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

+ **CS (OS) 438/2018**

PRAKASH LAL KAPUR & ANR. Plaintiffs

Through: Mr. Siba Prasad Das, Advocate with
Mr. Ashish Kapur, son of Plaintiff
No.1 and Plaintiff No.2 in person.
(M:9818097998)

versus

**M/S SALKELIN LEASING & FINANCE
LTD. & ORS.**

..... Defendants

Through: Mr. Shwetank Sailakwal, Advocate
with D-2 to 4 in person.
(M:9990803222)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER
27.11.2018

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I.A. 15928/2018 (u/O XXIII Rule 3 CPC) in CS (OS) 438/2018

1. This is an application under Order XXIII Rule 3 read with 151 CPC (hereinafter '*settlement application*'). Present suit for specific performance was filed by the Plaintiffs pursuant to an agreement to sell dated 16th May, 2018 in respect of property bearing No.K-12, Second Floor (rear portion), Hauz Khas Enclave, New Delhi-110016 (*hereinafter 'suit property'*) for a sale consideration of Rs.5.45 crores out of which Rs.2 crores was paid by the Plaintiffs to the Defendants. Since the sale deed was not executed, the present suit was filed.

2. Parties are stated to have settled their disputes. The property in question was mortgaged by the Defendants with the State Bank of India, Meerut Branch (*hereinafter 'Bank'*) in respect of a loan given to one M/s.

Kayo Enterprises Pvt. Ltd., which was a sister concern of Defendant No.1. Defendant Nos.2 to 4 are the directors of the said company. The mortgage, which was executed in favour of the Bank, has now been agreed to be released by the Bank upon receipt of Rs.2.55 crores. The letter dated 2nd November, 2018 issued by the Bank has been annexed with the application. Learned counsel for the Plaintiffs submits that his client has verified the authenticity of the said letter.

3. On behalf of the Plaintiffs, Plaintiff No.2 and Mr. Ashish Kapur, son of both Plaintiffs are present in Court today. It is submitted that Plaintiff no.1 has suffered an injury due to which he is unable to appear before the court and he has authorised his son to make a statement on his behalf. Defendant Nos.2 to 4 are present in Court. They represent Defendant no.1, the Company. Statements of all the parties have been recorded today. The settlement application on behalf of the Plaintiffs has been signed by Shri Prakash Lal Kapur – Plaintiff No.1 and his signatures have been identified by Plaintiff No.2 and their son.

4. Parties have settled their disputes in terms as contained in paragraph 6 of the settlement application. The said terms as contained in paragraph 6 are reproduced below:

“(i) The Plaintiffs have already paid a sum of Rs.2.00 Crores to the Defendant No. 1 at the time of Agreement to Sell on 16th May 2018 which has since been accepted by all the defendants.

(ii) That to enable the Defendant No.1 to get the original title deed in respect of the Suit Property deposited with the said Bank under mortgage as security released at the request of the defendants, the Plaintiffs have agreed to make a further payment of Rs.2.55 Crores by way of a pay order in favour of the

State Bank Of India, Meerut Branch directly in the said outstanding mortgage account No. 37245242187 with the said branch, where upon the original title documents shall be obtained by the Defendants from the said bank and forthwith handed over to the Plaintiffs. However, as the Original title documents have to be handed over to the Plaintiffs, the Defendant Nos. 2 & 3 alongwith Shri R.K. Singh, Director of M/s Kayo Enterprises Pvt. Ltd. with appropriate resolution shall visit the SBI, Meerut Branch along with Plaintiff No.1 for facilitating the handing over of the Original documents to the Plaintiff No.1.

(iii) That the Defendants have already vacated the Suit Property and shall handover the actual, vacant, physical possession of the Suit Property to the Plaintiffs before receipt of the pay order of Rs.2.55 Crores in favour of the Bank from the Plaintiff.

(iv) That upon release of the title documents relating to the Suit Property by the Bank, the Defendants shall within 10 days thereafter, execute and register the Sale Deed in respect of the Suit property in favour of the Plaintiffs. Simultaneously therewith the Plaintiffs shall make the balance payment as mentioned in Para 6 (vii) below subject to deduction of applicable TDS and the expenses and the compensation as mentioned in para (v) & (vi) below. That prior to receipt of the balance consideration, the Defendants shall pay the entire outstanding house tax, water and electricity charges in respect of the Suit Property and obtain a no dues certificate from the South Delhi Municipal Corporation, Delhi Jal Board and BSES Rajdhani respectively and shall handover all documents and files relating to the said property to the Plaintiffs.

(v) The Defendants have agreed that they will compensate the Plaintiffs by paying a sum of Rs.5,22,000/- towards 50% of cost and expenses incurred by the Plaintiffs for the present litigation.

(vi) The Defendants have agreed that they will pay a

sum of Rs. 10,00,000/- (Rupees Ten lakhs only) to the plaintiffs towards compensation for delay in concluding the sale.

(vii) That the above mentioned share of expenses and compensation in para 6 (v) & (vi) will be reduced from the balance sale Consideration of Rs.90,00,000/-.

(viii) The parties shall be left with no claim whatsoever against each other and the parties shall remain bound by their respective statements to be recorded before the Hon'ble Court."

5. The Plaintiffs have agreed to pay the remaining consideration as contained in the settlement terms. The Defendants have also agreed to execute the sale deed and hand over vacant and peaceful possession of the suit property to the Plaintiffs. Upon the Plaintiffs showing the pay order of Rs.2.55 crores in favour of the Bank, vacant and peaceful possession shall be handed over to the Plaintiffs. Parties shall jointly submit the said pay order to the Bank on or before 5th December, 2018. No further interest shall be payable for the five days of December, 2018. The title documents shall be released by the Bank on the same day to the Plaintiffs, in the presence of the Defendants. Within ten days thereafter, the Defendants shall execute a sale deed in favour of the Plaintiffs i.e. on or before 15th December, 2018. Parties shall strictly comply with the terms, set out herein above as contained in the settlement application.

6. The suit is decreed in terms of the settlement. The settlement application shall form part of the decree. All pending I.As. stand disposed of.

PRATHIBA M. SINGH, J.

NOVEMBER 27, 2018/dk