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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 12.02.2018

Pronounced on: 07.03.2018

+ CS(OS) 1040/2008

SHRI ROHIT SHARMA AND ANR

..... Plaintiffs

Through Mr.Joy Basu, Sr.Adv. with Mr.Varun
Sarin, Adv.

versus

CHANDER MOHAN KALRA, HUF

..... Defendant

Through Ms.Purnima Maheshwari and
Mr.D.K.Singh, Advs.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J.

1. The plaintiff has filed the present suit seeking specific performance of Agreement to Sell dated 12.10.2007. As per the plaint the defendant is the Karta of M/s.Chander Mohan Kalra, HUF and owner of property C-36, Inderpuri, New Delhi which is a plot measuring 500 sq.yards. The property was bought by the father of the defendant on 4.2.1966. The father of the defendant died on 23.4.2002 leaving behind a Will dated 5.3.1984. The defendant filed a Probate Petition where he was granted the probate by judgment dated 19.4.2006. The sisters of the defendant had filed their No Objection Affidavits. The defendant is a permanent resident of USA.

2. It is stated that in August 2007, a property dealer Shri Vijay Gupta made an offer for sale of the suit property to the plaintiffs. Pursuant to negotiations with the defendant a sale price of Rs.2.40 crores was agreed upon. It is pleaded that the defendant handed over copies of all past sale deeds, Will dated 5.3.1984, probate petition and the entire records. On 16.8.2007 the plaintiffs got prepared from Citi Bank in the name of the defendant a draft for Rs.5 lacs but the defendant was not available. The parties met on 8.10.2007 whereby the defendant received the draft on account of token money towards the sale. He gave a receipt. It is also stated that the defendant handed over the copies of the Power of Attorney in his favour sent by his sons, namely, Shri Vinit Kalra and Shri Sunil Kalra from USA giving no objection for the sale of the suit property. On 12.10.2007 an Agreement to Sell was executed which is said to have been signed by the defendant as Karta with a rubber stamp affixed on each page. The plaintiff is also said to have paid in cash another sum of Rs.5 lacs. Hence, the defendant is said to have received a total sum of Rs.10 lacs. Another sum of Rs.40 lacs was to be paid within one month. Balance money was to be paid within six months i.e. 11.4.2008.

3. Sometimes in August 2007 the plaintiffs had also applied to HDFC Limited for grant of a Housing Loan of over Rs.2 crores, which was approved on 27.9.2007.

4. For the purpose of payment of Rs.40 lacs which was payable on or before 11.11.2007 in terms of the Agreement to Sell dated 12.10.2007, the plaintiffs got two demand drafts prepared from Citi Bank, for Rs.30 lacs and Rs.10 lacs each. The demand drafts were handed over to the defendant as Karta but the defendant asked the plaintiffs to pay the total balance of

Rs.2,30,00,000/- at the time of execution of the Sale Deed which was agreed to be executed on or before 11.4.2008 The defendant stated that he was in the process of opening a bank account in the name of Chander Mohan Kalra, HUF and that he has not made any arrangements for receiving such a large amount of money as yet and, therefore, he did not accept the draft of Rs.40 lacs. The defendant thereafter left for USA. It is pleaded that the plaintiffs regularly contacted the defendant requesting him to receive the balance sum as the housing loan had already been approved. The defendant failed to perform his contract. On 20.5.2008 the plaintiffs are said to have learnt that the property dealer had been asked to find out some other buyer for Rs.3 crores in respect of the suit property.

5. It is pleaded that the plaintiff has always been ready and willing and is still ready and willing to perform his part of the contract. Hence, the present suit.

6. Defendants have filed the written statement. It has been pleaded in the written statement that the plaintiffs have forged the Agreement to Sell dated 12.10.2007 which was never executed by the defendant and have also made insertions in the receipt dated 8.10.2007 for Rs.5 lacs. It is stated that it was Mr.Vijay Gupta the property dealer who informed the defendant that one party desperately wants to buy the property and to show his bona fide they have prepared a pay order of Rs.5 lacs in favour of the defendant and that the entire sale consideration would be paid in one go. Based on the said assurances of Shri Vijay Gupta, the defendant and his wife planned a visit for a month to India from 27.9.2007 to 7.11.2007 for sale of the property. It is pleaded that in the meeting that took place on 08.10.2007 it was made

clear by the defendant that the property would be sold at Rs.5 crores which is the market rate provided payment is made during the present visit of the defendant i.e. by 7.11.2007. After discussions, photocopies of title documents and proceedings in the probate case were given to the plaintiffs and the plaintiffs in order to show their bona fide handed over the pay order of Rs.5 lacs to the defendant. The defendant issued a deposit receipt dated 8.10.2007.

7. On the request of the plaintiffs, the defendant attended a meeting with the Manager of HDFC Bank on 22.10.2007 alongwith original documents for verification. The Manager agreed to disburse the loan amount after receipt of power of attorney and no objection to sell the property from the other family members of the HUF. The defendant clearly informed the plaintiff that the said documents cannot be made available in the time available as he has to go back to USA for the same. On this, the father of the plaintiff assured that they had alternative arrangement and are not dependent on the bank loan to pay the defendant.

