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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 1229/2009, IA No.9475/2012(u/O.VII R-11 CPC)**
SANJAY PURI (DECEASED) THROUGH LRS Plaintiff
Through: Mr. G.S.Raghav, Adv.
Versus

PRITI SURI & ORS Defendants
Through: Mr. H.L.Tiku, Sr. Adv. with
Mr. Awijit Paliwal, Adv. for D-1 & 2.
Mr. Arun Vohra, Adv.
for Concord Infotech Pvt. Ltd.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.02.2020**

1. This order is in continuation of order dated 3rd February, 2020.
2. The senior counsel for the defendants no. 1 and 2 states (i) that the amount of Rs.2.50 crores was received by the defendants no. 1 and 2 from the deceased plaintiff on 14th November, 2005; (ii) that the suit was instituted on 9th July, 2009; (iii) that further amount of Rs.1.50 crores was received by the defendants no. 1 and 2 from the deceased plaintiff on 8th April, 2010; and, (iv) that the suit remained dismissed in default from 3rd May, 2013 to 16th January, 2017. It is stated that the aforesaid facts be kept into consideration while determining the rate of interest and the period for which interest is ordered to be paid. It is yet further stated that the defendants no. 1 and 2 are unable to pay the entire amount immediately and be permitted to pay Rs.50 lakhs within one week and the balance within one year from today, in four equal quarterly instalments.

3. On enquiry, the senior counsel for the defendants no.1 and 2 states that if the defendants no. 1 and 2 sell the property before one year, the entire amount shall be paid immediately.

4. The counsel for the legal heirs of the deceased plaintiff states, (i) that Rs.1 crore 60 lakhs was paid on 14th November, 2005; (ii) that the balance Rs.90 lakhs, to make up the total payment of Rs.2.50 crores, was paid on 12th January, 2006; (iii) that the deceased plaintiff has left Mona Puri as his widow and Nikhil Puri as his son as his only natural heirs, the mother of the deceased plaintiff having pre-deceased him, and monies are required for the education of Nikhil Puri.

5. On enquiry, it is stated that the monies be directed to be paid in the joint names of Mona Puri and Nikhil Puri.

6. Counsel also appears for Concord Infotech Pvt. Ltd. and states that Mr. D.P.Baweja, Director of Concord Infotech Pvt. Ltd. was present in the Court during the hearing yesterday and has informed him of the developments. It is stated that the amount of Rs.1.50 crores paid to the defendants no. 1 and 2 on 8th April, 2010 was paid by the said Concord Infotech Pvt. Ltd. and that Concord Infotech Pvt. Ltd. had entered into an MOU dated 15th April, 2010 with the deceased plaintiff for acquiring the rights of the deceased plaintiff under the agreement with the defendants no. 1 and 2 with respect to the property and have paid a total sum of Rs.7.18 crores to the deceased plaintiff and defendants no. 1 and 2.

7. The senior counsel for the defendants no. 1 and 2, on enquiry states that the defendants no. 1 and 2 received the demand drafts for Rs.1.50 crores from the deceased plaintiff on 8th April, 2010, under the Memorandum of

Settlement dated 9th April, 2010, and do not know the said Concord Infotech Pvt. Ltd. or Mr. D.P.Baweja.

8. I have enquired from the counsel for Concord Infotech Pvt. Ltd., whether has any writing from the defendants no. 1 and 2.

9. The counsel for Concord Infotech Pvt. Ltd. has in Court handed over a photocopy of a letter dated 15th April, 2010 written by the deceased plaintiff to the defendants no. 1 and 2, informing the defendants no. 1 and 2 that the deceased plaintiff had nominated his rights in respect of the property under the MOU dated 12th January, 2006 read with Memorandum of Settlement dated 9th April, 2010 in favour of Concord Infotech Pvt. Ltd. and had also signed an MOU dated 15th April, 2010 with Concord Infotech Pvt. Ltd. and the sale be completed in favour of Concord Infotech Pvt. Ltd..

10. The said document, for the sake of identification is marked as Mark 'A' in today's date and be tagged to Part I File.

11. The counsel for the legal representatives of the deceased plaintiff controverts the contentions of the counsel for Concord Infotech Pvt. Ltd.

12. The aforesaid contentions of the counsel for Concord Infotech Pvt. Ltd. do not disclose any ground for adjournment sought to enable Concord Infotech Pvt. Ltd. to make any application. Concord Infotech Pvt. Ltd., though aware of the present proceedings, as apparent from its conduct including of the presence of its Director, Mr. D.P. Baweja during the hearing yesterday, did not take any steps in this regard and cannot today come in the way of the proceedings as commenced yesterday.

13. As far as the rate of interest and period of interest is concerned, in my view, (i) the question of entitlement to interest prior to institution of the suit on 9th July, 2009 does not arise; (ii) though the defendants no. 1 and 2 have enjoyed the monies from the date of receipt, but at the same time it cannot also be forgotten that even in the absence of any interim relief restraining defendants no. 1 and 2 from dealing with the property, mere pendency of a suit for specific performance is a fetter on the right of the owner to deal with the property, inasmuch as the owner is unable, even if desirous, of transacting with the property with a view to fetch market price, for the reason of pendency of a suit for specific performance. Thus the rate of interest has to be a balance of the said factors.

14. Considering the facts and circumstances of the case, I am of the view that interest @ 6% per annum from 1st August, 2009 till the end of 31st March, 2020 would serve the ends of justice; however beyond 31st March, 2020, the rate of interest would stand increased to 9% per annum.

15. A decree is accordingly passed, in favour of Mona Puri and Nikhil Puri, legal heirs of the deceased plaintiff Sanjay Puri, and jointly and severally against the defendants no. 1 and 2 namely Priti Suri and Salina Timki Singh, of recovery of Rs.4 crores with interest @ 6% per annum on Rs.2.50 crores from 1st August, 2009 and on Rs.1.50 crores from 1st May, 2010 onwards, till today, and with future interest @ 6% per annum from today till 31st March, 2020 and @ 9% per annum with effect from 1st April, 2020 till the date of payment.

16. However the defendants no. 1 and 2 are given an opportunity to pay Rs.1 crore on or before 20th March, 2020 and the entire balance amount on or before 31st December, 2020, in four equal instalments beginning from 20th March, 2020. However, if there is default in payment of any of the said instalments, the decree for the entire amount shall become recoverable immediately.

17. It is further provided that if the property No.B-21, West End, Diplomatic Enclave Extension, New Delhi is sold before 31st December, 2020, the entire amount shall become payable immediately; and, that the amount under the decree shall be a charge on the property No. B-21, West End, Diplomatic Enclave Extension, New Delhi or the share of the defendants no. 1 and 2 therein, as the case may be, till the satisfaction of the entire decretal amount.

18. Decree sheet be drawn up.

19. As far as the arguments of counsel for the Concord Infotech Pvt. Ltd. are concerned, Concord Infotech Pvt. Ltd. shall be if entitled in law, to take its legal remedies.

RAJIV SAHAI ENDLAW, J

FEBRUARY 04, 2020

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