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

% **Date of decision: 30th November, 2021.**

\+ **CM(M) 1492/2018 & CM No. 25640/2021**

M/S KEDAR NATH GUPTA & SONS (HUF) ..... Petitioner
Through: Mr. A.K. Gupta, Advocate.

Versus

M/S PARSVNATH DEVLOPERS LTD ..... Respondent
Through: Ms. Minakshi Jyoti, Advocate.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

AMIT BANSAL, J. (Oral)

1. The present petition under Article 227 of the Constitution of India seeks to modify the order dated 28th September, 2018 passed by the learned Additional District Judge, Patiala House, Delhi in Civil No. 56823/2016, whereby the application filed on behalf of the respondent/defendant under Order XII Rule 6 of the Code of Civil Procedure, 1908, (CPC), has been allowed to the extent of the refund of Rs.34,07,325/- and no order has been passed in respect of the interest. It has been observed in the impugned order that the rate of interest would be decided upon the trial in suit.

2. The brief facts leading to the filing of the present petition are: (i) respondent invited applications from prospective customers for booking plots in their proposed upcoming project; (ii) one Smt. Santosh Jain booked a plot in the said project by paying a booking amount of Rs 6,56,250/-; (iii)

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the petitioner/plaintiff purchased the said booking from Smt. Santosh Jain by paying Rs 6,56,250/- to her; (iv) the petitioner further paid a sum of Rs 6,56,250/- as per the demand of the respondent; (v) the respondent provisionally allotted a plot to the petitioner; (vi) the total cost of the said plot was Rs. 38,02,650/- out of which the petitioner paid a sum of Rs. 29,56,670/- to the respondent in four instalments, including the two instalments of Rs. 6,56,250/- as noted above; (vii) the respondent also credited in the account of the petitioner, a sum of Rs. 4,50,655/- on account of interest on the first two instalments deposited by the petitioner/-; (ix) the respondent failed to give possession of the allotted plot to the petitioner; (x) the petitioner filed a suit for recovery of Rs. 34,07,325/- against the respondent; (xi) the respondent filed application under Order XII Rule 6 of the CPC thereby, admitting their liability and pleaded that the suit be decreed for the amount lying to the credit of the petitioner in the books of respondent. However, the remaining claim was sought to be decided on merits.

3. Vide the impugned order dated 28th September, 2018, the Trial Court has decreed the suit for Rs. 34,07,325/- which is the amount which was lying to the credit of the petitioner in the books of respondent however, no order was passed on the admitted rate of interest.

4. Counsel for the petitioner relies upon paragraph 6 of the application under Order XII Rule 6 of the CPC filed on behalf of the respondent (page 23 of the electronic file), to submit that there was a clear admission from the respondent to pay interest at the rate of 10% and therefore, the suit should have been decreed at least to the extent of rate of interest at 10 %, even though the petitioner has claimed interest at the rate of 18% p.a. in the suit.

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Attention of this has also been drawn to i) the affidavit/undertaking filed on behalf of the respondent before the Trial Court to contend that the respondent was willing to refund the deposited money to the petitioner along with a simple interest at the rate of 9% p.a. ii.) order dated 17th May, 2019, passed by this Court in the present petition where the respondent has admitted that as per the agreement, the interest was to be paid at the rate of 9%.

5. Accordingly, it is contended that there is clear and categorical admission on behalf of the respondent that interest at the rate of 9% p.a. is payable and the suit should have been decreed to the aforesaid amount.

6. Counsel for the respondent submits that paragraph 6 of the aforesaid application cannot be read in isolation and has to be read along with paragraphs 2, 5 and the prayer clause of the said application. He further submits that the only admission made by the respondent was with regard to the possession in respect of the plot not having been delivered to the petitioner. It is further submitted that the respondent had agreed to pay the amount of interest at the rate of 10% only in the event of the entire suit of the petitioner being decreed.

7. Accordingly, it is submitted that the impugned order has correctly appreciated the context in which the admission was made and hence, there is no infirmity in the impugned order. It is contended that there was no clear and unequivocal admission made by the respondent with regard to the interest payable and therefore a decree under Order XII Rule 6 of CPC could not be passed against the respondent in respect of the interest.