8. It is further pleaded that the parties met on 5.11.2007 when the plaintiff stated that without the help of the bank they are not in a position to conclude the transaction and requested the defendant to arrange the necessary Power of Attorney and No Objection from other members of the HUF. As the defendant was returning to USA, he requested the plaintiff to return the deposit receipt dated 8.10.2007 and to take back the pay order of Rs. 5 lakhs. It is stated that as the plaintiff did not return the receipts and the documents the defendant left India leaving the pay order with Shri Vijay Gupta the property dealer and told him that the said pay order be returned after taking back the papers and the original deposit receipt from the

plaintiff. The defendant admits that though the parties failed to conclude the transaction they were in touch on the phone for purchase of the said property but the rate and other terms were to be decided after the defendant finalizes his date of arrival in Delhi. It has been strongly pleaded that the plaintiff in connivance with their family members have conspired and created a forged agreement dated 12.10.2007. No such agreement was signed by the defendant. Further, the stamp papers were purchased with the connivance of the stamp vendor as the stamp paper was sold in the name of defendant on 11.10.2007 whereas defendant had not instructed anyone to buy the same. It is stated that the plaintiffs not only forged the agreement to sell but also fraudulently altered the deposit receipt dated 8.10.2007 by inserting the word 'token money' after striking out 'deposit'.

9. The issues were framed on 25.2.2009 and read as follows:-

“1. Whether the defendant had agreed to sell plot No. C-36, Inder Puri, New Delhi to the plaintiffs and if so on what terms and conditions? OPP

2. If the above issue is decided in favour of the plaintiffs, whether the plaintiffs have been ready and willing to perform their part of the agreement to sell? OPP

3. Whether the plaintiffs have paid Rs 5 lacs in cash to the defendant on 12th October, 2007? OPP

4. Whether the discretion in the grant of the relief of specific performance is to be exercised in favour of the plaintiffs? OPP

5. Whether the bank draft of Rs 5 lacs was given by the plaintiffs to the defendant as deposit only vide receipt dated 8th October, 2007 and whether the plaintiffs have unauthorizedly altered the word “deposit” on the said receipt to token money? and if so to what effect? OPD

6. Whether the plaintiffs have forged the signatures of the defendant on the agreement to sell dated 12th October, 2007?

OPD

7. Whether the plaintiffs had offered to purchase the property for Rs 5 crores and thereafter defaulted in the same? OPD

8. Relief.”

10. On the same date when issues were framed this court on an application of the defendant under Order 26 Rule 10A CPC agreed to refer the Agreement to Sell to CFSL (CBI) to determine the authenticity of the signatures of the defendant on the same. The court had noted an undertaking of the defendant that in case the CFSL holds that the signatures on the Agreement to Sell tally with the admitted signatures of the defendant then the defendant would be bound by the said report. Hence, the court had directed CFSL to compare the signatures of the defendant Chander Mohan Kalra on the Agreement to Sell dated 12.10.2007; with his admitted signatures i.e. receipt dated 8.10.2007, the written statement verified on 14.11.2008 and affidavit verified on 14.11.2008. I may note that CFSL in its report dated 9.4.2009 has opined that the signatures on the Agreement to Sell cannot be connected with the admitted signatures of Shri C.M.Kalra on the receipt dated 8.10.2007, the signatures on the written statement alongwith the affidavit dated 4.11.2008.

11. Parties have led their evidence. Plaintiff No.1-Sh. Rohit Sharma has led his evidence as PW-1. He has exhibited the receipt dated 08.10.2007 as Ex. CW-1/1. Copies of various documents have been given mark numbers. Similarly, the plaintiffs have also led the evidence of PW-2/Sh.Annindya Bannerjee, National Legal Head, Retail Lending HDFC Ltd. Munirka, New

Delhi. He brought with him the loan file maintained by the Company. The plaintiffs have also led the evidence of PW-3/Sh.V.C.Mishra, Forensic Handwriting and Finger Print Expert. He has tendered his evidence by way of affidavit and has exhibited his report as Ex.PW-2/A. The plaintiffs have also led the evidence of PW-4/Sh. Rohit Mahajan, the witness to the agreement to sell dated 12.10.2007; PW-5/Sh.Subodh Vats, Advocate who has given the title report; PW-6/Sh.Jagdish Salwan, Manager Citi bank, Connaught Place, New Delhi who has filed the statement of accounts for Vin Industries for the period from 01.10.2007 to 02.10.2007 as Ex.CW-6/1; PW-7/Sh. Isaar Babu, Alternate Nodal Officer, Vodafone, Okhla, New Delhi who has exhibited two documents as Ex.PW-7/1 and Ex.PW-7/2 which are itemized call details.

12. The defendant has led the evidence of himself as DW-1/Sh.Chander Mohan Kalra, DW-2/Vijay Gupta, the property dealer and DW-3/Sh.Jeet Singh, Senior Scientific Officer-cum-Chemical Examiner, Govt. of India from CFSL, New Delhi.

