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

% *Date of Decision:* 25.03.2019

\+ CS(COMM) 291/2017

ANIRUDH KUMAR ..... Plaintiff
Through Ms.Anita Sahani, Adv.

versus

JAGAT NARAIN & SONS HUF & ORS ..... Defendants
Through None

**CORAM:**
**HON'BLE MR. JUSTICE JAYANT NATH**

**JAYANT NATH, J. (ORAL)**

1. The suit is filed by the plaintiff for specific performance against the defendant for sale of the property bearing no. 1193, Chah Rahat Jama Masjid, Delhi-110006 *(herein after referred to as the "suit property")*. Other connected reliefs are also sought.

2. This court issued notice to the defendants by order dated 21.04.2017. Thereafter, learned counsels for the defendants entered appearance. This court on 27.11.2017 noted the submissions of the learned counsel for defendant no. 3 and 3a and directed deletion of defendant no. 1, 2a, 2b and 3 to 6 as parties to the present suit. Therefore, this suit now is only against defendant no. 2, namely, Smt. Lata Mehra.

3. None appeared on behalf of the defendant no. 2 nor any written statement was filed. Defendant no. 2 *(herein after referred to as the "defendant")* was proceeded *ex-parte* by this court on 14.01.2019.

4. For the disposal of this present suit, I may examine the relevant facts.

5. It is the case of the plaintiff that the plaintiff with Mr. Rajendra Narain was running a partnership firm, namely, M/s Sidhartha Sales Inc. from the suit property. It is also pertinent to mention that the plaintiff is also the sole proprietor of a firm, namely, "Jewels of India". It is stated in the plaint that the suit property belonged to Jagat Narain & Sons HUF of which Mr. Rajendra Narain was one of the Coparceners. It is further stated that Mr. Rajendra Narain was in possession of the suit property from 1975 and the plaintiff used to live and work with him in the suit property.

6. It is pleaded in the plaint that in the year 2000 the plaintiff was approached by the defendant, namely, Smt. Lata Mehra (i.e. Mother of Mr. Rajendra Narain) along with Mr. Rajendra Narain, for a loan of Rs. 9.75 lakhs. MOU was executed with the plaintiff on 30.09.2004, whereby defendant borrowed a sum of Rs. 9.75 lakhs @ 12% interest w.e.f 01.10.2004. It is further pleaded that a separate consignment sale agreement dated 30.09.2004 was also entered into between the parties wherein it was mutually agreed that the plaintiff would supply jewellery and handicrafts items to a partnership firm, namely, "Products of India", wherein defendant was one of the partners. It was agreed that the said supply would be on consignment basis were goods would be sold by defendant and 80% of the sale proceeds were to be remitted to the plaintiff and the remaining 20% was to be retained by defendant.

7. In 2011, defendant was not in a position to return the money to the plaintiff. Defendant along with Mr. Rajendra Narain made a representation that the suit property would fall under their share of Jagat Narain & Sons HUF and the same would be sold to the plaintiff. Due to cordial relationship with the defendant and Mr. Rajendra Narain, the plaintiff continued to pay them money in advance in order to meet the expenses of the firm "Products

of India". Thereafter, an oral agreement to sell of the suit property for an amount of Rs. 1,10,00,000/-(Rupees One Crore ten Lakhs only) was entered between the parties. It was further agreed that advance amount paid by the plaintiff would be adjusted against the said sale consideration. It was also agreed that the sale deed could only be executed after the suit for partition, pending before this court, among the members of the HUF is decided.

8. As per the plaint it is stated that after Mr. Rajendra Narain passed away on 24.01.2017 and the plaintiff is now in full possession of the suit property. It is the case of the plaintiff that after the demise of Mr. Rajendra Narain, the partnership firm stands dissolved and all the rights and liabilities of Mr. Rajendra Narain are transferred to the defendant, his mother.

9. Plaintiff has always shown his willingness to pay the remaining balance of the total consideration amount of Rs. 1.10 Crores. After the death of Mr. Rajendra Narain, the defendant has shown no inclination to accept the remaining balance. The plaintiff has claimed that it has paid to the defendant Rs.31,65,812/-. Plus Rs.37,02,007 is due as interest. Hence, a total of Rs.68,67,819/- has already been paid as consideration leaving a balance of Rs. 41,32,181/- out of the agreed sale consideration of Rs. 1,10,00,000/-.

10. Hence, this present suit was filed by the plaintiff.

11. I have heard the counsel for the plaintiff and examined the content of the plaint and documents annexed. As the defendant is already *ex-parte* in this present suit. *Ex-parte* evidence was recorded.

