

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

+ **RFA No.276/2018**

% **20th March, 2018**

M/S HIMLAND HOUSING PRIVATE LIMITED & ORS.

.....Appellants

Through: Mr. Sumeet Kaul, Advocate.

versus

M/S AKASH & ASSOCIATES

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.10790/2018 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.10789/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 68 days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.276/2018 and C.M. No.10788/2018 (stay)

3. This Regular First Appeal is filed under Section 96 of the Code of Civil Procedure, 1908 (CPC) by the defendant no.1 in the suit

impugning the judgment of the trial court dated 23.8.2017 by which trial court has decreed the suit for recovery of moneys filed by the respondent/plaintiff. The amount which has been decreed is the amount paid by the respondent/plaintiff as an investment in the projects of the appellant no.1/defendant no.1. The suit has been decreed after framing issues by holding that there is no need of trial on account of admissions which have been made by the appellant no.1/defendant no.1 in its written statement.

4. The facts of the case are that the respondent/plaintiff filed the subject suit for recovery of Rs.5,30,000/- pleading that this amount was paid by the respondent/plaintiff to the appellant no.1/defendant no.1 as investment in construction projects of appellant no.1/defendant no.1 but since however this investment was frustrated because the flats were not handed over to the respondent/plaintiff. Therefore, the subject suit for recovery came to be filed.

5. The relevant para of the plaint averring payments of amounts by the respondent/plaintiff to the appellant no.1/defendant no.1 is para 4. For the sake of understanding, however reference is

also made to paras 3 and 5 of the plaint and therefore, paras 3 to 5 of the plaint are reproduced as under:-

“3. That the defendants in collusion with each other & some of their associates misrepresented, allured and induced the plaintiff to invest in their project “Himland Executive Residences” a housing project of M/s Himland Housing Pvt. Ltd. in Damrog, Solan, Himachal Pradesh and assured the plaintiff to allot flats in the name of the plaintiff.

4. That as per the requirements of the defendants, the plaintiff invested the amount in the project of defendants through RTGS/NEFT and the details of the same is as under:-

S. No.	Name	Date	Mode of Payment	Amount in Rs.	Name of Beneficiary
1.	Akash & Associates	26/03/14	RTGS from Corporation Bank	5,00,000/-	Himland Housing Pvt. Ltd.
2.	Akash & Associates	06/08/14	NEFT from Corporation Bank	30,000/-	P.K. Dass accountant/superwiser head (HHPL)

5. That the defendants despite duly receipt the aforesaid amount have not allotted the flat in favour of the plaintiff and further linger on the same on one pretext or the other.”

6. I may note that summons in the suit were only issued to the appellant no.1/defendant no.1 and in fact even the decree is only passed against the appellant no.1/defendant no.1. The paras of the written statement of the appellant no.1/defendant no.1 which do not dispute the contents of paras 3 to 5 of the plaint, are paras 3 to 5 of the written statement and these paras read as under:-

“3. That in reply to the contents of para no.3 of the plaint it is submitted that mere assertion is not sufficient to make allegations; as the submissions are import of the information derived by the husband of the plaintiff, who is also attorney holder of the plaintiff being connected with

the defendant no.1 as Chartered Accountant and also to the defendant no.2 and his other family members and firms. The plaintiff shall stand to strict proof of her allegations that she was allured in any manner. Since there was no discussion, conversation with the plaintiff there was no assurance of any allotment of flat or flats as alleged. The plaintiff is making vague and bald assertions as to investment and allotment of flats and had not disclosed as to what was to agreed cost, how the payment was to done and what all payment is made by her and what all is/was due. It is strange to note that for the mere sum of Rupees 5,00,000/- flats could be allotted to the plaintiff that too at hilly area, where costs of land and construction is too high.

4. That in reply to the contents of para no.4 of the plaint it is submitted that one legal notice concerning the alleged payment was received by the answering defendant and interim reply was sent to the plaintiff's counsel and the present plaint neither discloses about the said reply nor acknowledges the said reply intentionally, wherein certain information was sought and is not supplied by the plaintiff so far to reply to this para. It is denied that the amount of Rs.30,000/- given to P.K. Dass was actually for the defendant no.1 or other defendant in any manner as alleged.

5. That in reply to the contents of para no.5 of the plaint it is submitted that reply to para 3 and 4 may kindly be read as reply to this para besides submission in preliminary submissions cum objections. The plaintiff is making bald assertions without disclosing as to when and who made promises and prolonging the false promises on one ground or the other. The plaintiff shall stand to strict proof of these assertions failing which the plaint would deserved to be dismissed on this sole ground."

7. In view of the aforesaid position of *non-traverse* of averments made in para 4 of the plaint by para 4 of the written statement, trial court after framing of issues has decided issue no.1 in favour of the respondent/plaintiff and granted a decree for a sum of Rs.5 lacs in favour of the respondent/plaintiff and against the appellant no.1/defendant no.1 by observing as under:-

"Issue No. 1.

2. After considering the pleadings, this court is of the opinion that this issues can be answered without putting the parties for trial on the issues. The entire claim of the plaintiff in this suit is based on para 4 of the plaint as under:

" That as per the requirements of the defendants, the plaintiff invested the amount in the project of defendants through RTGS/NEFT and the details of the same is as under:

S. No.	Name	Date	Mode of Payment	Amount in Rs.	Name of Beneficiary
1.	Akash & Associates	26/03/14	RTGS from Corporation Bank	5,00,000/-	Himland Housing Pvt. Ltd.
2.	Akash & Associates	06/08/14	NEFT from Corporation Bank	30,000/-	P.K. Dass accountant/superwiser head (HHPL)

3. The suit is for recovery of a sum of Rs. 5.3 lakhs. The reply to para 4 on merits in the W.S. is as under:

"That besides the other facts the territorial jurisdiction of the Hon'ble court is under challenge as the place of occupation/ business of the answering defendant against whom the present suit is alleged do not fall within the jurisdiction of this Hon'ble Court."