13. I have heard learned counsel for the parties. Learned senior counsel for the plaintiff has taken me through the evidence of the plaintiff and PW-4 Shri Rohit Mahajan who was the witness to the Agreement to Sell. He has also relied upon the evidence of PW-3 Shri V.C.Mishra, Forensic Handwriting and Finger Print Expert. Based on these testimonies he submits that it is clear that the Agreement to Sell was duly signed by the defendant. He has stressed that the report of the CFSL cannot be trusted as it is completely erroneous. He has shown to me the handwriting of the defendant on various documents including the testimony of the defendant where he has signed on each page to submit that there are tremors in the signatures as the

defendant appears to be suffering from some medical problem. Hence, the handwriting of the defendant is never consistent. He has also relied upon the evidence of the two bankers PW-2 and PW-6 to stress that the plaintiff was always ready and willing to make payment to the defendant. He has pointed out that pursuant to interim orders of this court on 4.8.2008 the plaintiff has already deposited Rs.75 lacs in court. He has also pointed out that before the court on 25.02.2009 in view of the plea of the defendant that the market value of the property was Rs.5 crores, the plaintiff had agreed to buy the property for Rs.5 crores which the defendant refused. Hence, it is pleaded that the plaintiffs have always been ready and willing to abide by the terms of the Agreement including for enhanced price of Rs.5 crores.

14. Learned counsel appearing for the defendant has vehemently denied the contentions of the plaintiff. She reiterates that the Agreement to Sell was never executed between the parties and the plaintiff has forged the Agreement to Sell dated 12.10.2007. The price of Rs.5 crores offered on 25.02.2009 was inadequate and was not the market price

15. In my opinion, the two most important issues are issue No. 1: Whether the defendant had agreed to sell the plot No. C-36, Inder Puri, New Delhi to the plaintiffs and if so, on what terms and conditions? OPP and Issue No. 6: Whether the plaintiffs have forged the signatures of the defendant on the agreement to sell dated 12.10.2007? OPD. These issues are interlinked and I will first deal with these issues.

16. The case of the plaintiffs is that pursuant to the discussions with the defendant around August 2007, through a property dealer Sh.Vijay Gupta, the defendant agreed to sell the property in question for Rs.2.40 crores. To show bona fide, a draft of Rs.5 lakh was got prepared on 16.08.2007, on the

strength of which, it is claimed that the defendant made a trip to India. Parties for the first time met on 08.10.2007 when the defendant received the demand draft as a token money towards the sale. Thereafter, an agreement to sell was executed on 12.10.2007 where it was agreed that the property would be sold for Rs.2.40 crores. Another sum of Rs.5 lakhs in cash is said to have been paid to the defendant on that date. Another installment of Rs.40 lakhs was to be paid within one month. The entire balance was to be paid within six months, namely, by 11.04.2008.

17. The case of the defendant is that the defendant had made it clear that the property was to be sold for Rs.5 crores and the entire payment was to be made at one go. It is pleaded that the defendant and his wife specifically came from USA for the sale of the property relying upon the assurances of the plaintiffs for one month w.e.f. 27.09.2007. Defendant was to return back on 07.11.2007. The defendant claims to have met the plaintiffs for first time on 08.10.2007 and received a demand draft of Rs.5 lakhs. The said amount was never deposited in the account by the defendant as it was only a deposit. In fact, it is the admitted case that the said expired demand draft in original was returned back to the plaintiffs in court as recorded by this court on 25.02.2009. It is further pleaded that on the request of the plaintiffs, the defendant did visit the concerned branch of HDFC Bank and did show to the bankers the original title documents. However, the Manager stated that the loan amount would be disbursed only after they receive power of attorney and no objection to sell on behalf of other family members of the HUF. It is stated that the defendant had clearly informed the plaintiffs that these documents cannot be made available in a short time and for these documents, the defendant would have to go back to USA. On this, the father

of the plaintiff is said to have assured the defendant that they would make alternate arrangements. Subsequently, the plaintiffs clearly said that they are unable to complete the transaction without a loan from the bank and requested the defendant to arrange the necessary power of attorney and NOC from the other members of the HUF. Hence, no transaction could take place or agreement finalized. The defendant states that he departed from India leaving the pay order of Rs.5 lakhs with the property broker-Sh. Vijay Gupta who was to return it to the plaintiffs on return of the receipt and copies of documents given to the plaintiff. Regarding the agreement to sell, the defendant has denied execution of the same pleading that no agreement to sell was entered into.

18. I may look at the evidence of the parties relevant to these issues. PW-1/Sh.Rohit Sharma has filed his affidavit by way of evidence where he has reiterated his stand as stated in the plaint. He claims that a draft agreement to sell was prepared by the defendant and was handed over to the plaintiff on 09.10.2007 in which details were filled up by the plaintiff. The plaintiff also got search of the title of the property on 11.10.2007 through Progressive Law Group. On 12.10.2007, two copies of the finally typed out agreement to sell were produced by the defendant. The plaintiff is said to have put his signatures on the agreement to sell. Sh.Rohit Mahajan is said to have signed as a witness along with Sh. Uppal Chopra. As per the plaintiffs, Sh. Uppal Chopra is the uncle of the defendant. The plaintiffs are also said to have paid Rs.5 lakhs in cash to the defendant. One copy of the agreement to sell is said to have been handed over to the plaintiffs. Reliance is also placed on the loan applied for by the plaintiffs for Rs.2 crores in August 2007 which was approved by the HDFC Bank on 27.09.2007. It is pleaded that as per the

