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

% **Date of decision: 5th November, 2019.**

\+ **CS(OS) 2139/2013**

SUBHASH ARORA **..... Plaintiff**
Through: Mr. Aditya Nayyar and Mr. Lavish Bhola, Advs.

Versus

PRASAD PROCESS PVT LTD **..... Defendant**
Through: Mr. Deepak Vohra, Adv. with Mr. M. Sena Prasad, Director of defendant.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. On 30th October, 2019, the following order was passed in this suit:

"1. The plaintiff has not deposited the costs, subject to deposit of which the suit was adjourned to today.

2. Though Mr. Aditya Nayyar, Advocate has appeared today and sought to justify the pendency of the suit, but ultimately when the question of law comes, again seeks adjournment to study, notwithstanding having been unable to answer the questions put to him as far back as on 6th May, 2019 also.

3. The suit has been filed for specific performance of an Agreement to Sell dated 19th November, 2010 of property no. C-21, Anand Niketan, New Delhi.

4. A perusal of the Agreement to Sell dated 19th November, 2010 shows, (i) that one A.G.K. Murty was the lessee of the

leasehold rights in the land underneath the property and the owner of the house constructed thereon; (ii) the said A.G.K. Murty vide the agreement to sell dated 20th February, 1973 in favour of B. Vishwanatha Reddy, Director of the defendant, agreed to transfer all his rights, title and interest in the property in favour of the defendant; and, (iii) the Agreement to Sell in favour of plaintiff to be containing inter alia the following clauses:-

> *"AND WHEREAS when Smt. Vatsala Vesico daughter of Late Shri A.G.K. Murty came to know of the fact that a suit of permanent injunction has been filed by the legal heirs of Late M.D.Rajan against M/s. Prasad Process Pvt. Ltd. claiming their right of possession over the said property, Smt Vatsala being a permanent resident of USA, filed an application before the High Court of Delhi in the said suit/pleading herself as the necessary party to the suit claiming her title and interest over the said property challenging the Agreement to Sell dated 20.02.1973 in favour of M/s. Prasad Process Pvt. Ltd. and simultaneously filed a counter suit against M/s. Prasad Process Pvt. Ltd. and the legal heirs of Late M.D.Rajan claiming her right and title over the said property numbered as CS(OS) 2216/2008 before the High court of Delhi which is presently pending for disposal.*
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> *And whereas the First Party have assured to the SECOND PARTY that the aforesaid ongoing suit No. CS(OS) 2216/2008 shall be settled and finalized by the FIRST PARTY with their own efforts and cost & expense as well as their own sources with a period of 3 Months from the date of executing this Agreement to Sell and executing the Sale Documents in favour of the SECOND PARTY.*

AND WHEREAS the First Part solemnly affirm that they have not entered into any other agreement with any other party with respect to the above mentioned property and confirms that they have the absolute, unhindered right over the title to the said property. That the First Party undertakes to indemnify the Second Party of all other liens, charges or encumbrances whatsoever including the claims in the suit filed by Mrs. Vatsala Vesico numbered as CS(OS) No.2216/2008 but excluding the vacating the same from the illegal occupants and shall handover the symbolic and proprietary possession of the same to the SECOND PARTY at the time of full and final payment when received by the FIRST PARTY."

5. The present suit was filed much beyond three months from the Agreement to Sell dated 19th November, 2010, in or about the year 2013.

6. The counsel for the plaintiff states that this suit is not being pursued, since throughout compromise talks have been taking place and the defendant has been assuring the plaintiff that he will settle with Vatsala Vesico as well as legal heirs M.D. Rajan.

7. On enquiry, whether the Agreement to Sell by AGK Murty in favour of the defendant is on record, the answer is in the negative.

8. The counsel for the defendant states that Vatsala Vesico aforesaid is disputing the Agreement to sell by AGK Murty in favour of the defendant and seeking recovery of possession of the property.

9. I have enquired from the counsel for the plaintiff, whether not the clauses of the Agreement to Sell reproduced here-in-above, disclose the Agreement to Sell to be a contingent

one and if so, how a suit for specific performance is maintainable.

10. The counsel for the plaintiff states that the plaintiff has paid a sum of Rs.1,50,00,000/- and also claimed damages for breach of contract in the alternative.

11. If the agreement is a contingent agreement, the question of the plaintiff being entitled to any damages would not arise and the only relief to which the plaintiff would be entitled, is of recovery of Rs.1,50,00,000/-.

12. The counsel for the defendant on enquiry states that though receipt of Rs.1,50,00,000/- is not denied but the same was received from the account of one Savera Reality Pvt. Ltd. and not from the account of the plaintiff and Savera Reality Pvt. Ltd. is not a party to the present suit.

13. On further enquiry, whether the plaintiff has any interest in Savera Reality Pvt. Ltd., the counsel for the defendant states that he does not know.

14. The counsel for the plaintiff on enquiry states that the plaintiff and his family members are the only shareholders and directors of Savera Reality Pvt. Ltd.

