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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

\+ CS(OS) 3085/2015 & I.A.Nos.9908/2016, 13735/2016

M/S JINDAL PROMOTERS (P) LTD ..... Plaintiff
Through Mr. T.K. Tiwari, Advocate

versus

M/S JAIPURIA BUILDTECH (P) LTD ..... Defendant
Through None

% Date of Decision: 20th December, 2017

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for recovery of Rs.5,00,00,000/- along with interest @ 24% per annum.

2. It is the case of the plaintiff that the plaintiff-company is a builder company and is engaged in the business of building residential flats in Noida-U.P. and Delhi. It is further stated that the defendant is engaged in the sale/purchase of property/plots and deals in real estate.

3. Learned counsel for the plaintiff states that the defendant had approached the plaintiff for the sale of land comprising half portion of Khasra no. 947 area measuring 2660 Sq.Mtrs. (3180 Sq. Yds.), Khasra no. 948 area measuring 3670 Sq. Mtrs. (4389 Sq. Yds.), half portion of Khasra no. 951-52 area measuring 800 Sq. Mtrs. (3200 Sq. Yds.),

Khasra no. 953 area measuring 3160 Sq. Mtrs. (3779 Sq. Yds.) and Khasra no. 957 area measuring 3410 Sq. Mtrs. (4076 Sq. Yds.) comprising total land of 13,700 Sq. Mtrs. situated at Saddiq Nagar, Ghaziabad – Uttar Pradesh.

4. It is stated in the plaint that the initial payment of Rs.5,00,00,000/- was made by the plaintiff company to the defendant before inspection of the land and settlement of prices, since payment of the amount was a condition precedent for inspecting the land.

5. It is stated that the defendant after receiving the amounts gave a rough receipt of part of the money to the plaintiff. It is further stated that the rough receipt was a hand written note of the director of the defendant- company i.e. Mr. Ashok Goyal.

6. It is averred in the plaint that, subsequent to the payment of the initial amount, the plaintiff conducted an enquiry with respect to the title of the suit property and the said enquiry revealed that the title papers were not under the name of the defendant. It is stated that the defendant had entered into an agreement with the plaintiff for the sale of the suit property with the sole intent to defraud and cheat the plaintiff.

7. It is stated in the plaint that the plaintiff confronted the defendant company directors and asked them to return the payment of Rs.5,00,00,000/- made by the plaintiff. The directors of the defendant-company admitted their liability and offered to refund/return the money of the plaintiff and issued three cheques bearing Cheque No. 000134 dated 20th August, 2013 for Rs.1,50,00,000/-, Cheque No. 000136 dated 15th September 2013 for Rs.1,50,00,000/- and Cheque

No.000137 dated 30th September, 2013 for Rs.2,00,00,000/-, all cheques drawn on Kotak Mahindra Bank Ltd. with the assurance that the same would be encashed on presentation.

8. Learned counsel for the plaintiff states that when the plaintiff presented the cheques for encashment, the same were returned by the bank, vide Cheque Returning Memos dated 20th August, 2013, 17th September, 2013 and 1st October, 2013, as 'unpaid and dishonoured' with the remark "FUNDS INSUFFICIENT".

9. He states that the plaintiff-company had informed the defendant that the cheques issued by them were dishonored and returned by the bank and requested the defendant to pay the amount through demand draft, but the defendant declined to make any payments to the plaintiff.

10. Learned counsel for the plaintiff states that since the defendant did not make the respective payment, the plaintiff issued three legal notices to the defendant dated 10th September, 2013, 25th September and 08th October, 2013 requesting them to make the relevant payments. He states that despite making several requests, the defendant has failed to pay the outstanding amount of Rs.5,00,00,000/- till date. Learned counsel of the plaintiff states that the plaintiff has also initiated multiple proceedings under Section 138 of the Negotiable Instruments Act against the defendant in respect of the aforesaid cheques and the same are pending before the Karkardooma District Court, Delhi.

11. Since the defendant did not enter appearance, it was proceeded ex-parte vide order dated 26th September, 2017.

12. The plaintiff has filed its evidence by way of affidavit of Mr. Jai Pal Singh Chauhan in support of the averments made in the suit and inter alia relied upon the following documents:-

(i) Ex.PW1/3 and Ex.PW1/4 are the copies of the hand written receipt given by the director of the defendant-company to the plaintiff.

(ii) Ex.PW1/5, Ex.PW1/6 and Ex.PW1/7 are the certified copies of the cheques given by the defendant-company directors to the plaintiff.

(iii) Ex.PW1/8, Ex.PW1/9 and Ex.PW1/10 are the certified copies of the cheque returning memos sent by the bank to the plaintiff.

(iv) Ex.PW1/11, Ex.PW1/12 and Ex.PW1/13 are the copies of the legal notices sent by the plaintiff to the defendant.

13. Having perused the paper book, this Court is of the opinion that the defendant had taken Rs.5,00,00,000/- from the plaintiff for sale of the suit property. However, the defendant has till date neither executed the sale of the suit property in favour of the plaintiff nor has the defendant returned the said amount to the plaintiff.

14. Further, the act of the defendant in issuing three cheques dated 20th August, 2013 for Rs.1,50,00,000/-, dated 15th September 2013 for Rs.1,50,00,000/- and dated 30th September, 2013 for Rs.2,00,00,000/- for payment of the aforesaid outstanding amount and the same being dishonoured vide return memos dated 20th August, 2013, 17th September, 2013 and 1st October, 2013 with remarks "Funds Insufficient" are clearly indicative of the defendant's intent of evading

the payments payable to the plaintiff-company.

15. Also, despite issuance of legal notices dated 10th September, 2013, 25th September and 08th October, 2013, by the plaintiff, calling upon the defendant to make the outstanding payment, the defendant has neither replied to the same nor made any payment till date.

16. As the averments in the plaint have not been rebutted by the defendant in spite of ample opportunities given by this Court, they are deemed to have been admitted.

17. Consequently, the present suit is decreed for Rs.5,00,00,000/- in favour of the plaintiff company and against the defendant along with pendent lite and future interest @ 8% per annum on the outstanding amount along with costs incurred by the plaintiff. The cost shall amongst others include the lawyers' fees as well as the amounts spent on purchasing the court fees. Registry is directed to prepare a decree sheet accordingly.

MANMOHAN, J

DECEMBER 20, 2017

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