requirement of the Bank, the Karta of the defendant sent the copies of the Power of Attorney in his favour by his sons giving no objection for the sale of the property to the plaintiff. The bank also demanded income tax returns for the last three years relating to the HUF. PW-1 claims to have made two bank drafts of Rs.30 lakhs and Rs.10 lakhs each dated 05.11.2007. Copies of the demand draft are on record and have been marked. It is stated that the defendant refused to accept the same as he did not have an account in the name of the HUF and stated that the entire amount would be taken at one go. It is further stated that the defendant went back to USA with the promise that he would come back within two months to get the sale deed executed. PW-4/Rohit Mahajan has also filed his affidavit by way of evidence stating that the defendant has signed the document i.e. agreement to sell dated 12.10.2007 on each page and thereafter, the plaintiffs have signed on each page. The second witness-Sh. Uppal Chopra is also said to have signed in his presence.

19. The plaintiffs have also led the evidence of Sh.V.C.Mishra/PW-3 who has also filed his affidavit by way of evidence. He has claimed himself to be a leading Forensic Handwriting and Finger Print Expert having 22 years experience in the field. According to his testimony, the same person has signed the agreement to sell dated 12.10.2007 as the receipt dated 08.10.2007 (Ex.PW1/1), written statement of the defendant verified on 04.11.2008 and affidavit also verified on 04.11.2008. His report has been marked as Ex.PW-2/A.

20. The defendant has led his own evidence by way of affidavit as DW-1. He has reiterated the averments of the written statement.

21. The defendant has also led the evidence of the property broker Sh.

Vijay Gupta, DW-2 who has filed his affidavit by way of evidence. He has stated that the pay order was received by the defendant so that he does not negotiate with any other purchaser as per the prevalent custom. No terms of sale were finalized on that date as the title was not yet verified. He confirms that the plaintiffs failed to arrange the funds and that is why, the defendant left the demand draft of Rs.5 lakhs with him to be handed over to the plaintiffs after taking the original receipt back from them. The defendant has also led the evidence of Sh.Jeet Singh/DW-3, Senior Scientific Officer, CFSL who has given his evidence to support the CFSL Report already filed in court.

22. The issue is to find out the truth based on the above evidence namely did the parties enter into the agreement to sell dated 12.10.2007. There are some relevant observations made by the Supreme Court regarding the search of truth. The following judgments are noteworthy:-

In *Garib Singh v. State of Punjab, 1972 (3) SCC 418*, the Supreme Court approved the following tests laid down by the Himachal Pradesh High Court in *Chet Ram v. State, (1971) 1 Sim LJ 153, 157*:

“8. ...Courts, in search of the core of truth, have to beware of being misled by half truths or individually defective pieces of evidence. Firstly, undeniable facts and circumstances should be examined. Secondly, the pattern of the case thus revealed, in the context of a whole sequence of proved facts, must be scrutinized to determine whether a natural, or probable and, therefore, a credible course of events is disclosed. Thirdly, the minutes of evidence, including established discrepancies, should be put in the crucible of the whole context of an alleged crime or occurrence and tested, particularly with reference to the proved circumstances which generally provide a more reliable indication of truth than the faulty human testimony, so that the process of separating the grain from the chaff may take place. Fourthly, in

arriving at an assessment of credibility of individual witnesses, regard must be had to the possible motives for either deliberate mendacity or subconscious bias. Lastly, the demeanour and bearing of a witness in Court should be carefully noticed and an appellate Court should remember that a trial Court has had, in this respect, an advantage which it does not possess.

In *M. Narsinga Rao v. State of Andhra Pradesh*, (2001) 1 SCC 691, the Supreme Court held as under:

“15. The word ‘proof’ need be understood in the sense in which it is defined in the Evidence Act because proof depends upon the admissibility of evidence. A fact is said to be proved when, after considering the matters before it, the court either believes it to exist, or consider its existence so probable that a prudent man ought, under the circumstances of the particular case, to act upon the supposition that it exists. This is the definition given for the word “proved” in the Evidence Act. What is required is production of such materials on which the court can reasonably act to reach the supposition that a fact exists. Proof of the fact depends upon the degree of probability of its having existed. The standard required for reaching the supposition is that of a prudent man acting in any important matter concerning him. Fletcher Moulton L.J. in *Hawkins v. Powells Tillery Steam Coal Co.Ltd.*, (1911) 1 K.B. 988 observed like this:

‘Proof does not mean proof to rigid mathematical demonstration, because that is impossible; it must mean such evidence as would induce a reasonable man to come to a particular conclusion.’

23. As noted above in the facts of the present case, I have contradictory evidence led by both the sides on the issue as to whether the parties entered into an agreement to sell and as to whether the defendant signed the agreement to sell dated 12.10.2007. On this aspect, the defendant has led the evidence of DW-3 Sh.Jeet Singh from FSL. The plaintiff has led the evidence of PW-3 Sh.V.C.Mishra, Forensic Handwriting

and Finger Print Expert and PW-4 Sh.Rohit Mahajan, the witness to the agreement to sell who states that the concerned parties signed the agreement to sell in his presence and he along with other witnesses have also signed the agreement to sell.

