

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 29th May, 2018**
+ **CS(OS) 308/2016 & CC No.10/2017**

MERA BABA PVT. LTD.

..... Plaintiff

Through: Mr. Jayant Mehta, Mr. Kapil
Wadhwa, Ms. Devyani Nath and Mr.
Rahul Kukreja, Advs.

Versus

RAM LUBHAYA PURI & ORS

.....Defendants

Through: Ms. Smita Mann, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. The plaintiff has instituted this suit for recovery of Rs.2,60,00,000/- jointly and severally from the defendants No.1 to 5 i.e. (i) Ram Lubhaya Puri; (ii) Smt. Janak Puri; (iii) Amit Puri; (iv) Subodh Kumar; and, (v) Sneha Lata, pleading:

(a) that the plaintiff entered into an Agreement to Sell dated 20th May, 2013 with the defendants, to purchase certain agricultural land, and as per the Agreement, defendants received an amount of Rs.2,60,00,000/- from the plaintiff as advance money;

(b) that the defendants acknowledged receipt of payment of Rs.40 lakhs and thereafter of Rs.2,20,00,000/- in the Agreement to Sell;

(c) that the defendants, after receiving the advance amount aforesaid, were under obligation to obtain permission and 'No Objection Certificate' (NOC) from the concerned authorities and whereupon balance sale consideration was to be paid by the plaintiff and the sale deed executed by the defendants in favour of the plaintiff;

- (d) that the defendants failed to obtain the permission, as specified in Clause 9 of the Agreement to Sell, inspite of repeated requests and reminders of the plaintiff;
- (e) that the defendants also failed to provide to the plaintiff the complete chain of title documents with respect to the property;
- (f) that some *inter se* disputes also arose between the defendants with respect to the title to the property;
- (g) that the defendants sent a legal notice dated 17th December, 2013 to the plaintiff purporting to forfeit the amount of Rs.2,60,00,000/- received from the plaintiff on false and frivolous grounds;
- (h) that the plaintiff sent a reply dated 27th December, 2013 to the said notice, calling upon the defendants to perform their obligation under the Agreement;
- (i) that the defendants sent another notice dated 9th April, 2014 and to which a reply dated 22nd April, 2014 was given by the plaintiff;
- (j) that the defendants, in the month of June, 2014, approached the plaintiff to resolve the disputes;
- (k) that the plaintiff, in January, 2016 learnt that the defendants were trying to sell the land aforesaid to third party; the plaintiff filed an application before the Additional District Magistrate to not issue the NOC to the defendants to create third party interest; and,

(1) that the plaintiff has again learnt that the defendants, without refunding the monies received from the plaintiff, are attempting to sell the land.

2. The suit was entertained and vide *ex-parte* order dated 3rd June, 2016, while issuing summons of the suit, the defendants were restrained from selling the land subject matter of Agreement to Sell with the plaintiff.

3. The defendants filed a written statement along with Counter-Claim, pleading:

(i) that it is the plaintiff who is in breach of the Agreement to Sell dated 20th May, 2013 and the defendants, even now, are willing to sell the agricultural land to the plaintiff for the consideration agreed;

(ii) that the Agreement to Sell was for a total sale consideration of Rs.26,00,11,125/- and the plaintiff, on 13th May, 2013 paid an amount of Rs.40 lakhs in cash to the defendants as part of token amount for purchase of the subject land and on 20th May, 2013, the Directors of the plaintiff brought an Agreement to Sell dated 20th May, 2013 and which was got signed from the defendants and the plaintiff paid a further sum of Rs.2,20,00,000/- to the defendants in cash, as an earnest amount towards the sale consideration of the subject land and the factum of earlier payment of Rs.40 lakhs was already recorded in the Agreement to Sell dated 20th May, 2013 and a separate Receipt dated 20th May, 2013 was executed by the defendants acknowledging receipt of Rs.2,20,00,000/-;

(iii) that as per the Agreement to Sell dated 20th May, 2013, the balance sale consideration of Rs.23,40,11,125/- was to be paid by the

plaintiff to the defendants at the time of execution of the sale deed, within six months from 13th May, 2013 i.e. by 12th November, 2013;

(iv) that though the defendants on 20th May, 2013 itself asked the Directors of the plaintiff to sign the NOC form so that the defendants could obtain permission but the Directors of the plaintiff informed the defendants that they will sign the NOC towards the end of the time of six months agreed for completion of the sale, so that they have time to arrange the balance sale consideration;

