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

+ CS(OS) 159/2018 & I.A. 4989/2018

AGARWAL DEVELOPERS PVT. LTD. Plaintiff

Through: Mr.Sanjay Manchanda,
Advocate.

versus

ICON BUILDCON PVT. LTD. & ORS. Defendants

Through: Mr. Ankit Jain, Advocate with
Mr. R.K. Yadav and
Mr.Sarvesh Rai, Advocates for
D-1.

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Date of Decision: 07th May, 2018

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for specific performance and permanent injunction.
2. The present case was listed before this Court by the learned Joint Registrar as she was of the *prima facie* opinion that the suit was barred by limitation.
3. It is the case of the plaintiff that the defendant No.1 and the plaintiff had entered into an agreement dated 24th February, 2007 with regard to the Najafgarh properties on the representation made by defendant No.1 that it would transfer its rights under the three

agreements to sell with defendant nos.2 to 15. The relevant recital in the Agreement dated 24th February, 2007 is reproduced hereinbelow:-

“.....AND WHEREAS THE FIRST PARTY facing some financial problem and are in need of money, so they have agreed to transfer all their rights in the respective Agreement to Sell mentioned above with a profit of Rs.10,00,000/- per Acre.....”

4. It is the plaintiff's case that as it discovered that the said properties were subjudice in another litigation, it directed its banker to stop further release of funds.

5. As the cheques given by the plaintiff as consideration to the defendant No.1 were dishonoured, the defendant No.1 filed a suit in December, 2008 being CS(OS) 2656/2008 under Order XXXVII CPC for recovery and criminal complaints under Section 138 of the Negotiable Instruments Act.

6. Vide order dated 20th April, 2012, a Coordinate Bench of this Court granted leave to defend to the plaintiff, subject to deposit of fifty per cent of the principal amount.

7. In an appeal filed by the plaintiff i.e. FAO(OS) No.278/2012 before the Division Bench, the condition of pre-deposit was reduced to twenty five per cent provided the amount is deposited within a period of one week. An SLP challenging the order passed by the Division Bench was dismissed by the Apex Court

8. On 24th September, 2012, FAO(OS) No.278/2012 was disposed of permitting the judgment debtor to deposit twenty five per cent of the amount within one month, failing which the necessary consequences were to follow.

9. Since the plaintiff did not deposit the twenty five per cent the amount in accordance with the order granting conditional leave, the defendant No.1's suit was decreed for Rs.4,05,67,347/- along with *pendente lite* and future interest @ 18% per annum on 30th January, 2013.

10. On 18th February, 2013, the criminal complaints filed by the defendant No.1 under Section 138 of the Negotiable Instruments Act were dismissed.

11. On 03rd September, 2013, a Division Bench of this Court dismissed the plaintiff's appeal being RFA(OS) No.79/2013 challenging the judgment and order dated 30th January, 2013 by which the suit of the defendant no.1 had been decreed.

12. On 23rd April, 2014, criminal appeals filed by the defendant No.1 challenging the judgement dated 18th February, 2013 in complaints under Section 138 of the Negotiable Instrument Act were dismissed.

13. Thereafter, the special leave petitions filed by both the plaintiff and defendant no.1 came up for hearing before the Supreme Court. While the plaintiff's special leave petition challenging the order dated 03rd September, 2013 was dismissed, the criminal special leave petition filed by the defendant no.1 was disposed of in view of the dismissal of the plaintiff's special leave petition.

14. The review petition filed by the plaintiff was dismissed by the Apex Court on 11th August, 2016.

15. Subsequently, the plaintiff's application seeking setting aside of the money decree was also dismissed by a Coordinate Bench of this Court on 07th November, 2016.

16. Even an application filed by the plaintiff seeking recall of the judgment dated 03rd September, 2013 was dismissed by the Division Bench on 02nd August, 2017.

17. On 01st December, 2017, a special leave petition challenging the said Division Bench's order dated 02nd August, 2017 was dismissed.

18. Today, learned counsel for plaintiff states that the cause of action for filing the present suit for specific performance arose on 01st December, 2017 when the Supreme Court dismissed the plaintiff's special leave petition challenging the Division Bench order dated 02nd August, 2017.

19. The limitation in a suit for specific performance of contract is three years and it commences from the date fixed for the performance and in case no such date is fixed then, in that cases, when the plaintiff has noticed that performance is refused. Article 54 of the Schedule of the Limitation Act reads as under:-

<i>“54 For specific performance of a contract. Three years</i>	<i>The date fixed for the performance, or, if no such date is fixed, when the plaintiff has notice that performance is refused.”</i>
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20. Thus, Article 54 of the Limitation Act stipulates that the cause of action arises 03 years after notice of refusal of the performance.

21. In the present case, the cause of action for filing the present suit would have to be considered to have happened when the defendants' suit for recovery was filed in December, 2008 – as that would be the date when performance was refused.

22. This Court is of the opinion that the plaintiff cannot say it could not have filed a suit for specific performance till 01st December, 2017 because if that submission were to be accepted, then the defendant's suit for recovery, which has been decreed and the decree upheld right till the Supreme Court would have to be considered a pre-mature suit!

23. Further, as the defendant nos.1's right to sue for recovery was held to have arisen in 2007, the cause of action under the same agreement for specific performance would be deemed to have arisen on the same date. After all, suit for recovery of sale consideration and for specific performance under the same agreement cannot have two different causes of actions and/or two different dates of commencement of limitation.

24. Consequently, the present suit is clearly barred by limitation and it is accordingly dismissed.

MAY 07, 2018
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MANMOHAN, J