12. The plaintiff has led his evidence by of affidavit wherein he has affirms the content of the plaint. It is stated that the Mr. Rajendra Narain was known to the plaintiff since 1975 and the plaintiff has grown in his care in the suit property. Copies of the plaintiff's passport dated 26.11.2000 and 25.08.1993 issued at the same address is marked and exhibited as Ex. PW

1/1 and 1/2. It is further stated that the plaintiff with Mr. Rajendra Narain formed a partnership concern, namely, M/S Sidhartha Sales Inc. in the year 1981. A copy of the said partnership deed is marked and exhibited as Ex. PW 1/4 and registration certificate of the partnership deed is also marked and exhibited as Ex. PW 1/5. It is also stated that the plaintiff also started another business as sole proprietor of "M/s Jewels of India" and the business of both the buyers are related to jewellery. It is pleaded that the Sh. Rajender Narain and the defendant carried on business of jewellery under the name and style "Product of India". The Incorporation of the partnership and partnership deed dated 02.05.1980 is marked and exhibited as Ex. PW1/13 and 1/14. It is further pleaded that due to financial crisis the defendant approached the plaintiff for a loan of Rs. 9.75 lakhs to revive their partnership firm "Products of India". In this regard MOU dated 30.09.2004 was executed in wherein the defendant borrowed a sum of Rs. 9.75 lakhs and the plaintiff was entitled to 12% interest. The said MOU is marked and exhibited as Ex. PW 1/16. A separate consignment sale agreement dated 30.09.2004 was also executed between the parties wherein, the plaintiff agreed to supply jewellery and handicrafts items to the defendant and 80% of the sale proceeds were remitted back to the plaintiff and rest 20% was to be retained by the defendant. The said sale agreement is marked and exhibited as Ex. PW 1/18. Thereafter the defendant with Sh. Rajender Narain informed the plaintiff that there is a litigation pending before this court being CS(OS) 1293/1996 amongst the HUF members and the properties of Jagat Narain & Sons HUF were to be divided. It was also told by Sh. Rajender Narain and the defendant that the suit property had been agreed to come to the share of Sh. Rajender Narain and the defendant. It is averred that in 2011 the condition of defendant's firm "Product of India" was under critical financial crisis and they were not a the position to return the money taken from the plaintiff. As the plaintiff was carrying on the business from the suit property the defendant with Sh. Rajender Narain represented themselves to sell of the suit property to the plaintiff in furtherance to the sale deed to be executed after the partition suit is concluded. Keeping that into consideration the plaintiff continued to pay advance money to meet the expenses of defendant's firm 'Product of India'. It is further averred that the plaintiff continued to pay small instalments to the defendant till December, 2016 totalling the amount to be Rs. 31,65,812/-. The copy of the Bank Account statement of plaintiff's firm "Jewels of India" is marked and exhibited as Ex. PW 1/21(colly). It is also averred that in 2015, an oral agreement was executed by Sh. Rajender Narain and the defendant for the suit property for an amount of Rs. 1.10 crores. It was also agreed that the advance amount paid by the plaintiff to the defendant would be adjust to the said sale consideration. The plaintiff was assured by Sh. Rajender Narain and the defendant that the partition suit is likely to be settled out of court and the suit property would come to the share of Jagat Narain & Sons HUF. Thereafter, Sh. Rajender Narain passed away on 24.01.2017 as a bachelor leaving behind defendant as his sole legal heir. The death certificate is marked and exhibited as Ex. PW 1/25. The total amount paid by the plaintiff from the account of his firm "Jewels of India" to the defendant is of Rs. 31,65,812/- towards principle and a simple interest @ 12% thereon till 25.03.2019 amounts to Rs. 45,55,475/- totalling an amount of Rs. 77,21,287/- towards advance, for the purchase of the suit property.

13. I have perused the evidence placed on record and examined the exhibited document. It is established that the plaintiff is in possession of the suit property. It is clear from the records that the defendant took a loan

amount of Rs. 9.75 lakhs wherein the plaintiff was entitled interest @ 12%. It is further clear from the records that various transactions have taken place between the parties wherein, the plaintiff has paid a total sum of Rs. 31,65,812/- to the defendant. The plaintiff has further established that he has always shown his willingness to pay the remaining balance. He has been ready and willing to perform the above contract. He has also established that Sh. Rajender Narain has expired on 24.01.2017 leaving behind the defendant as his sole legal heirs who is bound by all the agreements executed between the parties.

14. It is clear from the aforenoted facts that a decree of specific performance with respect to sale of the suit property can be passed in favour of the plaintiff and against the defendant subject to payment of the balance amount of Rs. 32,78,713/-. Accordingly, a decree for specific performance is passed in favour of the plaintiff and against the defendants for the suit property. The defendant is also directed to execute the sale deed with respect to the subject property in favour of the plaintiff after the plaintiff deposits the balance consideration of Rs. 32,78,713/- in court in advance with the Registrar General, Delhi High Court. This amount shall be released in favour of the defendant after execution and registration of the sale deed at the cost of the plaintiff.

15. The defendant is also restrained by a decree of permanent injunction from dispossessing the plaintiff from the suit property.

16. Accordingly, the suit and all pending applications, if any, stand disposed of.

**JAYANT NATH, J**

**MARCH 25, 2019/ss**
Corrected and released
on 13.05.2019.