(v) that the defendants, on the basis of the Agreement to Sell dated 20th May, 2013, entered into an Agreement to Sell dated 15th June, 2013 for purchasing agricultural land elsewhere, for a total sale consideration of Rs.10,59,75,000/- and out of Rs.2,60,00,000/- received as earnest money from the plaintiff, paid a sum of Rs.2,30,00,000/- for purchase of the land elsewhere and the balance sale consideration of which land was to be paid by 20th August, 2014;

(vi) that the plaintiff, when approached in October, 2013 for signing the NOC form to enable the defendants to apply for permission to complete the sale in favour of the plaintiff, kept on deferring the matter;

(vii) that ultimately on 4th November, 2013 the NOC form bearing the signatures on behalf of the plaintiff was delivered to the defendants and whereupon the defendants applied for NOC to complete the sale in favour of the plaintiff;

(viii) that on 6th December, 2013, NOCs were granted by the Competent Authority to the defendants, for sale in terms of

Agreement to Sell dated 20th May, 2013 to the plaintiff and though the plaintiff was informed of the same and also furnished copy of the NOC but did not come forward with the balance sale consideration inspite of repeated requests and reminders and which led to the defendants issuing legal notices aforesaid to the plaintiff;

(ix) that it is the plaintiff who was in breach of the Agreement to Sell with the defendants;

(x) that in the meanwhile, the price of the land agreed to be sold to the plaintiff for Rs.26,00,11,125/-, fell to Rs.22 crores i.e. by Rs.4,00,11,125/-;

(xi) that owing to the breach by the plaintiff, the defendants were also unable to complete purchase of land elsewhere and the advance paid by the defendants of Rs.2,30,00,000/- for purchase thereof was forfeited;

(xii) that thus the defendants have suffered a loss of Rs.6,30,11,125/- on account of breach by the plaintiff and the defendants are also entitled to damages in the sum of Rs.1 crore from the plaintiff for mental agony and litigation costs;

(xiii) that the plaintiff is not entitled to recovery Rs.2,60,00,000/- which has been forfeited for the loss of Rs.6,30,11,125/- suffered by the defendants; and,

(xiv) that though the defendants, after adjustment of Rs.2,60,00,000/-, are entitled to recover balance damages of

Rs.3,70,11,125/- from the plaintiff but are confining the claim in the Counter-Claim to recovery of Rs.1,40,00,000/- only.

4. The suit, on 31st January, 2018 was ripe for framing of issues. However, on perusal of the Agreement to Sell dated 20th May, 2013, it was not found to describe the sum of Rs.2,60,00,000/- as earnest money, though the Agreement to Sell was christened as a 'Bayana Agreement'. It was further found, that the Agreement though provided for the consequences of breach by the defendants, did not provide for consequences of breach by the plaintiff. It was thus enquired from the counsel for the defendants, as to why a decree in favour of the plaintiff should not be passed forthwith. Attention of the counsel for the defendants was drawn to the dicta of the Supreme Court in *Kailash Nath Associates Vs. Delhi Development Authority* (2015) 4 SCC 136 and to the dicta of this Court in *Palm Art Apparels Vs. Enkay Builders* MANU/DE/3533/2017. *Satish Verma Vs. Garment Craft (India) Pvt. Ltd.* 2018 SCC OnLine Del 6829, *V.B. Roy Vs. Ravindra Kishore Sinha* 2017 SCC OnLine Del 10924 relying on *Kailash Nath Associates* supra, to the dicta of the Supreme Court in *Satish Batra Vs. Sudhir Rawal* (2013) 1 SCC 345, to the dicta of the Division Bench of this Court in *Klen & Marshalls Manufacturers and Exporters Ltd. Vs. Power Grid Corporation India Ltd.* 2015 SCC OnLine Del 11852, *Manoj Tomar Vs. Neena Khatter* 2015 SCC OnLine Del 12831 and to *Adhunik Datamatics Pvt. Ltd. Vs. Chandan Singh* (2017) 241 DLT 573.

5. The counsel for the defendants, on 31st January, 2018, referred to *Habibur Rehman Khan Vs. Naresh Kumar* 207 (2014) DLT 15 but it was not found to refer to *Kailash Nath Associates* supra.

