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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (OS) 82/2014**

INDIA AFFORDABLE HOUSING SOLUTIONS,
(IAHS) & ANR.

..... Plaintiffs

Through: Mr. O. N. Sharma, Advocate.
(M:9811675584)

versus

KONARK INFRA DEVELOPERS PRIVATE
LIMITED & ORS.

..... Defendants

Through: Mr. Rajnish Soni, Defendant No.2 in
person. (M:9001843456)

CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
10.12.2018

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CS (OS) 82/2014 & I.A. 16667-68/2018

1. The present suit was preferred under Order XXXVII CPC seeking recovery of Rs.3 crores along with the *pendente lite* and future interest with costs. Vide order dated 3rd April, 2018, this Court had granted conditional leave to the Defendant Nos.1 to 3 upon deposit of Rs.3 crores. Operative portion of the said order is set out below:

“8. As the defence raised in their application for leave to defend is contrary to what they had taken in their case under Section 138 NI Act, so the defence of the defendants no.1 to 3 though appear to be illusory but they are allowed to proceed on their depositing the principal suit amount of ₹3.00 Crore with the Registrar General of this Court within four weeks from today. The amount so deposited shall be put in the fixed deposit for a period of one year. Alternately, they are also permitted to furnish the bank guarantee of any nationalised bank for the above sum.”

2. Insofar as Defendant Nos.5 & 6 are concerned, they were dropped from the array of the parties as recorded in the order dated 19th March, 2018, which reads as under:

“IA No. 10344/2014

This is application is for grant of leave to defend to defendant No.5 and 6. It is submitted by learned counsel for the plaintiff that these two persons became directors of defendant No. 1 company after the subject transaction, hence are not necessary parties. She has no objection if they are deleted from the array of parties. Ordered accordingly. The application has become infructuous and is accordingly disposed of.....”

3. The order dated 3rd April, 2018 was challenged before the Division Bench in FAO (OS) 94/2018. The said appeal was dismissed on 10th October, 2018. Thereafter, another appeal being LPA No. 634/2018 was also filed challenging the order dated 3rd April, 2018. On 20th November, 2018, the learned Division Bench has refused to interfere and, accordingly, the said LPA also stands dismissed. In view of the above developments, the Plaintiff has filed an application seeking pronouncement of judgment in its favour. The said application was listed on the last date and today.

4. Defendant No.2, who has appeared in person, submits that proceedings under section 138 of the Negotiable Instruments Act, 1881, which were initiated by the Plaintiff, already stand dismissed. This fact goes in favour of the Defendant Nos.1 to 3, and accordingly, he is entitled to unconditional leave to defend.

5. This Court, in the present case, is not going beyond the order dated 3rd April, 2018, which has already been upheld by the learned Division Bench. The only question, which remains is as to whether the suit would proceed

further without the Defendant Nos.1 to 3 complying with the condition imposed in the said order i.e. deposit of Rs.3 crores. Since the Defendants admittedly, even today, are not willing to deposit the sum of Rs.3 crores, the Defendants do not have any further right to defend the present suit, and the Court can pass judgment in favour of the Plaintiff. Order XXXVII Rule 3(6)(b) CPC stipulates as under:

“3. Procedure for the appearance of the defendant.-

(6) At the hearing of summons for judgment, -

(a)

(b) if the defendant is permitted to defend as to the whole or any part of the claim, the Court or Judge may direct him to give such security and within such time as may be fixed by the Court or Judge and that, on failure to give such security within the time specified by the Court or Judge or to carry out such other directions as may have been given by the Court or Judge, the plaintiff shall be entitled to judgment forthwith.”

6. The Supreme Court also in ***Wada Arun Asbestos (P) Ltd. v. Gujarat Water Supply and Sewerage Board AIR 2009 SC 1027*** has categorically held as under:

“12. Where a conditional leave is granted and the conditions therefore are not complied with, a judgment in favour of the plaintiff can be passed.....”

7. The suit is, accordingly, decreed for the sum of Rs.3 crores along with the interest @ 8% per annum from 15th June, 2010 till realisation. Decree sheet be drawn up.

8. The I.As. and the suit, accordingly, stand disposed of.

PRATHIBA M. SINGH, J.

DECEMBER 10, 2018/dk