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

\+ **CS(COMM) 974/2018 & I.As. 2408/2019, 2627/2019, 2628/2019, 3974/2019**

***Date of decision: 6th May, 2019***

RELIANCE HOME FINANCE LIMITED ..... Plaintiff

Through: Mr. Akhil Sacchar, Ms. Sunanda Tulsyan, Advocates along with Mr. Mayank Chawla, AR (M-9891105069)

versus

JAGWATI JAIN AND OTHERS ..... Defendant

Through: Mr. Anirudh Bhatia, Advocate for Mr. Pankaj Jain (II) (M-9871877755). Mr. Randhir Jain & Mr. Dhananjai Jain, Advocates for D-4 (M-9560562050) Mr. Abhas Kumar, Advocate for D-6 (M-9910425958). Mr. Amit Mahajan, CGSC with Mr. Olson Nair, Advocate (M-8860750431) Mr. Umesh Suri, Mr. Avinash Suri, Advocates for Applicants. (M-9810424804)

**CORAM:**
**JUSTICE PRATHIBA M. SINGH**

**Prathiba M. Singh, J. (Oral)**

1. Mr. Abhas Kumar, Ld. counsel submits that Mr. Pankaj Jain – Defendant No.6 is absconding and he seeks discharge from this matter. Accordingly, Mr. Abhas Kumar is discharged.

2. The present suit for recovery of a sum of Rs. 2,04,00,000/- has been filed by the Plaintiff against Smt. Jagwati Jain – Defendant No.1; Shri Satyaveer Singh – Defendant No.2; Smt. Rajbati – Defendant No.3; Shree Om Wires Private Limited – Defendant No.5; Shri Pankaj Jain – Defendant No.6 and Shri Mander Das Jain – Defendant No.7. None of the Defendants except Defendant No.4 - M/s. Jain Foot Comforts Pvt. Ltd. have filed their written statements. The Plaintiff is a financing company, which has financed a sale and purchase transaction in respect of property being Plot admeasuring 199.68 square meters bearing Nos.426-431 situated at Gali No.8, Friends Colony, G. T. Road, Shahdara, New Delhi-110095 (*hereinafter 'suit property'*). Defendant No.l - Smt. Jagwati Jain was the seller of the property and Defendant Nos. 2 and 3 were the purchasers of the property. The Defendant No. 2 and 3 were customers of the Plaintiff in whose favour the loan was sanctioned and money was deposited directly in the bank account of Defendant No.1 in Kotak Mahindra Bank.

3. It is the case of the Plaintiff that Smt. Jagwati Jain – Defendant No.1 claiming to be the owner of the suit property had deposited the original title deeds of the said property including the original sale deed dated 17th February, 2015 with the Plaintiff company. After verification and other legal compliances, the Plaintiff sanctioned a sum of Rs.2.04 crores to Defendants No.2 and 3 vide sanction letter dated 31st March, 2018 to enable the said Defendants to purchase the suit property. After considering the original sale deed between Defendant No.1 and Defendants Nos. 2 & 3 - dated 17th July, 2015, the loan was disbursed to Smt. Jagwati Jain – Defendant No.1 on behalf of Defendants No.2 and 3. The Defendant No.1, executed the sale deed in favour of Defendants No.2 and 3. The same was registered on 26th

April, 2018 and the cheques were handed over by the Plaintiff to Defendant No.1. Defendant Nos. 2 and 3 were to pay the EMIs on or before 10th of every month. When Defendant Nos. 2 and 3 defaulted in payment of EMIs on 10th May, 2018, it established contact with Defendant No.2. At that stage, the Defendant No.2 informed the Plaintiff that there was a *status quo* order in respect of the suit property and hence the Sub-Registrar had refused to register the sale deed in favour of Defendant Nos. 2 and 3. The Plaintiff, thereafter, learnt that there was an order dated 9th March, 2018 which had been passed in OMP (I) 12/2017. The Plaintiff then moved an application in the said case seeking directions from Defendant No.1 to remit the sale consideration, but the said application was rejected as the Plaintiff was not a party to any arbitration agreement which was subject matter of the said petition. The present suit then came to be filed by the Plaintiff. Thus, the Plaintiff became aware of the fact that Defendant No.1 had sold the suit property in violation of the *status quo* order and had also accepted the sale consideration.