6. The counsel for the defendants then stated that the plaintiff had filed an application under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC) on the same grounds but which had been dismissed.
7. The counsel for the plaintiff stated that the application had not been dismissed but was withdrawn.
8. Though the counsel for the defendants stated that the application was withdrawn after extensive arguments but in the order dated 31st January, 2018, it was observed that as long as there is no adjudication, the withdrawal of the application under Order XII Rule 6 of the CPC by the plaintiff would not come in the way of this Court, if finds the plaintiff to be entitled to a decree forthwith, to do so.
9. The counsel for the defendants next contended, that decree forthwith could not be passed in favour of plaintiff since the defendants had made a Counter-Claim for damages.
10. It was further enquired from the counsel for the defendants on 31st January, 2018, that the defendants having made a Counter-Claim for Rs.1,40,00,000/- only and having not made a Counter-Claim for Rs.2,60,00,000/- and having not even sought adjustment of balance Rs.1,20,00,000/-, why should a decree at least for Rs.1,20,00,000/- be not passed immediately in favour of the plaintiff.
11. On request of the counsel for the defendants on 31st January, 2018, the hearing was adjourned.

12. The counsels thereafter were substantially heard on 16th May, 2018 and hearing adjourned to today to enable the counsels to cite case law. The counsels have been further heard today.

13. The counsel for the defendants, on the aspect on which her attention on ***Kailash Nath & Associates*** and other judgments was drawn on 31st January, 2018, could not show anything further.

14. The Agreement dated 20th May, 2013 is titled “Agreement to Sell & Purchase” but commences as “This Bayana Agreement is made at Delhi, on this 20-05-2013, between....” with the defendants herein being described therein as ‘first party/Seller’ and the plaintiff as the ‘second party/Purchaser’ and the relevant clauses thereof are as under:

“1. That the total sale price of the said land has been fixed between the both parties at the rate of Rs.2,10,11,000/- (RUPEES TWO CRORES TEN LACS & ELEVEN THOUSAND ONLY) PER ACRE, the first has received a sum of Rs.2,20,00,000/- (RUPEES TWO CRORES & TWENTY LACS ONLY) and Rs.40,00,000/- (RUPEES FORTY LACS ONLY) already paid as a token money on dated 13-05-2013, from the second party as a advance-payment and the balance amount Rs.23,40,11,125/- (RUPEES TWENTY THREE CRORES FORTY LACS ELEVEN THOUSAND ONE HUNDRED & TWENTY FIVE ONLY), of will be paid by the second party to the first party at the time of registration/transfer document.

.....

5. That if the first party violated and infringes the terms and conditions laid down in the agreement to sell, the second party shall be entitled to get the said transaction to complete through the Court of law under the suit for specific performance at the costs and expenses of the first party.

.....

10. *That the first party and second party agreed to the the time bound on this agreement dated 13-05-2013 to 12-11-2013 fixed for between time in registration documents in the office of the concerned sub-registrar and then the said time of expire first party will not bound the execute the registration document in favour of second party.”*

(emphasis added)

15. The Receipt dated 20th May, 2013 of Rs.2,20,00,000/- also acknowledges receipt of the said amount “against the sale of our AGRICULTURE LAND.....”.

16. It would thus be seen that neither the Agreement to Sell nor the Receipt provide for forfeiture by the defendants of the amount of Rs.40,00,000/- or the amount of Rs.2,20,00,000/- admittedly paid by the plaintiff to the defendants thereunder.

17. Supreme Court, in ***Kailash Nath Associates*** supra, held as under:

“43. On a conspectus of the above authorities, the law on compensation for breach of contract under Section 74 can be stated to be as follows:

43.1 Where a sum is named in a contract as a liquidated amount payable by way of damages, the party complaining of a breach can receive as reasonable compensation such liquidated amount only if it is a genuine pre-estimate of damages fixed by both parties and found to be such by the Court. In other cases, where a sum is named in a contract as a liquidated amount payable by way of damages, only reasonable compensation can be awarded not exceeding the amount so stated. Similarly, in cases where the amount fixed is in the nature of penalty, only reasonable compensation can be awarded not exceeding the penalty so stated. In both cases, the liquidated amount or penalty is the upper limit beyond which the Court cannot grant reasonable compensation.

43.2 Reasonable compensation will be fixed on well known principles that are applicable to the law of contract, which are to be found inter alia in Section 73 of the Contract Act.

....

43.7 Section 74 will apply to cases of forfeiture of earnest money under a contract. Where, however, forfeiture takes place under the terms and conditions of a public auction before agreement is reached, Section 74 would have no application.

44. The Division Bench has gone wrong in principle. As has been pointed out above, there has been no breach of contract by the appellant. Further, we cannot accept the view of the Division Bench that the fact that the DDA made a profit from re-auction is irrelevant, as that would fly in the face of the most basic principle on the award of damages - namely, that compensation can only be given for damage or loss suffered. If damage or loss is not suffered, the law does not provide for a windfall."