24. The sections 45, 47 and 73 are the relevant sections of the Evidence Act which deals with the issue of signatures being that of a person who is purported to have signed. The said sections read as follows:

“45. Opinions of experts.—When the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting [or finger impressions], the opinions upon that point of persons specially skilled in such foreign law, science or art, [or in questions as to identity of handwriting] [or finger impressions] are relevant facts. Such persons are called experts.

47. Opinion as to handwriting, when relevant.—When the Court has to form an opinion as to the person by whom any document was written or signed, the opinion of any person acquainted with the handwriting of the person by whom it is supposed to be written or signed that it was or was not written or signed by that person, is a relevant fact.

73. Comparison of signature, writing or seal with others admitted or proved.—In order to ascertain whether a signature, writing or seal is that of the person by whom it purports to have been written or made, any signature, writing, or seal admitted or proved to the satisfaction of the Court to have been written or made by that person may be compared with the one which is to be proved, although that signature, writing, or seal has not been produced or proved for any other purpose.

The Court may direct any person present in Court to write any words or figures for the purpose of enabling the Court to compare the words or figures so written with any words or figures alleged to have been written by such person. [This section applies also, with any necessary modifications, to finger-

impressions.]”

25. The Supreme Court in *Fakhruddin v. State of Madhya Pradesh AIR 1967 SC 1326* has on opinion of the handwriting expert held as follows:-

11. "Both under Section 45 and Section 47 the evidence is an opinion, in the former by a scientific comparison and in the latter on the basis of familiarity resulting from frequent observations and experience. In either case the Court must satisfy itself by such means as are open that the opinion may be acted upon. One such means open to the Court is to apply its own observation to the admitted or proved writings and to compare them with the disputed one, not to become an handwriting expert but to verify the premises of the expert in the one case and to appraise the value of the opinion in the other case. This comparison depends on an analysis of the characteristics in the admitted or proved writings and the findings of the same characteristics in large measure in the disputed writing. In this way the opinion of the deponent whether expert or other is subjected to scrutiny and although relevant to start with becomes probative. Where an expert's opinion is given, the Court must see for itself and with the assistance of the expert come to its own conclusion whether it can safely be held that the two writings are by the same person. This is not to say that the Court must play the role of an expert but to say that the Court may accept the fact proved only when it has satisfied itself on its own observation that it is safe to accept the opinion whether of the expert or other witnesses."

26. The Supreme Court in *Dayal Singh & Ors. v. State of Uttaranchal, AIR 2012 SC 3046*, held as follows:

“34. We really need not reiterate various judgments which have taken the view that the purpose of an expert opinion is primarily to assist the Court in arriving at a final conclusion. Such report is not binding upon the Court. The Court is expected to analyse the report, read it in conjunction with the other evidence on record and then form its final opinion as to whether such report is worthy of reliance or not. Just to illustrate this point of view, in a

given case, there may be two diametrically contradictory opinions of handwriting experts and both the opinions may be well reasoned. In such case, the Court has to critically examine the basis, reasoning, approach and experience of the expert to come to a conclusion as to which of the two reports can be safely relied upon by the Court. The assistance and value of expert opinion is indisputable, but there can be reports which are, ex facie, incorrect or deliberately so distorted as to render the entire prosecution case unbelievable. But if such eye-witnesses and other prosecution evidence are trustworthy, have credence and are consistent with the eye version given by the eye-witnesses, the Court will be well within its jurisdiction to discard the expert opinion. An expert report, duly proved, has its evidentiary value but such appreciation has to be within the limitations prescribed and with careful examination by the Court. A complete contradiction or inconsistency between the medical evidence and the ocular evidence on the one hand and the statement of the prosecution witnesses between themselves on the other, may result in seriously denting the case of the prosecution in its entirety but not otherwise.”

27. I may now look at the relevant evidence on this issue.

28. A perusal of the admitted signatures of the defendant on Ex.CW-1/I, the receipt dated 08.10.2007 shows that it is materially different from the signatures which exist on the agreement to sell dated 12.10.2007. In fact, the last name ‘Kalra’ is written in a completely different manner in the agreement to sell as compared to the accepted signatures on the receipt Ex.CW1/1. The same is the position on comparing the signatures of the defendant on the written statement dated 04.11.2008 and the accompanying affidavit also of the same date. Based on the above initial examination, in my opinion, the signatures on the agreement to sell dated 12.10.2007 are not that of Mr.Chander Mohan Kalra, the defendant.

29. My above view regarding the signatures of the defendant on the

agreement to sell is fortified by the opinion of the witness of the defendant, namely, DW-3/Sh.Jeet Singh, Senior Scientific Officer-cum-Chemical Examiner to Govt. of India, CFSL who has given an unshakable testimony.