4. Under these circumstances, this Court had on 8th June, 2018 passed an order directing *status quo* in respect of the bank account maintained in Kotak Mahindra bank. The bank officials thereafter appeared and informed the Court that there were no sums in the said bank account and the balance was nil. On 8th June, 2018, this Court had passed an interim order in the following terms:

> ***I.A. 8145/2018 (u/O XXXVIII Rule 5 read with Order XXXIX Rules 1 & 2 CPC)***
>
> *7. Issue notice to the Defendants, returnable on the date fixed. Reply be filed within four weeks.*
> *8. The Plaintiff is a financing company, which has financed*

*a sale and purchase transaction in respect of property being Plot admeasuring 199.68 square meters bearing Nos.426 to 431 situated at Gali No.8, Friends Colony, G. T. Road, Shahdara, New Delhi-110095. Defendant No.1 Smt. Jagwati Jain was the seller of the property and the Defendant Nos. 2 & 3 are purchasers. The Defendant No. 2 and 3 were the customers of the Plaintiff in whose favour the loan was sanctioned and money was deposited directly in the bank account of the seller in Kotak Mahindra Bank. However, the Plaintiff, thereafter, was informed that the sale deed, which was executed, was not registered by the sub-Registrar as there was a status quo order passed by this Court in a different proceeding in respect of same property. Learned counsel for the Petitioner has taken the Court through the order dated 9th March, 2018 passed in OMP (I) 12/2017 titled Jain Foot Comforts Pvt Ltd Vs. Jagwati Jain wherein the Court has directed that status quo would be maintained. Paragraph 12 of the said order reads as under:*

*".......*

*12. It is directed that the parties shall maintain the status quo as to the properties in question. The respondent shall also ensure that the title deeds of the said properties are not transacted in any manner. This order shall continue for a further period of ninety days.*

*.........................."*

*9. It is clear from a perusal of the above order that Smt. Jagwati Jain was fully aware of the status quo order operating against the suit property as also the fact that this Court has directed the title deeds of the said properties not to be transacted in any manner. The present transaction, which has been carried out amongst the Defendants, appears to be in the teeth of the said order. The Plaintiff company has been made to part with a sum of Rs.1,94,44,580/- as the sale consideration for the said property.*

*10. Learned counsel for the Plaintiff submits that the Defendant Nos. 2 & 3 have also not paid their EMI's which* *they were supposed to pay on the ground that the sale deed has not been registered.*

*11. The Plaintiff has made out a prima facie case in its favour and balance of convenience is also in favour of the Plaintiff. There is a serious apprehension that the consideration amount, which was paid to the Defendant No.1, may be diverted by her and the funds may be usurped. Under these circumstances, it is directed that the bank account of the Defendant No.1 being* ***Bank Account No.1312359930 at Kotak Mahindra Bank, Yojana Vihar, Delhi-110095*** *shall stand attached. Status quo shall also be maintained by all the Defendants in respect of the suit property.*

*12. The bank shall put up a report before this Court as to the balance amount that is available in this account. If the balance is more than Rs. 2 crores, the bank shall ensure that the amount of Rs.1,94,44,580/- remains attached and no transaction in respect of the said amount shall be carried out.*

*13. On the next date of hearing, if the bank reports that there are insufficient funds in the account of Defendant No.1, the relief prayed for in (i) shall be considered.*

*14. Compliance under Order XXXIX Rule 3 CPC be made within three days. Order dasti under signature of the Court Master.*

*15. A copy of this order be sent to the Sub-Registrar-IVA, Shahdara to ensure that no transactions in respect of this property are registered.*

5. In the meantime, the Plaintiff also acquired knowledge through Kotak Mahindra Bank with whom the cheque given to Defendant No.1 was deposited, that the loan amount which was disbursed to Defendant No.1 was transferred by Defendant No.1 to one Shree Om Wires Private Limited i.e. Defendant No.5 which is run by the son of Smt. Jagwati Jain, namely, Sh. Pankaj Jain – Defendant No.6 and her hushand – Defendant No.7. In this

manner, without executing a sale deed, the entire loan amount which was disbursed by the Plaintiff, was transferred by Defendant No.1 for the benefit of Defendants No.5, 6 and 7 i.e. the family company run by them, her son and her husband respectively.

6. Under these circumstances, the Plaintiff had parallelly filed complaint under Section 156(3) Cr.P.C which was taken up by the ACMM. The Defendant No. 6 had been arrested in the said complaint. He was produced before the court, from custody on 26th October, 2018. He had submitted that he is willing to pay the dues to the Plaintiff. The order passed on 26th October 2018 reads as under:

> *"Mr. Pankaj Jain has been produced in Court by the Jail Authorities. His son – Mr. Shubham Jain is also present in Court. It is submitted on their behalf that they are in the process of locating a buyer/buyers for the six plots owned by them in the Shahdara Industrial Area. They submit that if they are given time, they will locate the buyer for the said purpose and they are willing to pay the dues to the Plaintiffs in both the suits.*
>
> *Since, Mr. Pankaj Jain is still in custody on a criminal complaint by M/s Reliance Home Finance Limited in CS (COMM) 974/2018, as requested by them, matter is listed on 1st November, 2018 at 2:15 P.M.*
>
> *If they identify a buyer for their plots, they are given liberty to request the buyer's presence on the next date of hearing in the Court.*
>
> *The copy of the entire paper book in this matter has been supplied to Mr. Pankaj Jain by counsel for the Plaintiff.*

7. Thereafter, again on 1st November, 2018, he re-affirmed his intention to pay back the money taken from the Plaintiff. However, the ACMM released Mr. Pankaj Jain on bail subject to his depositing his passport.