18. Before proceeding further, notice may also be taken of another recent dicta of the Supreme Court in ***Suresh Kumar Wadhwa Vs. State of Madhya Pradesh*** (2017) 16 SCC 757, where, in a suit for refund of security amount deposited along with the bid in a public auction and which was claimed by the defendants to have been forfeited for the failure of the plaintiff to pay the balance bid amount, it was held (i) that a reading of Section 74 of the Contract Act, 1872 shows that in order to forfeit the sum deposited by the contracting party as 'earnest money' or 'security' for the due performance of the contract, it is necessary that the contract must contain a stipulation of forfeiture; (ii) that a right to forfeit being a contractual right and penal in nature, the parties to a contract must agree to stipulate a term in the contract in that behalf; (iii) that a fortiori, if there is no stipulation in the contract of forfeiture, there is no such right available to

the party to forfeit the sum; and, (iv) that a stipulation for deposit of security amount ought to be qualified by a specific stipulation providing therein a right of forfeiture and the contingencies in which such right of forfeiture could be exercised.

19. In accordance with the dicta of the Supreme Court in ***Suresh Kumar Wadhwa*** supra, the defendants have no right of forfeiture. The plaintiff is thus entitled to a decree forthwith for recovery of the said amount.

20. The legal question, on which the counsels were granted opportunity on 16th May, 2018 was, whether in view of the Counter-Claim made by the defendants of Rs.1,40,00,000/- or in view of the plea of the defendants of having suffered loss/damage in the sum of Rs.6,30,11,125/- on account of breach of the Agreement to Sell dated 20th May, 2013 by the plaintiff, and which question will have to be put to trial, the defendants cannot be made liable for refund of Rs.2,60,00,000/- till the adjudication of the said pleas of the defendants.

21. It was enquired from the counsel for the defendants on 16th May, 2018 that since the defendants, though pleading to have suffered loss of Rs.6,30,11,125/-, had made a Counter-Claim for Rs.1,40,00,000/- only and even if owing to the said Counter-Claim, a decree to that extent was not to be passed in favour of the plaintiff, the defendants having paid court fees on Rs.1,40,00,000/- only and not on the entire amount of Rs.2,60,00,000/-, why should a decree in any case for recovery of balance Rs.1,20,00,000/- be not passed immediately in favour of the plaintiff. It was felt on 16th May, 2018 that the defendants having paid court fees on Rs.1,40,00,000/- only, could not withhold the balance Rs.1,20,00,000/- to which the plaintiff

had been found entitled. The legal question of the difference between ‘adjustment’ and ‘set-off’ and of payment of court fees thereon’, was posed to the counsels.

22. After hearing on 16th May, 2018, my research unearthed the judgments of this Court in *Cofex Exports Ltd. Vs. Canara Bank* AIR 1997 Delhi 355 (DB) followed in *Walchandnagar Industries Ltd. Vs. Cement Corporation of India* 2012 (2) Arb. LR 219 (DB) and the counsels also have today relied on the same. It was held in the said judgments, (a) that an adjustment contemplates existence of mutual demands between the same parties in the same capacity—the broad distinction between a payment and an adjustment is that in an act of payment, one party deals with the other, while in an adjustment it is an act of the party himself prior to the filing of the written statement, though the benefit of both is claimed by raising a plea in the written statement; (b) that a plea of adjustment is to be distinguished from a plea of a set-off or Counter-Claim — adjustment, like payment, is relatable to a period anterior to the date of such plea being set out before the Court; (c) that on a general principle, a person is entitled to pay to himself that amount which is due to him from another if he has in his hands monies belonging to that other provided that his dues are legally recoverable; (d) that where the defendant pleads that the plaintiff is not entitled to the suit amount, the defences of payment or the adjustment have to be adjudicated by the Court, after the defendant proves its case during trial in accordance with law—if the defendant fails to prove its entitlement, the defence of payment or adjustment is rejected and the suit of the plaintiff for recovery of money will be decreed; (e) that there is a misconception that the plea of adjustment is the same as the plea of equitable set-off; though the effect of

both the pleas is extinguishment of the claim of plaintiff, equitable set-off is pleaded where there is an agreed crystallisation of the amount/an admitted amount which is payable, being an admitted contractual amount or where there is a decree of a Court in favour of the defendant for an amount.

