

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

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Reserved on: 18th October, 2019
Decided on: 7th January, 2020

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CS(OS) 86/2017

PRALEEN CHOPRA

..... Plaintiff

Represented by: Mr. Jitender Vohra, Mr. N.K. Vohra,
Advs.

versus

HONEY BHAGAT

..... Defendant

Represented by: None

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J.

1. The present suit has been filed by the plaintiff under Order XXXVII CPC seeking recovery of a sum of ₹5,26,87,500/- being the amount of two cheques dishonored issued by defendant in favour of the plaintiff together with the interest @ 2.5% per month effective from 16th February 2014 i.e. the date of intimation of dishonor of the said two cheques till 19th January, 2017, payable by defendant under a written MOU dated 1st November, 2013, besides interest pendente lite till realization. It is pleaded in the plaint that a Collaboration Agreement for demolition and reconstruction was executed between the plaintiff and the owners of the property built up over Plot No. 47, main North Avenue Road, West Punjabi Bagh (in short the suit property) admeasuring 1365 sq.yds. A general power of attorney was executed in

favour of the plaintiff being the Director of M/s. Earthz Urban Spaces Pvt. Ltd. in respect of the plaintiff's shares allocation in the said property based on the Collaboration Agreement dated 18th February, 2008.

2. As per the Collaboration Agreement plaintiffs'/ builders' share was entire terrace over and above the entire 3rd floor (of both the wings), 1/4th share of Northern Side driveway, use of common area, facilities & services and proportionate undivided, indivisible and impartible ownership rights in the plot of the land admeasuring 1365 sq.yds.

3. Plaintiff entered into an agreement to sell in respect of half portion of the 3rd Floor which was on the right side together with the terrace over the said half portion over the 3rd Floor with other amenities, facilities, utilization and common passage in favour of the defendant for a total sale consideration of ₹7,31,00,000/-, for which a MOU dated 1st November, 2013 was entered into between the plaintiff and the defendant Ms. Honey Bhagat as the Director of M/s. R.V. Ganga Enterprises and was duly authorized in this respect by a Resolution of the Board of Directors of the company duly signed by Rohit Bhagat and Honey Bhagat.

4. Sum of ₹4,50,00,000/- was paid at the time of entering of MOU between the plaintiff as the power of attorney holder of the erstwhile owners as also his individual capacity and between Honey Bhagat as representative of Rohit Bhagat, Honey Bhagat and M/s. R.V. Ganga Enterprises. However, the defendant failed to make the balance payment of ₹2,81,00,000/-. As per the MOU after expiry of six months, in case the defendant failed to make the payment the plaintiff had right to sell the apartment in the market and out of the proceeds so received re-pay the loan taken by the defendant from Dewan

Housing Finance Limited for a sum of ₹4,50,00,000/- and recover the balance payment with interest after paying the home loan.

5. Defendant undertook to pay the balance consideration and subsequently issued two post dated cheques for a sum of ₹1.51 crores and ₹1.31 crores both dated 12th February 2014. On a positive assurance of the defendant as to encashment of the cheques, the sale deed along with a rectification deed dated 12th December 2013, were executed by the plaintiff in respect of the right side of the 3rd Floor with two car parking, and since the balance amount of ₹2,81,00,000/- has not been paid, no sale deed with regard to the terrace portion as well as other areas and amenities was executed between the parties.

6. As per Clause 2 of the said MOU, defendant, her husband and the Company agreed and undertook to pay liquidated interest @ 2.5% on the balance consideration in case of further delay of 2 months. Further, as per Clause 4 of the said MOU, a specific written and express indemnity was given by Defendant, her husband and the Company to Plaintiff, to make good the losses suffered by him in case of non-payment of the balance consideration. Defendant also agreed to pay interest in case of default committed by her in terms of the said MOU.

7. The aforesaid post dated cheques were returned back as dishonored with remarks "Funds Insufficient" on 16th February 2014, and thereafter legal notices were issued calling upon the defendant to pay the balance amount. Upon failure of the defendant to pay the balance amount within the stipulated period of 15 days, two criminal complaints were filed by the plaintiff before learned Metropolitan Magistrate, Tis Hazari. Defendant also filed a petition under Section 482 of the Code of Criminal Procedure, 1973

challenging the summoning order passed by the learned MM, Tis Hazari Court in the criminal complaint with respect to the cheque of ₹1.31 crores. The trial proceedings were initially stayed vide order dated 28th May 2015 passed in CrI. M.C. No. 1681/2015, however the said petition was thereafter dismissed by this Court vide order dated 25th September, 2017.

