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

+ **CS(COMM) 6/2017**

M/S ADHUNIK DATAMATICS PVT. LTD. Plaintiff
Through Mr.Nikhilesh Krishnan, Adv.

versus

SH. LAL SINGH AND ORS. Defendants
Through

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% 14.09.2018

IA No.13628/2017

This application has been filed under Order 37 Rule 3 CPC by the defendants seeking leave to defend. On the last two dates none had appeared for the defendants. This application is accordingly dismissed in default.

CS(COMM) 6/2017

1. This suit has been filed under Order XXXVII CPC against the defendants for recovery of Rs. 3,80,01,250/- based on an written agreement to sell dated 06.04.2013.

2. It is the case of the plaintiff as stated in the plaint that the plaintiff is seeking recovery of Rs.3,80,01,250/- (Rupees Three Crores Eighty Lakhs One Thousand Two Hundred Fifty Only) with interest @ 14.25% per annum from 10/08/2016 till date of realization, in view of material breach by the defendants of their obligations and non-observance of terms of the Agreement to Sell dated 06.04.2013.

3. It is further the case of the plaintiff that one Sh.Suraj Mal @ Surja and the plaintiff company entered into subject agreement to sell dated 06.04.2013 whereby Sh.Suraj Mal @ Surja agreed to sell subject parcels of land and plaintiff company agreed to purchase the same for total sale consideration of Rs.19,00,06,250/- (Rupees Nineteen Crores Six Thousand Two Hundred Fifty Only). Towards part payment of sale consideration, plaintiff paid a sum of Rs.1,90,00,625/- (Rupees One Crore Ninety Lakh Six Hundred Twenty Five Only) to Sh.Suraj Mal @ Surja which was duly acknowledged by Sh.Suraj Mal @ Surja in the subject agreement to sell itself and receipts.

4. Since said parcels of land to be sold to the plaintiff are agricultural land, Sh.Suraj Mal @ Surja being owner was required to obtain NOC in terms of Section 5(1) of Delhi Land (Registration of transfer) Act, 1972, issued by the concerned revenue authority permitting him to sell the suit land to the plaintiff and only thereafter sale deed could have been executed by him and balance sale consideration could be paid by the plaintiff. However, on 31.05.2014, Sh.Suraj Mal @ Surja unfortunately expired intestate without providing NOC and was succeeded by four legal heirs in respect of the above property and consequently in respect of the subject agreement to sell.

5. Thereafter, one Tripartite Agreement dated 02.07.2014 was entered into by and between the plaintiff, defendants(LR's) and proposed joint purchasers i.e. M/s Real Force Properties Private Limited and Mr.Mukesh Kumar Verma for purchasing the said parcels of land wherein it was provided that the entire amount of Rs.1,90,00,625/- (Rupees One Crore Ninety Lakh Six Hundred Twenty Five Only) paid by the plaintiff to

predecessor interest (Late Sh.Suraj Mal @ Surja) of defendants would be paid to the plaintiff by the proposed joint purchasers and balance sum of Rs.17,89,24,375/- (Rupees Seventeen Crores Eighty Nine Lakhs Twenty Four Thousand Three Hundred Seventy Five only) to defendants. In the said Tripartite Agreement, defendants acknowledged execution of the subject Agreement to sell dated 06.04.2013.

6. It was also provided in Clause 3 of the said Tripartite Agreement that any default in making payment to the plaintiff herein in terms of the said Tripartite Agreement had to render the said Tripartite Agreement coming to end and not to have any force in favor of proposed joint purchasers and the subject agreement to sell already entered into between Late Sh.Suraj Mal and the plaintiff had to continue as it is and enforceable against the defendants in all respects. Since the said proposed joint purchasers made default in payment, the said Tripartite Agreement came to an end and the Original agreement to sell dated 06.04.2013 became enforceable and binding upon defendants.

7. Arguments on behalf of plaintiff have been heard.

8. Application for leave to defend under Order XXXVII Rule 3 CPC having been dismissed in default, the plaintiff is entitled to Judgment forthwith in terms of Order XXXVII Rule3 (6) (a) of CPC.

9. Being based on written contract and no relief having been claimed which does not fall within the ambit of Order XXXVII CPC, the suit is maintainable under Order XXXVII CPC.

10. The learned counsel appearing for the plaintiff submits that as per the terms of the agreement, the plaintiff is entitled to refund of double the amount paid to the defendant under clause 11 of the agreement, i.e.

Rs.3,80,01,250/-. However, he submits that for the purpose of present suit he confines his relief to Rs.1,90,00,625/- stating that this was the amount originally paid by the plaintiff to the defendant at the time of execution of the agreement to sell dated 06.04.2013 alongwith appropriate interest.

11. Accordingly, a decree is passed in favor of the plaintiff and against defendants for Rs.1,90,00,625/- (Rupees One Crore Ninety Lakh Six Hundred Twenty Five Only). The plaintiff shall also be entitled to *pendent lite* simple interest @ 10% per annum from the date of the filing of the suit till the date of the decree. In addition, the plaintiff shall also be entitled to simple interest @ 10% per annum from the date of decree till recovery. The plaintiff shall also be entitled to costs.

12. The suit stands disposed of as above. All pending applications, if any, also stands disposed of.

JAYANT NATH, J.

SEPTEMBER 14, 2018/v