23. The counsel for the defendants, on this aspect, also referred to *Maruti Udyog Vs. Bule Star Ltd.* AIR 1995 Punjab 45 (DB), *The Tata Iron And Steel Co. Ltd. Vs. R.N. Gupta* AIR 1963 Orissa 174 (DB), *Indian Airlines Limited Vs. Skyline Nepc Limited* 2018 SCC OnLine Del 7013 and *J.B. Chaudhry Vs. Indian Overseas Bank* (2013) 203 DLT 23 but in view of the judgments aforesaid of the Division Benches of this Court, need to discuss the judgments of the other High Courts is not felt and the latter two of the aforesaid judgments are authored by the same learned Judge, though sitting singly, who authored *Walchandnagar Industries Ltd.* supra.

24. The counsel for the plaintiff also draws attention to Order VIII Rule 6(1) of the CPC as under:

“6. Particulars of set-off to be given in written statement— (1) Where in a suit for the recovery of money the defendant claims to set-off against the plaintiff's demand any ascertained sum of money legally recoverable by him from the plaintiff, not exceeding the pecuniary limits of the jurisdiction of the Court, and both parties fill the same character as they fill in the plaintiff's suit, the defendant may, at the first hearing of the suit, but not afterwards unless permitted by the Court, presents a written statement containing the particulars of the debt sought to be set-off.”

and contends that set-off has to be of an ascertained sum of money legally recoverable by the defendants from the plaintiff. It was argued that the claim of the defendants is of damages which is to be adjudicated and

cannot be said to be an ascertained sum of money. Reliance is placed on *Victoria Mills Company Limited Vs. Brij Mohan Lal* ILR (1917) 39 All 362 and on *Narsing Rao Ramkrishnayya Vs. Veerayya Rajanna* AIR 1953 Hyd 186 to contend that damages are an unascertained sum and cannot fall within Order VIII Rule 6 of the CPC. Reliance is also placed on *Girdharilal Chaturbhuj Vs. Surajmal Chauthmal Agarwal* AIR 1940 Nag 177 holding that before a legal set-off can be claimed, it must be presented in a written statement which shall have the same effect as a plaint, and it must be shown that it is an ascertained sum of money legally recoverable by the defendant from the plaintiff, and on facts holding that the claim for the commission over reduction of losses having been stated approximately, cannot be considered as an ascertained sum of money. It was further contended that there can be no set-off with respect to a claim for damages and moreover the defendants have paid a court fees on Rs.1,40,00,000/- only and cannot claim set-off of balance Rs.1,20,00,000/-.

25. The counsel for the plaintiff next draws attention to Order VIII Rule 6-A of the CPC introduced by amendment of the CPC of the year 1976, permitting the defendant in a suit to, in addition to set-off, set-up by way of a Counter-Claim against the plaintiff, any right or claim in respect of cause of action accruing to the defendant against the plaintiff before or after filing of the suit. Reliance is placed on *Pathrose Samual Vs. Karumban Parameswaran* AIR 1988 Ker 163 and *Union of India Vs. Karam Chand Thapar* (2004) 3 SCC 504 holding, that set-off can be only of an ascertained sum of money which is legally recoverable. Reliance in addition is also placed on *Indian Oil Corporation Ltd. Vs. International Building & Company (Pvt.) Ltd.* (2001) 93 DLT 566 (DB) to contend that

claims of risk purchase and damages are not ascertained amounts and cannot be a part of set-off.

26. The counsel for the plaintiff also referred to ***Krishan Kumar Wadhwa Vs. Arjun Som Dutt*** 2018 SCC OnLine Del 7441 also holding that the defendants would have to prove set-off before retaining any part of the admitted amount.

27. The counsel for the plaintiff next referred to ***M/s Lakshnichand and Balchand Vs. State of Andhra Pradesh*** (1987) 1 SCC 19, also holding that the claim for adjustment in that case could not be allowed because the claim of the defendant was disputed by the plaintiff and was yet to be determined as a liability of the plaintiff.

28. Both the counsels also refer to ***Gangotri Enterprises Limited Vs. Union of India*** (2016) 11 SCC 720 *inter alia* holding that a claim for damages for breach of contract is not a claim for a sum presently due and payable and thus the government was not entitled to appropriate the amounts admittedly payable to the contractor in exercise of the clause in the agreement entitling the government to recover the amounts due to it from the outstanding payment of the contractor.

