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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 22/2019 & IA No.600/2019 (u/O XXXIX R-1&2 CPC).**
RAJINDER JAIPURIA & ANR. Plaintiffs
Through: Mr. Atul Nigam, Mr. Randhir Kumar,
Mr. Paritosh Jain, Advs.
versus
M/S CHOLAMANDALAM INVESTMENT
& FINANCE CO. LTD. & ORS. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.01.2019

IA No.601/2019 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CS(COMM) 22/2019 & IA No.600/2019 (u/O XXXIX R-1&2 CPC).

3. The two plaintiffs, namely (i) Rajinder Jaipuria and, (ii) Jayshree Jaipuria, have instituted this suit for (i) declaration that the Home Equity Loan availed in the name of the plaintiff no.1 as principal borrower and in the name of the plaintiff no.2 as co-borrower with respect to property no.B-158, Sector-31, Noida - 201301 belonging to the plaintiff no.1 from the defendant no.1 Cholamandalam Investment & Finance Co. Ltd. and the documents purportedly executed by the plaintiffs with respect thereto are null and void; (ii) for cancellation of the said documents; (iii) for permanent injunction restraining the defendant no.1 from selling, creating or transferring interest in favour of third party in respect of the said property and from recovering the loan amount from the plaintiffs or against subject

property; and, (iv) for mandatory injunction directing the defendants no.2&3 namely (i) Anuj Jaipuria and, (ii) Sakshi Jaipuria, being the son and daughter-in-law of the plaintiffs, to refund the loan amount to the defendant no.1 and to return the original title documents of the property to the plaintiff no.1 free from any charge or encumbrance.

4. It is *inter alia* the case of the plaintiffs that though the plaintiff no.1 is the owner of the property aforesaid but the defendants no.2&3, by playing a fraud on the plaintiffs and taking advantage of the relationship with the plaintiffs, have created a mortgage with respect to the said property in favour of the defendant no.1.

5. Territorial jurisdiction of this Court is invoked pleading:-

“11. This Hon’ble Court at Delhi has territorial jurisdiction to entertain the suit as defendants have committed fraud, colluded and schemed on the basis of forged and fabricated documents in respect of home equity loan within the jurisdiction of this Hon’ble Court at New Delhi. That defendant no.1 has received the original title documents of the property of plaintiff no.1 from defendant no.2&3 at their branch office at New Delhi. The purported loan amount has been released by defendant no.1 from its branch at New Delhi to defendant no.2 in his bank account which is Bank A/c No.03141530006670 HDFC Bank, Ansari Road, Darya Ganj, New Delhi. Defendant no.1 and defendant no.2 are carrying on business and work for gain within the jurisdiction of this Hon’ble Court. That even otherwise the relief(s) sought can be entirely obtained through the personal obedience of defendants within the jurisdiction of this Hon’ble Court where defendants voluntarily are carrying on business and work for gain.”

6. It has been enquired from the counsel for the plaintiffs, whether not the suit *inter alia* seeks determination of rights and/or interest in the immovable property situated at Noida, Uttar Pradesh (UP) and whether not in terms of Section 16 of the Code of Civil Procedure, 1908 (CPC), the exclusive jurisdiction to determine the said rights or interest would be of the Court within the local limits of whose jurisdiction the property is situated i.e. the Courts at Noida. Attention of the counsel for the plaintiffs is also invited to the dicta of the Supreme Court in ***Harshad Chiman Lal Modi Vs. DLF Universal Ltd.*** (2005) 7 SCC 791.

7. The counsel for the plaintiffs withdraws the suit with liberty to file before the Court of appropriate jurisdiction and also seeks refund of court fee paid on this suit.

8. The suit is dismissed as withdrawn with liberty aforesaid.

9. A certificate entitling the plaintiffs to refund of court fees paid less Rs.25,000/- be issued and be handed over to the counsel for the plaintiffs.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2019

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