15. On further enquiry, whether the defendant is willing to refund the said amount of Rs.1,50,00,000/- to Savera Reality Pvt. Ltd., the counsel for the defendant states that though he needs instructions but the defendant would have no objection thereto.

16. The counsel for the plaintiff has contended that the defendant had entered into the Agreement to Sell with the plaintiff claiming to be the owner of the property.

17. However that is not found to be the position. The defendant, in the Agreement to Sell with the plaintiff, clearly disclosed that it only had an Agreement to Sell in its favour

from the owner of the property and the counsel for the plaintiff, on enquiry whether the Agreement to Sell constitutes ownership, is not able to answer in the positive.

18. The plaintiff, even if entitled to sue for specific performance, was required to, besides the defendant who was merely an agreement purchaser, also implead the legal heirs of A.G.K. Murty aforesaid and also the heirs of M.D. Rajan who till today are in possession of the property and which the plaintiff has failed to do and is thus not entitled to maintain the relief of specific performance against the defendant, who does not have any ownership of the property and is not in possession.

19. The counsel for the defendant, on enquiry whether the defendant is willing to abide by the Agreement to Sell with the plaintiff on culmination of the litigations pending with respect to the property, again has no instructions and only states that the litigation will go on for long.

20. It seems both counsels are pursuing the litigation without proper instructions.

21. The plaintiff along with the other shareholders/directors of Savera Reality Pvt. Ltd. and documents to demonstrate the same and with extract of Resolution of Board of Directors of Savera Reality Pvt. Ltd. for re-payment of the amount of Rs.1,50,00,000/- paid to the defendant as well as the director of the defendant in the know of facts and able to take a decision, to appear before this Court on the next date.

22. The plaintiff to also deposit costs imposed on 16th October, 2019 before that.

23. List on 5th November, 2019."

2. The counsel for the defendant, on enquiry, states that the defendant is willing to refund the amount of Rs.1,50,00,000/- and Mr. M. Sena Prasad,

Director of the defendant is present in the Court. Attention is however drawn to paragraph 21 of the order aforesaid.

3. The counsel for the plaintiff, though initially today again sought to keep the suit pending by seeking adjournment as is being done for the last six years, but on adjournment being declined states that the plaintiff is agreeable to disposal of the suit as aforesaid by refund in the name of Savera Reality Pvt. Ltd.

4. On enquiry, it is further informed that though the extract of the resolution of the Board of Director of Savera Reality Pvt. Ltd. has not been brought because the plaintiff, who along with his daughter-in-law Anshul Arora is the Director of Savera Reality Pvt. Ltd., is unwell and there are no other Directors of Savera Reality Pvt. Ltd. It is however stated that Ankur Arora, son of the plaintiff and husband of Anshul Arora is present in the Court and duly authorised to make statements.

5. With the consent of the counsel for the plaintiff as well as for Savera Reality Pvt. Ltd. and the counsel for the defendant, Savera Reality Pvt. Ltd. is impleaded as plaintiff No.2 to this suit.

6. The counsel for the plaintiff and Savera Reality Pvt. Ltd. states that Savera Reality Pvt. Ltd. adopts the same plaint as filed and is agreeable to disposal of the suit by passing a decree for recovery of Rs.1,50,00,000/- in favour of the plaintiff No.2 Savera Reality Pvt. Ltd. with interest as claimed.

7. That still leaves the aspect of interest, if any payable on the amount of Rs.1,50,00,000/-.

8. The plaintiff in the plaint has claimed interest @ 15% per annum on the said sum of Rs.1,50,00,000/-, with effect from the date of payment thereof till the date of institution of the suit, as well as interest *pendente lite* and future.

9. The counsel for the defendant states that the defendant had offered to refund the sum of Rs.1,50,00,000/- as far back as in 2011 but the same was not accepted and the defendant is thus not liable for any interest.

10. However, on enquiry, whether the defendant at any time in this suit offered to deposit Rs.1,50,00,000/- in this Court, the answer is in the negative.

11. The defendant having availed of and enjoyed the amount of Rs.1,50,00,000/- cannot be absolved from liability for interest, especially when the defendant itself admits offer to refund but has not deposited the amount in the Court.

12. Considering the facts and circumstances of the case, the defendant is found liable to pay interest from 14th February, 2011, when the defendant first offered to refund the monies, and the rate of interest with effect from 14th February, 2011 till the date of institution of the suit is determined @ 6% per annum and interest *pendente lite* and for a period of three months from today is determined @ 9% per annum and from expiry of three months herefrom @ 15% per annum.

13. A decree is accordingly passed, in favour of the plaintiffs, of recovery of Rs.1,50,00,000/- in the name of the plaintiff No.2 Savera Reality Pvt. Ltd. together with interest with effect from 14th February, 2011 till the date of institution of the suit @ 6% per annum, with effect from the date of

institution of the suit till expiry of three months from today @ 9% per annum and thereafter @ 15% per annum, leaving the parties to bear their own costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

NOVEMBER 05, 2019
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HIGH COURT OF DELHI
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