

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

+ **RFA No. 44/2018**

% **16th January, 2018**

M/S APPLE MINES & MINERALS PVT. LTD. & ANR.

..... Appellants

Through: Mr. Manohar Malik and Mr.
Amit Dhaka, Advocates.

versus

BABA BUILDWELL PVT. LTD.

..... Respondent

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 1722/2018 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

RFA No. 44/2018 and C.M. Appl. Nos. 1720/2018 (for delay) and 1721/2018 (for stay)

1. This Regular First Appeal is filed under Section 96 of the Civil Procedure Code, 1908 (CPC) by the defendant in the suit impugning the judgment of the trial court dated 31.8.2017 by which the trial court has decreed the suit filed by the respondent/plaintiff for

recover of a sum of Rs.25,00,000/- along with interest at the rate of 8% per annum. The suit has been decreed on account of the sum of Rs.25,00,000/- having been paid by the respondent/plaintiff to the appellant no. 1 as loan.

2. The facts of the case are that the subject suit was filed by the respondent/plaintiff pleading that on the request of appellant no. 1 the respondent/plaintiff granted a loan of Rs.25,00,000/- to the appellant no. 1. A sum of Rs.10,00,000/- was given through an account payee cheque which was debited to the respondent's/plaintiff's account on 12.8.2008, whereas a sum of Rs.15,00,000/- was given by means of demand draft dated 25.8.2008 and which was encashed by the appellant no. 1. Since appellant no. 1 failed to re-pay the loan amount therefore after serving the legal notice dated 27.1.2010 the present suit was filed, the present suit was filed.

3. There were a total of five defendants in the suit with appellant no. 1 being the main defendant inasmuch as loan was granted to appellant no. 1 by the respondent/plaintiff. Suit against defendant nos. 2 to 5 has been dismissed inasmuch as they were only shareholders/directors in the appellant no. 1/company. The defence of

the appellant no. 1 was that amount of Rs.25,00,000/- was received by the appellant no. 1 from the respondent/plaintiff under an agreement to sell a property. It was pleaded that the agreement to sell was for selling of a property admeasuring 10,000 sq. metres bearing number A-4/3, South Site, G.T. Road, Gaziabad for a sum of Rs.10 crores and in furtherance of this agreement to sell Rs.25 lakhs was received by the appellant no. 1 from the respondent/plaintiff. It is further pleaded in the written statement of the appellant no.1 that the respondent/plaintiff thereafter expressed his inability to purchase the property of 10,000 sq. metres and requested to give a smaller plot and therefore appellant no. 1 transferred two plots to the respondent/plaintiff bearing nos. A-4/3/27 and A-4/3/28, South Site G.T. Road, Ghaziabad admeasuring 256.86 sq. metres and 256.82 sq. metres. The suit was therefore prayed to be dismissed.

4. After pleadings were complete, the following issues were framed:-

- “(i) Whether the plaintiff is entitled to recover the amount of Rs.25,00,000/- admittedly received by the defendants from the plaintiff?
OPP
- (ii) Whether the defendants had sold the property bearing no. A-4/3/27 and A-4/3/28, South Site G.T. Road, Ghaziabad measuring 256.86 sq. metres and 256.86 sq. metres respectively to the plaintiff as claimed by the defendants? If so, to what effect? OPD

- (iii) Whether the plaintiff is entitled to interest at the rate of 14% per annum pendent lite and future on the amount claimed in the suit? OPP
- (iv) Relief.”

5. At the outset it is required to be noted that appellant no.1 was given numerous opportunities to lead evidence but appellant no.1 failed to lead any evidence and therefore the right of the appellant no.1 to lead evidence was closed. The respondent/plaintiff has proved its case by filing the bank certificate as Ex.PW1/3 showing receipt of the amount of Rs.25,00,000/- by the appellant no. 1. In any case appellant no. 1 admits to receiving of this amount of Rs.25,00,000/-. Once appellant no. 1 has lead no evidence of transfer of two plots, in such a fact situation the suit of the respondent/plaintiff for recovery of Rs.25,00,000/- had to be decreed. Also, even assuming that there was an agreement to sell with respect to a plot of 10,000 sq. meters, and with respect to which there is no evidence led on behalf of the appellant no. 1 (with the fact that there is no written agreement to sell) yet, once amounts are received under an alleged agreement to sell, then such amounts cannot be forfeited by the seller unless loss is pleaded and proved as held by the Supreme Court in the judgments in the cases of *Fateh Chand Vs. Balkishan Dass AIR 1963 SC 1405* and

Kailash Nath Associates Vs. Delhi Development Authority and Another (2015) 4 SCC 136. No loss is pleaded and proved by the appellant no. 1 to justify adjustment of the amount of Rs.25,00,000/- received from the respondent/plaintiff.

6. In view of the aforesaid discussion I do not find any merit in the appeal and the same is hereby dismissed.

JANUARY 16, 2018

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VALMIKI J. MEHTA, J



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