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

+ **CS (COMM) 928/2016**

M/S BHATIA PROPCON PVT LTD. .... Plaintiff  
Through: Mr. Dinesh Garg and Ms. Rachna  
Agrawal, Advocates. (M:9810027444  
& 9899007471)

versus

ASHOK MEHTA .... Defendant  
Through: Mr. Atul Bandhu, Advocate.  
(M:9811608039) with Defendant  
(M:9718222505) in person.

**CORAM:**

**JUSTICE PRATHIBA M. SINGH**

**ORDER**

% **19.09.2018**

1. The present suit for specific performance has been filed by the Plaintiff in respect of agreement to sell dated 3<sup>rd</sup> September, 2012. By the said agreement, the Defendant, who owns one half share in the property bearing No.Z-26, Hauz Khas Enclave, New Delhi measuring 250 sq.yds., had agreed to sell to the Plaintiff his share with proportionate rights in the land underneath, with possession of the ground floor and two rooms on the Barsati Floor, along with other common portions, for a total consideration of Rs.2,40,00,000/-. The Plaintiff had paid a sum of Rs.1 lakh in cash and Rs.23 lakhs by way of cheque on 11<sup>th</sup> August, 2012 and 3<sup>rd</sup> September, 2012 respectively. The Parties had exchanged the draft sale deed. However, the sale transaction did not go through, leading to a legal notice, and thereafter, filing of the present suit for specific performance. The reliefs sought in the present suit, as per paragraph 22 are as under:

*“(i) a decree for specific performance may please be*

*passed in favour of the plaintiff and against the defendant directing the defendant to perform his part of obligations in terms of Agreement dated 03<sup>rd</sup> September, 2012, inter-alia, by executing and getting registered the Sale Deed in respect of half share in respect of property bearing no.No.Z-26, Hauz Khas Enclave, New Delhi, measuring 250 sq.yds. with proportionate rights in the land underneath and handing over the vacant peaceful physical possession of the ground floor and two rooms on the Barsati Floor alongwith other common portions against receipt of the balance sale consideration.*

*Or in the alternative*

*if and only if, this Hon'ble Court comes to the conclusion (and not by way of an alternative relief) that the plaintiff is not entitled to specific performance, then in that event, a decree for recovery of Rs.24,00,000/- towards refund alongwith the interest @ 24% per annum from the date of agreement and the damages in the sum of Rs.2,00,00,000/- towards breach of contract may please be passed in favour of the plaintiff and against the defendant.*

*(ii). in case the defendant fails to perform his part of obligations, then same may please be got done through the agency of this Hon'ble Court;”*

2. On 4<sup>th</sup> August, 2014, summons were issued in the suit. The Defendant in his written statement took the stand that he had never agreed to sell his rights in the suit property. According to him, the consideration was paltry. The Defendant also denied receipt of the amount of Rs.1 lakh in cash and Rs.23 lakhs by way of cheque.

3. The Plaintiff, thereafter, moved an application under Section 340 Cr.P.C. being CrI.M.A.6100/2016. In the said application, the Plaintiff pointed out that the stand of the Defendant in the written statement was completely false, to his own knowledge, as in the reply to the legal notice he had admitted the receipt

of part sale consideration. This Court on 19<sup>th</sup> December, 2017 had issued bailable warrants for production of the Defendant in the Court, which was thereafter cancelled upon the undertaking given by counsel, that he would appear in the Court.

4. Vide order dated 4<sup>th</sup> April, 2018, this Court, in CrI.M.A.6100/2016, came to the conclusion that the Defendant's stands in the written statement and in the reply to the legal notice are wholly contradictory and *prima facie* it amounts making false averments in the pleadings. Paragraph 9 of the said order passed by the Ld. Single Judge, is set out below:

*“9. Hence in the circumstances as the pleadings are wholly contradictory to stand taken by the defendant in reply to legal notice and prima facie it amounts to making false averments in pleadings. Thus, a show cause notice is hereby issued to the defendant as to why a complaint be not made under Section 340 Cr P C for having made a false averment in the written statement, under Section 209 of the IPG and the defendant is directed to reply within 6 weeks from today.”*

5. The Defendant has, thereafter, filed his reply in compliance of the order dated 4<sup>th</sup> April, 2018. In the said reply, the Defendant firstly apologises for the contradictory statements but thereafter takes the stand that he shall prove his stand at the time of trial.

6. Today, the Defendant is present in person and expresses his willingness to settle the disputes with the Plaintiff.

7. The parties have agreed to settle their disputes in the following terms and conditions.

- 1) The Defendant agrees to pay to the Plaintiff a sum of Rs.24 lakhs with simple interest @ 8% per annum from 3<sup>rd</sup> December, 2012, as full and final settlement amount in respect of the Agreement to Sell

dated 3<sup>rd</sup> December 2012.

- 2) The Defendant further agrees to pay the entire amount on or before 19<sup>th</sup> December, 2018. Out of the total amount, Defendant undertakes to bring a sum of Rs.3 lakhs by way of demand draft on 10<sup>th</sup> October, 2018 in the Court, to be paid to the Plaintiff.
- 3) Until the entire payment is made, the Defendant undertakes not to sell the property or create any third party interest or part with possession in the property without permission of the Court.
- 4) The Plaintiff agrees that upon the receipt of the full and final payment as per clauses 1) and 2) above, the Plaintiff would have no further claims/dues in respect of the suit property or in respect of Agreement to Sell dated 3<sup>rd</sup> December 2012.

8. Separate statements of the Defendant and Ld. Counsel for the Plaintiff are recorded. In view of the settlement between the parties, the suit is decreed as per terms set out above with the consent of the parties under Order XXIII Rule 3 CPC.

9. In terms of Section 16A of the Courts Fee Act, 50% court fee is directed to be refunded to the Plaintiff

10. List on 10<sup>th</sup> October, 2018 for handing over the payment of Rs.3 lakhs to the Plaintiff by the Defendant.

**CRL.M.A.6100/2016**

11. Reply has been filed by the Defendant. Let Rejoinder be filed by the Plaintiff before the next date.

12. List on 10<sup>th</sup> October, 2018.

**PRATHIBA M. SINGH, J.**

**SEPTEMBER 19, 2018/dk**