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

+ CS(OS) 2679/2015

KRISHAN BIDHURI Plaintiff
Through Mr. Rish Khatri, Advocate with
Mr. Archit Arora, Advocate

versus

NARENDER KUMAR Defendant
Through None

% Date of Decision: 21st March, 2018

CORAM:
HON'BLE MR. JUSTICE MANMOHAN

J U D G M E N T

MANMOHAN, J: (Oral)

1. Present suit has been filed for recovery of Rs.2,32,00,000/- (Rupees Two Crores Thirty Two Lacs Only) along with interest @ 8% per annum.

2. It is the case of the plaintiff that the defendant, claiming himself to be owner in possession of property bearing Khasra No. 792 at Village Manadpur Khadar, Abadi, now known as Madanpur Khadar Extension Part III, Tehsil Sarita Vihar (earlier Kalkaji), New Delhi - 110076 entered into an Agreement to Sell dated 11th May, 2013 with respect to a part of the aforesaid land admeasuring 3900 sq. yds. (hereinafter referred to as 'suit property'), for a sum of

Rs. 2,00,00,000/- (Rupees Two Crores Only).

3. It is stated that on 11th May, 2013 the entire consideration of Rs. 2,00,00,000/- (Rupees Two Crores Only) was paid to the defendant in cash and the defendant issued a receipt dated 11th May, 2013. Pursuant to the above, on the same date, the defendant gave possession of the suit property to the plaintiff and issued a possession letter.

4. On 11th November, 2014, the plaintiff visited the suit property and found that two guards deployed by '*Karbala Educational Foundation*' as well as a board displaying the name of the said foundation. After removing the display board, the plaintiff visited the suit property on 15th November, 2014 and found another board displaying '*Tarbia Education Foundation*'.

5. Upon further enquiry it is the plaintiff's case that the defendant had cheated him.

6. On 25th November, 2014, the plaintiff filed a criminal complaint before the Metropolitan Magistrate, Saket Courts, Delhi. It is averred in the plaint that the defendant in his statement before the police, during inquiry, stated that he had never sold the suit property to the plaintiff.

7. On 28th July, 2015, the plaintiff issued a legal notice to the defendant, calling upon him to remit the amount Rs.2,00,00,000/- (Rupees Two Crores Only) plus interest @ 9 % per annum and compensatory loss of profits to the plaintiff. However, no reply was received.

8. On 31st August, 2015, the plaintiff filed the present suit.

9. On 20th May, 2016, the parties were referred to the High Court Mediation and Conciliation Centre and the matter was amicably resolved vide settlement agreement dated 25th May, 2016. The relevant portion of the settlement agreement dated 25th May, 2016 is reproduced hereinbelow:-

“6. That the following settlement have been arrived at between the parties:-

- a) It is agreed between the parties that the first party has forgone Rs. 15,00,000/- (Rupees Fifteen Lakhs only) from the suit amount and has settled the said suit for an amount of Rs. 1,85,00,000/- (Rupees One Crore Eighty Five Lakhs only).*
- b) That the second party has paid a sum of Rs. 10,00,000/- (Rupees Ten Lakhs only) on 25.05.2016 at the time of signing of the settlement agreement by way of cash to the first party and the first party has received the said amount and is agreeing the signing of the present settlement agreement itself may be considered as a receipt in respect of the same.*
- c) That the first party in his remaining claim of Rs. 1,75,00,000 (Rupees One Crore Seventy Five Lakhs only) is willing to accept the ownership rights of the property bearing Plot No. 12, Hari Nagar, Badarpur, New Delhi – 110 044 admeasuring 200 sq. yards from the second party.*
- d) It is agreed between the parties that the handing over of the possession and execution of documents with respect to the said plot shall be completed within the period of one month from the date of signing of the instant settlement agreement.*
- e) It is agreed between the parties that in case the first party sells the said property and receives more than Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs only), the second party shall have no claims over the excess amount received by the first party and in case on*

selling the said property, the first party receives lesser than the amount of Rs. 1,75,00,000/- (Rupees One Crore Seventy Five Lakhs only) then the first party shall not be entitled to claim the balance amount from the second party.

- f) By receipt Rs. 10,00,000/- (Rupees Ten Lakhs only) on 25.05.2016 and ownership of property bearing Plot No. 12, Hari Nagar, Badarpur, New Delhi-110 044 admeasuring 200 sq. yards, the suit of the first party is fully satisfied by the second party.*
- g) The second party shall cooperate with the first party in transferring of the ownership rights of the above said property in favour of the first party.*
- h) The stamp duty and other expenses in respect of the said transfer shall be borne by the first party exclusively.*
- i) That the parties have agreed that the present suit be disposed of in terms of the present settlement agreement.”*

10. Since the defendant was not complying with the terms and conditions of the settlement and stopped appearing, he was proceeded *ex-parte* vide order dated 20th December, 2016.

11. The plaintiff has filed its evidence by way of affidavit of Sh. Krishan Bidhuri in support of the averments made in the suit and proved amongst others, the following documents:-

- (i) The Agreement to Sell dated 11th May, 2013 exhibited as Ex. PW1/B.
- (ii) The original receipt of Rs. 2,00,00,000/- (Rupees Two Crores Only) exhibited as Ex. PW1/C.
- (iii) Affidavit of the defendant exhibited as Ex. PW1/D, Possession Letter exhibited as Ex. PW1/E.

- (iv) Legal notice dated 28th July, 2015 exhibited as Ex. PW1/K.
- (v) Settlement Agreement dated 25th May, 2016 exhibited as Ex. PW1/M.

12. Having perused the paper book, this Court is of the opinion that till date, the defendant has failed to comply with the terms of the settlement agreement dated 25th May, 2016. As the averments in the plaint have not been rebutted by the defendant in spite of ample opportunities given by this Court, they are deemed to have been admitted.

13. In any event the plaintiff has proved its case.

14. The mediated settlement agreement dated 25th May, 2016 also confirms the case of the plaintiff.

15. It is pertinent to mention that the Supreme Court in ***Afcons Infrastructure Ltd. Vs. Cherian Varkey Construction Co. (P) Ltd., (2010) 8 SCC 24*** while dealing with Section 89 of the CPC observed that the settlement agreement will have to be placed before the Court for recording it and in disposing of the suit in its terms, the Court should apply the principle of Order 23 Rule 3 of the CPC and make a decree in terms of the settlement in regard to the subject matter of the suit, to make such settlement effective.

16. This Court is satisfied that the compromise between the parties contained in the aforesaid Settlement Agreement is lawful and therefore, this Court does not find any impediment in decreeing the present suit in terms of the aforesaid Settlement Agreement.

17. Consequently, the present suit is decreed in terms of the settlement agreement dated 25th May, 2016 along with interest pendente lite and future @ 8% p.a. This Court may mention that it is awarding the interest @ 8% per annum as that is the normal rate at which the banks are lending monies now-a-days. Registry is directed to prepare a decree sheet accordingly.

MARCH 21, 2018
mn/rn

MANMOHAN, J