8. I have heard the counsels for the parties. Since both sides have relied on the averments made in the application filed on behalf of respondent under

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Order XII Rule 6 of the CPC, the relevant paragraphs of the said application are set out below:

> *"3. It is submitted that by way of the present application, the Defendant's gives notice of acceptance of the case of the Plaintiff to the extent that the possession of the Plot bearing No. B-3332 (herein after referred to as "the Plot") which was provisionally allotted in favour of the Plaintiff vide letter dated 22.09.2009, has till date not been delivered…*
>
> *xxx xxx xxx*
>
> *…5. Since the Defendant admittedly has not been able to deliver possession of the Plot, it being a customer-oriented company, is ready and willing to refund the amount deposited by the Plaintiff along with reasonable interest rate as may be ordered by this Hon'ble Court in the interest of justice from the respective dates of each deposit till the date of refund.*
>
> *6. It is submitted that the Defendant was throughout the pendency of the captioned matter was ready and willing to refund the deposited amount of the Plaintiff along with interest. In fact, as admitted by the Plaintiff in the Plaint, the Defendant has paid interest @rate of 10%, from the date of deposit of the amount i.e. from 15.11.2005 & 19.01.2006 to10.10.2009 and is further ready and willing to pay interest @10%.*
>
> *PRAYER*
>
> *In the fact and circumstances of the case, it is most respectfully prayed that this Hon'ble Court may be pleased to:-*

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i. Pass an order allowing this application.

ii. Pass an order in favour of the Plaintiff for refund of the amount deposited by the Plaintiff along with reasonable interest as this Hon'ble Court may deem fit in the interest of justice."

9. Reading of the aforesaid paragraphs of the application, leaves no doubt in my mind that a clear and unambiguous admission was made on behalf of the respondent with regard to payment of interest on the amount deposited at a reasonable rate of interest. A perusal of the prayer made in the aforesaid application leads to inescapable conclusion that the respondent was praying for an order to be passed under Order XII Rule 6 of the CPC in favour of the petitioner for refund of the amount deposited along with 'reasonable interest'.

10. There may be some merit in the contention of the respondent that the respondent had not conceded to grant of 10% rate of interest and 10% interest was agreed only in the event of the entire suit being decreed. But, there can be no escape from the unequivocal admission made by the respondent that they were ready and willing to pay interest at a reasonable rate on the refund amount.

11. This is also borne out from the statement made by the counsel for the respondent before this Court on 17th May, 2019. The relevant portions of the order dated 17th May 2019 are set out below:

"..It is submitted by learned counsel for the petitioner he has made a claim of 18% interest in the suit but ***whereas the learned counsel for the respondent submits, as per the agreement only 9% interest per annum is payable though the respondent has made a concession in application***

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under Order 12 Rule 6 CPC to the extent of 10% per annum…"

12. Even in the affidavit/undertaking filed by the respondent before the Trial Court, the respondent had undertaken to make the payment of refund of the money deposited by the petitioner at the rate of 9%.

13. In view of the discussion above, there is a clear and unambiguous admission made on behalf of the respondent with regard to payment of interest at the rate of 9% per annum and therefore, the petitioner was entitled to a decree under order XII Rule 6 of the CPC not only to the extent of the principal amount but also in respect of the admitted rate of interest.

14. Accordingly, the impugned order passed by the Trial Court is modified to the extent that the petitioner, in addition to the sum of Rs. 34,07,325/- would also be entitled to interest at the rate of 9% p.a. on the sum of Rs. 29,56,670/-, the amount deposited by the petitioner.

15. The question whether the interest is payable on the amount of Rs. 4,50,655/-, would be determined by the trial court during the trial of the suit along with the rate of interest, uninfluenced by any observation made by this Court. Since the only question to be adjudicated by the trial Court is in respect interest payable, trial court shall endeavour to expeditiously decide the suit.

16. The petition stands disposed of.

AMIT BANSAL, J.

NOVEMBER 30, 2021
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