29. It was not disputed by the counsel for the defendants that court fees is payable on a set-off. The defendants having not paid court fees on Rs.1,20,00,000/-, are not entitled to set-off the said amount from the amounts due to the plaintiff. The only plea of the defendants is of 'adjustment'. However, the claim of the defendants being of damages and not ascertained, cannot, in accordance with ***M/s Lakshnichand and Balchand*** *supra*, also be adjusted out of the monies which the defendants

have been found liable to pay to the plaintiff. Thus, the defendants are not entitled to withhold at least Rs.1.20,00,000/-.

30. The next question which arises is that once it has been found that the plaintiff is entitled to a decree for recovery of Rs.2,60,00,000/-, whether the said decree of the plaintiff can be put on hold merely because the defendants also have a Counter-Claim against the plaintiff.

31. In my opinion, no. A decree to which a plaintiff is entitled to, passing thereof cannot, in my opinion, be put in abeyance, merely because the defendant has made a Counter-Claim and which Counter-Claim requires adjudication. If the same were to be permitted, it would give a handle to all those litigants who have no defence to the claim in the suit, to delay the passing of decree against them, merely by making a Counter-Claim. On equitable principles, I just find that the defendants, owing to their Counter-Claim, cannot deny the plaintiff of a decree.

32. I find a Division Bench of this Court in ***Numero Uno International Ltd. Vs. Prasara Bharti*** 2008 SCC OnLine Del 175 to have, in the context of arbitration proceedings, relying on ***Cofex Exports*** supra, held that pendency of a Counter-Claim does not denude a arbitrator of the power to make an interim award in the original suit / claim if such an interim award is otherwise justified and that there is no reason why the payment of what is admittedly due should await the determination of other disputes, which may take years before they are finally resolved. I see no reason as to why the ratio aforesaid should be confined to arbitral proceedings only and should not be applied to Court proceedings.

33. Resultantly, insofar as the suit of the plaintiff for recovery of Rs.2,60,00,000/- is concerned, is entitled to be allowed forthwith and the Counter-Claim of the defendants to be put to trial.

34. The plaintiff, besides claiming the decree for recovery of Rs.2,60,00,000/- has also sought interest @24% per annum from 20th May, 2013 till the date of realization. However, the claim for interest from 20th May, 2013 till the date of institution of the suit on 12th May, 2016 should have been made in the plaint and court fees paid thereon and which has not been done. The plaintiff has claimed only the principal amount of Rs.2,60,00,000/-. The only entitlement of the plaintiff can be to interest with effect from the date of institution of the suit.

35. I have considered the aspect of interest and in the facts and circumstances of the case, am of the view, that though the decree for recovery of Rs.2,60,00,000/- will carry an interest @ 9% per annum with effect from the date of institution of the suit till realisation but if the defendants make the payment of Rs.2,60,00,000/- on or before 31st July, 2018, the entire decree shall stand satisfied. Needless to state that if the said payment of Rs.2,60,00,000/- is not made on or before 31st July, 2018, the plaintiff shall be entitled to recover, besides Rs.2,60,00,000/-, also interest thereon @ 9% per annum from the date of institution of the suit till realisation.

36. A decree is accordingly passed in CS(OS) No.308/2016 in favour of the plaintiff and jointly and severally against the defendants, of recovery of Rs.2,60,00,000/- with interest @ 9% per annum from the date of institution of the suit till realisation and for costs of the suit; however, if the

defendants pay the said sum of Rs.2,60,00,000/- to the plaintiff on or before 31st July, 2018, the entire decree shall stand satisfied.

37. Decree sheet be drawn up.

38. CS(OS) No.308/2016 is disposed of.

39. The following issues are framed in the Counter-Claim No.10/2017:

(I) Whether the plaintiff was in breach of its obligation of the Agreement to Sell dated 20th May, 2013? OPD

(II) If the above issue is decided in favour of the defendants / Counter Claimants then whether the defendants have suffered any loss/damages on account of breach by the plaintiff, and if so in what amount? OPD

(III) Relief.

40. No other issue arises.

41. The parties to file their list of witnesses on or before 15th July, 2018.

42. The onus of both the issues being on the defendants / Counter Claimants, the defendants / Counter Claimants to lead evidence first and to file affidavits by way of examination-in-chief of all their witnesses on or before 13th August, 2018.

43. List the Counter Claim No.10/2017 before the Joint Registrar on 17th August, 2018 for fixing the dates of evidence in the Counter-Claim.

RAJIV SAHAI ENDLAW, J.

MAY, 29, 2018

‘bs’ ..

(Corrected and released on 7th June, 2018).