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

Date of decision: 9th August, 2019

+ **CS(OS) 77/2019**

SHRI SUBHASH CHAND GARG & ANR. Plaintiffs

Through: Mr. Ankit Gupta, Advocate (M-9717134040)

versus

SHRI ROSHAN SETH & ORS. Defendants

Through: Mr. Saurabh Chouhan & Mr. Varun Jain, Advocates for D-3 (M-9810104127)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. The present suit for recovery of sum of Rs.2,28,65,000/- has been filed by the Plaintiffs against Defendants No.1 to 4. Defendant No.3 lays claim to the First Floor of the property bearing no.C-3/201, Janak Puri, New Delhi-110058 (*hereinafter 'suit property'*) on the basis of a registered Sale deed.

2. The case of the Plaintiffs is that the Plaintiffs who were looking to buy a property had explored purchase of the suit property. Defendants No.1 and 2 represented themselves as the owners of the property. After negotiations, two agreements to sell dated 4th February, 2016 and 18th March, 2016 were entered into. Under the said agreements, the total sale consideration was agreed as Rs.4.7 crores for the entire property. Various receipts were executed by the Defendants No.1, 2 and 4 and a total sum of

Rs.1.64 crores was paid to the said Defendants. However, despite the Plaintiffs arranging the balance funds and consideration for payments, the Defendants No.1, 2 and 4 refused to execute the sale deed despite accepting a large sum of money. Thereafter, the Plaintiffs also came to know that in respect of the First Floor, some rights were created in favour of Defendant No.3. Under these circumstances, the Plaintiffs asked the Defendants No.1,2 and 4 to return the money which the said Defendants refused to do.

3. In view of the refusal by Defendants 1 to 4, the Plaintiffs registered a FIR with P.S. Janak Puri being FIR No.595/2016. Charge sheet was also filed. Defendants No.1, 2 and 4 were arrested. Thereafter the Defendants No.1, 2 and 4 sought bail and in the bail application proceedings, a settlement was arrived at between the parties. The order dated 4th May, 2017 passed by Special Judge Sh. Harish Dudani, Dwarka Courts, New Delhi recorded the settlement which reads as under:

“It is contented by the parties that they have amicably settled the matter. Statement of Ld. Counsel for the applicants and Ld. Counsel for the complainant have been recorded separately wherein they stated that the matter has been settled between the parties on the terms that the complainant shall not object to release of applicants on interim bail for a period of three months in order to facilitate the disposal of the property by the applicants and after disposal of the property within the said period of three months, the applicants shall make payment of total sum of Rs.1,70,00,000/- (One Crore Seventy Lacs) to the complainant.”

In view of statement of Ld. Counsel for the applicants and Ld. Counsel for the complainant, the applicant/accused are granted interim bail till the next date of hearing in order to facilitate the applicant's for

giving effect to the settlement, on furnishing a personal bond and surety bond in the sum of Rs.50,000/- each to the satisfaction of the concerned Ld. M.M./Link MM/Duty MM.

Application be put up on 05.08.2017.”

4. Ld. counsel for the Plaintiffs submitted that thereafter, the bail was extended by another three months and despite that, no payment was made to the Plaintiffs. As per the second order by which the bail was extended by another three months, interest was agreed to be paid on Rs.1.7 crores @ 18% for the first three months and thereafter @ 24% till the return of the whole amount. The order dated 5th August, 2017 passed by Special Judge Dr. V.K. Dahiya, Dwarka Courts, New Delhi reads as under:

“It is stated by both the parties that matter was settled and the amount of Rs.1.7 crore was to be paid by applicant to the complainant on or before today itself.

Ld. Counsel for applicant seeks three months time to pay the amount of Rs.1.7 crore to the complainant.

Applicant hereby undertakes to pay the interest on the amount @ 18% p.a. on the amount of Rs.1.7 crores till next three months. Thereafter, the applicant submits that the applicant will pay instalment @ 24 p.a. till the return of whole amount of Rs.1.7 cores.

In view of the above, the earlier interim order passed by Sh. Harish Dudani, Ld. Spl. Judge (PC Act) CBI-01, Dwarka Court dated 04.05.2017 is hereby made absolute.

Needless to say that applicant shall pay the amount of Rs.1.7 crore to the complainant within three months from today.

In case, applicant backed out from the settlement, the complainant would be at liberty to get the bail cancelled.

As prayed, copy of order be given dasti.”

5. Defendants No.1, 2 and 4 subsequently jumped bail, were finally arrested after several months and are now again in judicial custody. It is submitted by ld. counsel for the Plaintiffs that none of the Defendants have filed any written statements and according to the Plaintiffs, this is a fit case for passing judgment in favour of the Plaintiffs.

6. Ld. Counsel for the Defendant No. 3 submits that Defendant No.3 is also one of the victims of Defendants No.1, 2 and 4 and in fact, Defendant No.3 is a Pilot who had paid the agreed consideration to Defendants No.1 and 2 and has a registered sale deed in his favour in respect of the First Floor of the suit property. It is submitted that Defendant No.3 has filed a civil suit against Defendants No.1 and 2.

7. The submission made by Defendant No.3's counsel is denied by ld. counsel for the Plaintiffs. The Defendants were served in this suit as recorded by the Joint Registrar on 26th March, 2019. None of the Defendants have filed their written statements. Opportunities have been granted by the Joint Registrar, however, since no written statement has been forthcoming, the matter has been placed before Court.

8. The Court has perused the documents on record as also the various orders passed in the bail proceedings. It is clear from the orders passed that Defendants No. 1, 2 and 4 do not dispute that they had indeed received a sum of Rs.1.64 crores from the Plaintiffs. Further, they also agreed to repay to the Plaintiffs a sum of Rs.1.7 crores initially without interest and thereafter @ 18% per annum for the first three months and @ 24% per annum thereafter. Thus, it is clear that there are unambiguous admissions by Defendants No.1, 2 and 4 as to their liability to repay the Plaintiffs. Since the amounts received is admitted, the suit is liable to be decreed for a sum of

Rs.1.7 crores along with simple interest @ 12% per annum from the date of first agreement to sell i.e. 4th February, 2016 till the date of payment. Ordered accordingly.

9. Insofar as Defendant No.3 is concerned, no decree is being passed against Defendant No.3 who is deleted from the array of parties. Decree sheet be drawn in the above terms. All pending I.As. are disposed of.

AUGUST 09, 2019
Rahul

PRATHIBA M. SINGH
JUDGE