8. Further, FIR No. 622/2015 at PS Punjabi Bagh was registered on the basis of criminal complaint filed by the plaintiff for offences of cheating, forgery, criminal breach of trust and conspiracy.

9. Although the sale deed was executed on 31st October 2013 and registered on 1st November 2013, but on failure of defendant to pay the balance consideration the possession of the said property was not delivered.

10. Due to non- payment of the home loan to DHFL by the defendant it turned into NPA. Thereafter, notices were issued by DHFL under SARFAESI Act for taking possession of the suit property. It was confirmed by the defendant that the possession of the suit property was never handed over vide a specific affidavit in CrI. MC. No. 1681/2015. In furtherance to the notices issued, DHFL took the possession of the suit property and the same was put to auction in proceedings before the Debt Recovery Tribunal. Thereafter, objections and several applications in the proceedings before the Debt Recovery Tribunal were filed by the plaintiff.

11. Furthermore, directors of the Company also filed a complaint with the Company Law Board against the defendant, alleging serious acts of frauds, cheating, forgery, swindling and defalcation of moneys etc. Thereafter, a settlement agreement was entered into and the suit property was sold in an illegal manner.

12. An application was also filed before the DRT for restraining DHFL from auctioning the suit property on the ground that the market value of property was ₹6 crores while it was more than ₹8 crores at the time of execution of the sale deed.

13. In furtherance of the settlement sought by the defendant, DHFL agreed to accept ₹3.75 crores as against the sum of ₹5 crores from a company called M/s Vedanta Engineers Pvt. Ltd. Prior to filing of the settlement agreement, an order dated 5th May 2016 (r/w Order dated 11th March 2016) was passed directing the release of the title deeds to M/s Vedanta Engineers Pvt. Ltd. which is a closely held private limited company owned by one Sh. Gulshan Rai Mahajan and Anupam Mahajan who were also the shareholders of M/s RV Akash Ganga Infrastructure Ltd.

14. Prior to adjudication in civil suit before the learned ADJ, Tis Hazari filed by the directors of the Company for cancellation of the sale deed against the defendant, her husband and the plaintiff, the suit property was sold by them to M/s Tanisha Info Pvt. Ltd. vide sale deed dated 16th May 2016. The said company is owned by Sh. Gorav Aggarwal who happened to be a long-standing friend of Sh. Manoj Bansal- director of M/s RV Ganga Infrastructure Pvt. Ltd.

15. Vide Board Resolution dated 16th January 2019 passed by the Board of M/s Earthz Urban Spaces Pvt. Ltd. of which plaintiff is a director, the plaintiff remained duly authorized and empowered to file and prosecute the present suit and to file any other suit or legal proceedings in respect of entire subject matter of this suit qua suit amount and also in respect to the suit property.

16. Summons for appearance in the suit were issued on 18th April, 2017 whereafter defendant filed an application being I.A. 9150/2017 for entering appearance. In I.A. 1313/2017 for issuing summons for judgment to the defendant the summons were served and learned counsel for the defendant sought time to file the application for leave to defend within the prescribed period. However, the said application being I.A. 2429/2018 was filed belatedly along with an application for condonation of delay being I.A. 2428/2018.

17. Since none appeared on behalf of the defendant to pursue I.A. 2428/2018 and 2429/2018, the applications were dismissed for non-prosecution on 27th August, 2019. Thus, no leave to defend having been granted to the defendant the suit is liable to be decreed in favour of the plaintiff in case the plaintiff makes out a case for summary judgment.

18. As noted above, the suit for recovery of money by the plaintiff is based on dishonor of two cheques being cheque Nos. 053365 and 053369 both dated 12th February, 2014 for a sum of ₹1,50,00,000/- and ₹1,31,00,000/- respectively drawn on Union Bank of India, Punjabi Bagh Branch. The plaintiff has proved that cheques were issued pursuant to the MOU dated 1st November, 2013. The said MOU also notes payment of ₹2,81,00,000/- by way of two cheques as noted above for which a promissory note was also executed. The MOU also notes that after two months the plaintiff would be liable to pay an interest @ 2.5 % per annum.

19. Hence the plaintiff has made out a case of recovery for a sum of ₹2,81,00,000/- along with the interest @ 2.5 % per annum till the filing of the suit. A decree is thus passed in favour of the plaintiff and against the defendant for a sum of ₹5,26,87,500/- along with the interest @ 9% per

annum from the date of filing of the suit till realization. The plaintiff is also entitled to cost of ₹5,25,000/-.

(MUKTA GUPTA)
JUDGE

JANUARY 07, 2020
‘mv/akb’