4. A sum of Rs.30,000/- is denied, which is alleged to have been paid through RTGS to Mr. P.K. Dass and not for defendant no.1-company.

5. After going through the pleadings, the aspect of investment of Rs. 5 lakhs by the plaintiff in the projects of the defendants is not denied. What the defendant answered is that, they received a legal notice and that interim reply was sent to plaintiff's counsel. What the interim reply sent by the defendant is not mentioned in the W.S. and explained; nor a copy of the said interim reply is filed by the defendant no.1 alongwith the W.S. There is no specific denial of the investment of Rs. 5 lakhs made by the plaintiff on 26.03.2014 through RTGS from corporation bank.

6. Order 8 rules 3 & 4 of CPC reads as under:

"3. **Denial to be specific:** - It shall not be sufficient for a defendant in his written statement to deny generally the grounds alleged by the plaintiff, but the defendant must deal specifically with each allegation of fact of which he does not admit the truth, except damages.

4. **Evasive denial.**- Where a defendant denies an allegation of fact in the plaint, he must not do so evasively, but answer the point of substance. Thus, if it is alleged that he received a certain sum of money, it shall not be sufficient to deny that he received that particular amount, but he must deny that he received that sum or any part thereof, or else set out how much he received. And if an allegation is

made with diverse circumstances, it shall not be sufficient to deny it along with those circumstances."

7. Order 8 rule 1 A of CPC also makes it mandatory for the defendant to produce the document along with the W.S. In this case, the defendant has taken a stand that some interim reply is filed in answer to the legal notice issued. Such an interim reply is not filed.

8. Considering the silence on the part of the defendant in the written statement, towards the allegation of the investment made by the plaintiff on 26.03.2014 a sum of Rs. 5 lakhs through RTGS, which is not denied, the only inference that can be drawn is that the defendant admits the investment of Rs. 5 lakhs as averred in the plaint.

9. There are two parts of the claim, the first part is for recovery of a sum of Rs. 5 lakhs and the second part is for recovery of a sum of Rs. 30,000/-.

10. Ld. Counsel Shri Manish Kumar appearing for the defendant submits that a sum of Rs. 30,000/- is denied which is allegedly paid to the account of Shri P. K. Dass as clearly admitted by the plaintiff. Therefore this sum did not reach the sum of defendant no.1-company.

11. As regards the other part of the claim of a sum of Rs. 5 lakhs, the Ld. Counsel for the defendant submits that the same is neither admitted nor denied.

12. Order 8 rule 5 of CPC is very clear as regards the denials to be made in the W.S. as under:

"5. Specific denial.- (1) Every allegation of fact in the plaint, if not denied specifically or by necessary implication, or stated to be not admitted in the pleading of the defendant, shall be taken to be admitted except as against a person under disability:

Provided that the Court may in its discretion require any fact so admitted to be proved otherwise than by such admission.

(2) Where the defendant has not filed a pleading, it shall be lawful for the court to pronounce judgment on the basis of the facts contained in the plaint, except as against a person under a disability, but the Court may, in its discretion, require any such fact to be proved. (3) In exercising its discretion under the proviso to sub- rule (1) or under sub-rule (2), the Court shall have due regard to the fact whether the defendant could have, or has, engaged a pleader.

(4) Whenever a judgment is pronounced under this rule, a decree shall be drawn up in accordance with such judgment and such decree shall bear the date on which the judgment was pronounced."

13. In view of the above, this court is bound to pass a decree on the admitted part as a consequential inference to the pleadings. As regards the second component of the claim concerning Rs. 30,000/-, the same is credited into the account of beneficiary namely Shri P.K. Dass. The said P.K. Dass is not a party to the present suit. Further more, this court is of the opinion that at the first hearing itself after considering the pleadings, it is made clear that the parties are not in variance or issue with regard to this

question of fact and considering order 15 rule 1 of CPC, this court may at once pronounce its judgment.

14. In view of the above, the plaintiff is only entitled to the first part of the claim that is Rs. 5 lakhs and the second part of the claim of Rs. 30,000/- thus cannot be decreed against the defendant.”

8. I do not find any illegality whatsoever in the aforesaid discussion, reasoning and conclusion of the trial court inasmuch as I have already reproduced above paras 3 to 5 of the plaint and replies thereto in paras 3 to 5 of the written statement, and it is seen that there is no denial that appellant no.1/defendant no.1 did receive an amount of Rs.5 lacs from the respondent/plaintiff towards projects of the appellant no.1/defendant no.1 but the flats under the projects have not been delivered to the respondent/plaintiff and therefore respondent/plaintiff was entitled to the decree of the amount of Rs.5 lacs. I may note that though the suit amount claimed Rs.5.30 lacs, however, the trial court decreed the suit only for a sum of Rs.5 lacs as a sum of Rs.30,00/- was not found to have been paid to the appellant no.1/defendant no.1 but was paid to one Sh. P.K. Dass.

9. There is no merit in the appeal. Dismissed.

MARCH 20, 2018
Ne

VALMIKI J. MEHTA, J