30. As per the report of CFSL the signatures on the Agreement to Sell dated 12.10.2007 of Shri Chander Mohan Kalra are at points Q1, Q2 Q3 and Q4. These were compared with the admitted signatures on the written statement alongwith the affidavit being A1-A-4 and with the signatures on the original receipt of Rs.5 lacs dated 8.10.2007 marked as A-5. The report concludes as follows:-

“Result of examination

I. The authorship of the questioned English signatures marked Q-1 to Q-4 could not be connected with the writer of the admitted signatures marked A-1 to A-5 attributed to Chander Mohan Kalra due to the following reasons:-

Inter se comparison of the admitted signatures reveal that they are written with fluent line quality, natural variations and speed. Qualities of imitation were not found in them.

A careful microscopic examination of the questioned signatures reveal that they are written slowly showing inherent signs of imitations such as: blunt start and finish, slow and drawn movement, careful retouching of strokes. Pen lifts and their unnatural movement indicating that the questioned signatures marked Q-1 to Q-4 are forged signatures. On comparison, the questioned signatures marked Q-1 to Q-4 shows fundamental differences in the execution of capital and small letters, their combinations and other details in comparison with the admitted signatures marked A-1 to A-5.”

31. DW-3 Shri Jeet Singh has been extensively cross-examined on various dates. In my opinion, he has withstood the cross-examination very effectively. On 25.4.2011 he has stated as follows:-

“In this case I examined documents marked Q-1 to Q-4 and marked A-1 to A-5 by me. I gave my opinion with reasons that the authorship of the questioned English Signature marked Q-1 to Q-4 could not be connected with the writer of the admitted English Signature marked A-1 to A-5 attributed to Sh. Chander Mohan Kalra due to the following reasons:-

- (i) Inter-se comparison of admitted signatures marked A-1 to A-5 revealed that they are written with fluent line quality, natural variation and speed, quality of imitation was not found in the admitted signature.
- (ii) A careful microscopic examination of the questioned English signature as Q-1 to Q-4 reveal that they are written slowly, showing inherent sign of imitation such as blunt start and blunt finish, slow and drawn movement, careful retouching of strokes, pen lifts and their unnatural movement indicating that the questioned English Signature marked Q-1 to Q-4 are forged signatures. On comparison the questioned English signatures marked Q-1 to Q-4 showed fundamental differences in the execution of capital and small letters their combination and other details in comparison with admitted English signature marked as A-1 to A-5. Some of the point of differences observed between question and admitted signature marked as Q-1 to Q-4 and A-1 to A-5 have been incorporated from 2, 3 and 4 of my report which is exhibit as Ex.DW-3/1. The report bears my signature on each page which I identify.

I had examined the documents with the help of Video Spectral Comparator-5000. Twin Video Comparator, Stereo Zoom microscopic, magnifying glasses applying the principles of handwriting examination in forming my opinion.

I prepared the enlarge photographs with the help of Video Spectral Comparator-5000 at the magnifying of 5.66 as bend pass off, long pass VIS, brightness auto, contrast auto, auto exposure (Integration=1/60, Iris=50%, Gain=0db). Brightness=Auto, Contrast=Auto, Imaged with = 65.02 mm and same examination was carried out at the same condition of admitted signature marked A-1 to A-5 with the same instruments at the same magnification.”

32. Reference may be had to further cross-examination that reads as follows:-

“Q.7 While comparing mark A1 to A5 could you find individual characteristic?

Ans.Yes. Vol: The writings A1 to A5 are written by one or the same person and the individual characteristic which is coming the word “Kalra”, the combination “ra” is written in one operation after pen lift after the word L in the “Kalra”. I have mentioned more than 15 characteristic in my report at Page 2 to 4.”

.....

“Q.9. Please see the letter “c” of Q1, it is a jerky handwriting?

Ans. It is incorrect. Vol.: There is blunt start at the initial point of the “c” which indicate its forgery.

Q.10 How it is about letter ‘c’ in mark A1 and A2. They are also with blunt Start?

Ans. It is incorrect. Vol.: There is natural variation, which is repeatedly coming in all admitted writings A1 to A5.”

33. In this context, reference may also be had to the evidence led by the plaintiff regarding the above noted issues i.e., whether the parties entered into an agreement to sell. The plaintiff has filed evidence by way of affidavit of PW-3 Shri V.C.Misra who has opined that the four disputed signatures have been written by the same person who has executed the five admitted signatures. He has taken photographs from a NIKON FM-10 SLR Camera.

In his cross-examination Mr.V.C.Misra has stated that he was a student of C.F.S.(DU)PG Course and was sent to CBI for field training which was for two days and was shown instruments for two days. He has confirmed that he has spoken in a seminar of financial crime, at Vadodara, Gujarat. He has not published any paper.

34. The detailed testimony of DW-3 Sh. Jeet Singh inspires confidence. He is a government official, completely unconnected with the dispute and has given his opinion based on the request of this court vide order dated 25.02.2009. His background shows him to be highly experienced. He has stated his experience as follows:-

“I am working with the Govt. of India for the last 31 years. At present I am Sr. Scientific Officer Cum Chemical Examiner, in CFSL, New Delhi. During the last 31 years, I have examined 1500 documents and thousands of exhibits in CFSL, New Delhi. I received the training of examination and stabilization of charred document from FSL, Lucknow and also training on examination of fraudulent documents from CBI Academy, Ghaziabad. At Ghaziabad I was given training by experts called from United States of America. I hold B.Sc. Degree in Science and Post Graduate Diploma in Forensic Science from University of Delhi. I have appeared as witness in various courts in more than 100 cases at Delhi and also outside Delhi.”

