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IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 7th August, 2019

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CS(COMM) 205/2016

M/S PARKLAND PROPERTIES LTD

..... Plaintiff

Through: Mr. Sunil Chauhan, Advocate (M-9810213040)

versus

**NEW RAJPUT COOPERATIVE GROUP HOUSING
SOCIETY**

..... Defendant

Through: Mr. Vijay Mishra, Advocate (M-9136346788) along with Mr. Sanjay Kr. Gupta, President of the Society.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

I.A. 10670/2019 (for extension of time)

1. This is an application seeking extension of time of six weeks for making payment of Rs.20 lakhs in terms of order dated 16th April, 2019. The brief background is that the present suit under Order XXXVII has been filed by the Plaintiff for recovery of a sum of Rs.1,10,00,000/- towards the cost of construction of 108 flats in terms of the settlement agreement dated 22nd May, 2011. The application for leave to defend filed by the Defendant - Society was considered by this Court on 16th April, 2019 and the Court, after hearing the parties, the Court had passed the following order:

“...On a harmonious reading of the aforesaid clauses this Court is of the view that the plaintiff-contractor is entitled to balance payment of Rs.3,19,00,000/-

(Rupees Three Crores Nineteen Lacs Only), subject to completion of remaining construction as well as repair jobs. In the event of non-completion of repair works as stipulated in Clause 12, the defendant society at the most could have retained Rs. 90,00,000/- (Rupees Ninety Lacs Only).

Since in the present case a third party like DDA has issued completion-cum-occupancy certificate and that too eight months after execution of the Settlement Agreement for 108 flats and in no contemporaneous correspondence any grievance of non-construction of twelve flats had ever been raised, this Court is of the view that the defendant-society at the most could have retained/deducted only Rs.90,00,000/- (Rupees Ninety Lacs Only) in accordance with Clause 12 of the Settlement Agreement.

As a consensual ceiling had been placed on the deduction that could have been made by the defendant-society, this Court is of the view that even if the defendant-society's defence is ultimately proved to be correct, then also not more than Rs. 90,00,000/- (Rupees Ninety Lacs Only) can be retained / deducted by the defendant-society.

*Consequently, defendant-society is granted leave to defend, subject to payment of Rs. 20,00,000/- (Rupees 1,10,00,000/- minus Rs.90,00,000/-) to the plaintiff within eight weeks. **Needless to say, if the aforesaid payment is not made within the stipulated period the suit shall stand decreed without any further orders of this Court.** Accordingly, present application stands disposed of."*

2. A perusal of the above order shows that the Defendant had to make payment of Rs.20 lakhs within 8 weeks, failing which, the suit was to stand automatically decreed without any further orders of this Court.
3. The present application is based on the premise that subsequent to this

order, the Defendant chose to file a review petition under Order XLVII Rule 1 and 4 which was dismissed on 31st May, 2019. Thereafter, the Defendant filed an appeal being FAO (OS)(COMM) 167/2019 which was also dismissed vide order dated 19th July, 2019. It is submitted by ld. counsel for the Plaintiff that upon the dismissal of the appeal, the order was received by the Defendant only on 29th July, 2019. Thereafter the Society offered a cheque of Rs.20 lakhs to the Plaintiff dated 28th July, 2019. However, the Plaintiff refused to accept the same. Under these circumstances, extension of six weeks is sought by the Society.

4. Ld. counsel for the Plaintiff opposes the request for extension as according to him, the order dated 16th April, 2019 was a peremptory order and the suit already stands decreed upon the non-payment of the amount within 8 weeks.

5. Ld. counsel for the Defendant - Society has been put a specific query as to whether any leave was sought by the ld. counsel for the Defendant from the ld. Division Bench for extension in making the payment to which the answer is clearly in the negative. A perusal of the ld. Division Bench's order also does not show that there was any request made for extension or any such request was considered by the Court.

6. The order of the Court dated 16th April, 2019 is completely clear in the sense that it directs the Defendant to pay the amount within 8 weeks, failing which, the suit was to be automatically decreed. A perusal of the review application shows that the said application was in fact preferred only on 17th May, 2019 which is almost six weeks after the passing of the order dated 16th April, 2019. In the review application, the Defendant chose to tender a sum of approx. Rs. 12 lakhs based on some further submissions

which were rejected by the Court. Even at that stage, the eight-week period had not expired and the Defendant could have paid the sum of Rs. 20 lakhs and availed of the opportunity to defend the suit. The defendant however chose not to do so. Even the appeal challenging the order dated 16th April 2019, was only filed in July and was dismissed on the first day itself.

7. The order dated 16th April, 2019 is clear and categorical in its terms. Upon the expiry of eight weeks, if there is no payment made, the suit stands decreed. No leave was sought before the Court dealing with the review or the Id. Division Bench dealing with the appeal to pay the amount after the expiry of eight weeks. The suit actually stands decreed and there is no application seeking setting aside of the decree passed on 16th April, 2019.

8. It has been held in ***Bindru vs. Kikru and Others, AIR 1988 J&K 1*** a Full Bench of the J&K High Court held as under:

“29. The powers of the court under S. 148 C.P.C. are to be correlated with the pending lis and not with the lis which is terminated and in respect whereof the court has become functus officio and where making of the deposit is condition of the decree under the mandatory provisions of law and not made by the court under its discretionary powers. From a bare perusal of S. 148 it is clear that in respect of suits based on right of prior purchase which are decreed by the court, it cannot pass an order under S. 148, C.P.C. about enlarging the period which was originally fixed or which may have expired, Court after passing the decree becomes functus officio, therefore, it cannot enlarge the time for making a deposit of purchase money (and) thereby amend the condition of the decree so far as the period of deposit is fixed by the court.

30. Our answer to the second question, therefore, is that Court passing the decree in a suit for pre-emption

has no power to enlarge the time for making the deposit of purchase money because after passing of the decree no lis is pending before it and period for depositing of the money is a condition of the decree and court loses control over the matter soon after it decides the matter and passes a decree. Thereafter it becomes functus officio and has no authority under S. 148, C.P.C. to vary the condition of the decree as regards the period of deposit or any matter. The decree in a suit for prior purchase is to be passed in accordance with O. 20, R. 14. Therefore the command in that provision is to be made a condition in the decree which cannot be enlarged after the suit is decreed by the trial court.”

9. The Supreme Court in ***Wada Arun Asbestos Private Limited vs. Gujarat Water Supply and Sewerage***, (2009) 2 SCC 432 has held as under:

“15. Where a conditional leave is granted and the conditions therefor are not complied with, a judgment in favour of the plaintiff can be passed...”

10. Any litigant, against whom there is a specific order that too a peremptory one, ought to take the orders of the Court extremely seriously and cannot seek to post-pone the payment of the amount fixed by the Court at its own sweet will. The orders of the Court are meant to be complied with strictly and any attempt to defeat the order of the Court ought to be viewed strictly by the Court.

11. The suit in fact stands decreed and this Court cannot extend the time for making the payment, in these facts. In view of the non-payment by the Defendant, the order dated 16th April, 2019 cannot be recalled and no extension be granted to the Defendant. The application is accordingly dismissed.

12. The amount of Rs.20 lakhs which has been tendered by the Defendant is handed over to the Plaintiff. Ld. counsel for the Defendant undertakes that the said cheque would be honoured by the Defendant.

13. Decree sheet be drawn accordingly. *Dasti*.

PRATHIBA M. SINGH
JUDGE

AUGUST 07, 2019

Rahul