However, Mr. Pankaj Jain, after being released by the ACMM has absconded. Ld. CGSC – Mr. Amit Mahajan appearing for the Union of India (Ministry of External Affairs) submits that a Look Out Circular (LOC) has already been issued in respect of Mr. Pankaj Jain. However, Mr. Mahajan, CGSC submits that the passport details of Mr. Pankaj Jain are not available. Today, Mr. Pankaj Jain's son – Mr. Shubham Jain has submitted that his father is absconding. However, the passport has been produced in the Court being passport no. Z3338386. The passport is taken on record and is directed to be retained in the custody of the Worthy Registrar General of this Court.

8. Mr. Akhil Sacchar, Ld. Counsel appearing for the Plaintiff submits that Defendant No.4 – M/s Jain Foot Comforts Pvt. Ltd. is a third party which has filed a suit against the other Defendants. He does not press any reliefs against Defendant No.4 in the present suit. Accordingly, Defendant No.4 is deleted from the array of parties. It is seen that the contesting Defendants have not filed any written statements despite being fully aware of the entire matter. The monies extended by the Plaintiff have been taken by the family members/related companies and the same have been withdrawn from the bank account of the Defendant No.6. Clearly, in view of the fact that no written statement has been filed and in view of the various statements made by Mr. Pankaj Jain, when he has appeared before the Court, it is clear that there is no defence to the present suit. Defendant No.1 – Smt. Jagwati Jain, her son, her husband and the company – Shree Om Wires Private Ltd. are clearly in collusion with each other. The amounts having been disbursed by the Plaintiff to Defendant No.1 is not in dispute. Accordingly, under Order XII Rule 6 CPC, both on admission and under Order VIII Rule 10 CPC, for non-filing of written statement, judgment is

liable to be passed against the Defendants No. 1 to 3 and 5 to 7. The suit is accordingly decreed for a sum of Rs.2,04,00,000/- along with the simple interest @ 12% from the date of filing of the suit i.e. 6th June, 2018 till payment is made.

9. Pursuant to order dated 26th October, 2018 and subsequent orders, a sum of Rs.17 lakhs is lying deposited before this Court. The same be released to the Plaintiff along with the interest accrued thereon.

10. Insofar as Applicants namely Mr. Amrit Rai Aggarwal, Mr. Atul Aggarwal, Mrs. Krishna Aggarwal & Mr. Sameer Aggarwal in the application under Order I Rule 10 i.e. I.A. 2627/2019 are concerned, it is the case of the said Applicants that the suit property belonged to the Applicants and the other Defendants including Smt.Jagwati Jain and her family, had no right, title or interest in the same in order to mortgage the property with the Plaintiff. The title of the said Applicants is not being gone into in the present case as the same does not arise in the present suit for recovery. Even if the Defendants have committed any irregularity and impropriety by mortgaging property or attempting to sell property that does not belong to them, the decree in the present suit would still be liable to be passed against them. The rights of the Applicants are not being adjudicated in the present suit as they do not arise for consideration.

11. Mr. Randhir Jain, Ld. counsel appearing for Defendant No.4 submits that he opposes the release of the amount of Rs.17 lakhs in favour of the Plaintiff. Insofar as Defendant No.4 is concerned, it has already filed a suit being CS(COMM) 860/2018. His submission is that he has filed a prior suit against the same Defendants and hence the amount should be secured. Insofar as the amount of Rs.17 lakhs is concerned, the same has been

deposited in this suit pursuant to orders passed herein. M/s Jain Foot Comforts Pvt. Ltd. – Defendant No.4 have already preferred CS (COMM) 860/2018 which is yet to be adjudicated by this Court. In the said suit, the immovable property already stands attached subject to the orders. Thus, the objection to release of the amount, is not sustainable.

12. Mr. Anirudh Bhatia, Ld. counsel appears on behalf of one Mr. Pankaj Jain (II) resident of F-202, Palm Spring Road, Golf Course Road, Sector-54, Gurugram. It is his submission that this is a case of mistaken identity insofar as Mr. Pankaj Jain (II) residing at the above address is not the same as Defendant No.6. He has produced the passport of Mr. Pankaj Jain (II) bearing no. R8731329. The said Mr. Pankaj Jain (II) is also present in Court. The said address was recorded by this Court on 25th July, 2018 as the Plaintiff – M/s Reliance Home Finance Ltd. had given the said address as being that of Defendant No.6. It is now clear that Mr. Pankaj Jain (II) is not the same as Mr. Pankaj Jain – Defendant No.6. Accordingly, any warrants issued against Mr. Pankaj Jain (II) stand automatically cancelled. No reliefs are pressed by the Plaintiff against Mr. Pankaj Jain (II). The address F-202, Palm Spring Road, Golf Course Road, Sector-54, Gurugram shall not be treated as the address of Mr. Pankaj Jain – Defendant No.6.

13. The suit and all pending I.As stand disposed of.

**PRATHIBA M. SINGH**
**JUDGE**

**MAY 06, 2019**
*Rahul/Agastya*
*(corrected and released on 13th May, 2019)*