35. The other person whose evidence is relevant for determining as to whether the defendant had signed the Agreement to Sell is that of Mr.Rohit Mahajan PW-4. As per the Agreement to Sell there are two witnesses, namely, Mr.Rohit Mahajan and Mr.Uppal Chopra who have also signed the Agreement. Mr.Rohit Mahajan PW-4 in his affidavit by way of evidence has stated that the defendant put his signatures in his presence and he identifies the respective signatures. His cross-examination, however, reveals that he

has been working with Vin Industries since 2001 which was a partnership firm. The plaintiff Shri Rohit Sharma and his brother Bharat Sharma are partners in the said Vin Industries. PW-4 is also now a Director/employee in Vin Poly Additives Pvt.Ltd. since 2009. Keeping in view the fact that the said witness is connected with the plaintiff, in my opinion, much credence cannot be given to his evidence.

36. As stated above, the evidence of DW-3 from FSL inspires confidence and I accept the same. In view of what I have observed on a visual comparison of the two signatures, the accepted signatures of the defendant on the receipt dated 08.10.2007, written statement and the affidavit as compared to the agreement to sell and above unshakable testimony of the DW-3, I am of the view that the defendant did not sign the agreement to sell dated 12.10.2007 and parties never entered into an agreement to sell.

37. In my opinion, the above conclusion is also supported by other discrepancies in the stand and evidence of the plaintiff which are quite glaring and are there on record. I may now mention the same.

38. First is the contention of the plaintiff that as per the agreement to sell, he had to pay within one month a sum of Rs.40 lakhs. Reliance is placed on the photocopies of two documents which are said to be demand drafts prepared in the name of Chander Mohan Kalra HUF for Rs.10 lakhs and Rs.30 lakhs each from Citi Bank. It is the case of the plaintiff that these drafts were prepared pursuant to the stipulation in the agreement to sell. The payment was offered to the defendant but he refused to accept the same saying that he does not have a bank account in the name of Chander Mohan Kalra HUF. The evidence of the witness from Citi Bank, namely, Sh. Jagdish Salwan/PW-6 was recorded. On 10.01.2011, he was asked to produce the

record of the two pay orders which he had not brought on that date. On the next date, namely, 28.01.2011, the witness brought photocopies of the pay orders containing round seal of Citi Bank signed by the witness. He has further stated that the demand drafts of Rs.30 lakhs and Rs.10 lakhs were made from the account of Ms.Malti Sharma while one was from the account of Sh.Vipin Bihari Sharma. There is nothing on record to show as to when these drafts were cancelled. Further as per the agreement to sell allegedly executed on 12.10.2007, the defendant was to receive a sum of Rs.40 lakhs within one month. Despite this defendant is said to have not received the demand draft on the alleged ground that he did not have a bank account in the name of Sh.Chander Mohan Kalra HUF. The plea is quite suspicious. As per the alleged agreement to sell dated 12.10.2007, a sum of Rs.40 lakhs was to be paid to the defendant within one month, i.e. by 11.11.2007. The defendant despite knowing this had not allegedly bothered to take steps to receive this money and open an appropriate account. Defendant and his wife had come to India for the sale of the property, yet they failed to even open an account; as alleged. I may note that the first draft of Rs.5 lakhs prepared on 16.08.2007 is not favouring Chander Mohan Kalra HUF. One cannot help feeling that this was a suo moto act of the plaintiff in preparing the demand drafts favouring Chander Mohan Kalra HUF and thereafter cancelling the same. It appears to be only an exercise in gathering evidence to support the plea of the existence of the agreement to sell and nothing more.

39. Secondly, I may note the position of Sh.Vijay Gupta, property broker, DW-2. The plaintiff in his cross-examination held on 26.08.2009 admits that the brokerage of Sh.Vijay Gupta was 1%. He confirms that Mr.Vijay Gupta, property broker was present on 08.10.2007 when initially the demand draft

of Rs.5 lakhs was given to the defendant and receipt was executed. Surprisingly, Sh.Vijay Gupta appears to have been completely disassociated when the agreement to sell was allegedly executed on 12.10.2007 or when the alleged demand drafts of Rs.40 lakhs prepared in the name of Chander Mohan Kalra HUF were offered to the defendant. Normally, the property broker who facilitates the deal remains involved at each stage of the transaction for the simple reason, he seeks to protect his own interest i.e. brokerage. It is strange that the property broker is not present at all when these two events allegedly took place. PW-1 further in his cross-examination confirms that there is no document on record which bears the signatures of Mr.Vijay Gupta, property broker. The absence of Mr.Vijay Gupta on the two crucial dates raises doubts about the plea of the plaintiffs about these events.

40. I may also note that as per the plaint, the plaintiff learnt on 20.05.2008 that the plaintiff have contacted property dealer to find some other buyers. In his cross-examination on 27.08.2010, PW-1 has noted that he does not know the name of the property broker who told him about the plan of the defendant to sell the property. Clearly, this plea that the defendant had contacted a property broker to sell the property to someone else is a make belief submission made without any basis.

41. There is another aspect which raises doubts about the conduct of the plaintiffs. I cannot help noticing that the loan that was sought for from the HDFC Bank was sanctioned on 27.09.2007 i.e. when the parties had not even met. The first meeting of the parties took place on 08.10.2017. The loan had no connection with the present property. In fact the witness from the HDFC Bank, namely, Sh.Annindya Bannerjee/PW-2 has in his cross-examination on 04.10.2010 confirmed that along with the loan application no

property details have been given and no agreement to sell is on record of HDFC on the date of approval dated 27.09.2007. He has also confirmed that there is no proposal from the plaintiff for purchase of the suit properties on record. He confirms that the loan was approved on 27.09.2007 subject to completion of conditions by the borrowers. These facts that have come out in evidence are in shocking contrast to the plea raised in the plaint that the deal had been finalized in August, 2007 and thereafter the plaintiff applied for a loan to HDFC Bank. Para 12 of the plaint reads as follows:

“That when in August 2007 the deal between the parties was agreed and finalized the plaintiffs alongwith their parents namely Shri Vipin Bihari Sharma and Smt.Malti Sharma applied to HDFC Ltd. The Capital Court, Olof Palme Marg, Munirka, New Delhi-110067, for grant of housing loan ofRs.2,00,00,000=00 (Rupees two crores only) which was approved on 27.9.2007, and the plaintiffs paid about Rs.1,40,000=00 to HDFC Ltd. on account of processing charges for the loan”

42. Clearly, the averments in the plaint are entirely different from the facts as unfolded in the evidence. The application for Loan had no connect to the suit property or the alleged Agreement to sell. Yet in the plaint, it is pleaded that the plaintiff applied for the loan after finalizing the deal with the defendant in August, 2007. The fact is that till October, 2007 the parties had not even met.

43. In my opinion, in view of the above facts, there is no merit in the contentions of the plaintiffs. All the above aspects lead me to conclude that no agreement to sell was executed between the parties on 12.10.2007. Hence, on Issue No. 1, I hold that there was no agreement to sell regarding the suit property. On Issue No. 6, I hold that the agreement to sell dated

12.10.2007 was never signed by the defendant. In view of what I have held above on issue No.1 and issue No.6, issue No.2 also gets disposed of accordingly inasmuch as there was no Agreement to Sell between the parties.

44. Similarly, issue No.4 also gets disposed of. As I have held that there is no Agreement to Sell between the parties the question of exercising discretion for grant of specific relief will not arise.

45. I will now deal with Issue No. 3, namely, as to whether the plaintiffs paid Rs.5 lakhs in cash to the defendant on 12.10.2007? OPP. In view of my opinion on issues No. 1 and 6 above, I hold that no payment of Rs.5 lakhs was received by the defendant on 12.10.2007.

46. I will now deal with other Issues. Issue no. 5 reads as follows:-

“5. Whether the bank draft of Rs.5 lacs was given by the plaintiffs to the defendant as deposit only vide receipt dated 8th October, 2007 and whether the plaintiffs have unauthorizedly altered the word “deposit” on the said receipt to “token money”? and if so to what effect? OPD

47. A perusal of the receipt dated 08.10.2007 would show that the original receipt reads as “Received draft of Rs.5 lakhs only as deposit towards sale of plot No. C-36, Inder Puri, New Delhi on 08.10.2007”. The word ‘deposit’ is struck out and a word ‘token money’ has been written in a different handwriting. Somebody has initialed as CMR in front of the correction.

48. In my opinion, there is no evidence to show that the defendant had corrected the original receipt. In fact, the pen with which the receipt is made and the defendant has signed appears to be the same pen as it has the same handwriting. The correction has been made from a different pen which itself throws grave suspicion on the authenticity of the correction. Accordingly, I

answer issue No. 5 holding that the plaintiffs have unauthorizedly altered the word 'deposit' on the receipt with the word 'token money'.

49. Issue No. 7 reads as follows:-

“7. Whether the plaintiffs had offered to purchase the property for Rs.5 crores and thereafter defaulted in the same? OPD”

50. An offer to purchase the property for Rs.5 crores was made in court on 25.02.2009. The plaintiff categorically offered to pay Rs.5 crores. However, the defendant refused the offer stating that the price of the property is much higher. I answer issue No. 7 accordingly. In my opinion nothing turns out on this issue in the absence of agreement to sell. The defendant cannot be forced to sell the property.

51. The suit is hence without merit and is dismissed with costs. All pending applications, if any, also stand disposed of accordingly. Any money deposited by the plaintiff in Court pursuant to orders of the Court may be refunded back to the plaintiff alongwith accumulated interest, if any. However, as I have awarded costs in favour of the defendant the said amount will be refunded to the plaintiff after deducting the costs that may be assessed by the Joint Registrar. The costs will be paid to the defendant.

(JAYANT NATH)
JUDGE

MARCH 07, 2018

n/r/v