

**IN THE HIGH COURT AT CALCUTTA
(Ordinary Original Civil Jurisdiction)**

ORIGINAL SIDE

Present:

The Hon'ble Justice Krishna Rao

CS 98 of 2021

IA NO: GA 1 of 2021

Celica Motocorp Private Limited & Anr.

Versus

Samiran Gain

Mr. Suman Dutt

Ms. Manali Bose

Mr. Paritosh Sinha

Ms. Shrayashee Das Roy

.....For the Plaintiff

Heard on : 03.08.2022

Judgment on : 10.08.2022

Krishna Rao, J.: Plaintiffs have filed the instant suit praying for a decree against the defendant for a sum of Rs. 85,10,356.16/-, Rs. 50,00,00/- for the loss and damages and interest pendent lite and interest upon judgment @ 12% per annum on the total sum of Rs. 85,10,356.16/-. The defendant inspite of service of writ of summons has not entered into appearance and accordingly the instant suit proceeded as undefended suit against the defendant.

The plaintiffs to set up a project were in requirement of land to the extent of 84 acres on National Highway No. 6 near Dankuni in Jaikrishnapur Mouza. After knowing the intention of the plaintiffs to set up the project, the defendant had approached the plaintiffs and expressed his interest in facilitating the procurement of 84 acres of land to the plaintiffs for the purpose of their project. On being satisfied with regard to the fact that the defendant is acting as a land broker in the concern area had entered into a Memorandum of Understanding on 16.11.2017 with the defendant wherein the defendant had agreed to facilitate the procurement of 84 acres of agricultural land for the purpose of the project of the plaintiffs. It was agreed between the plaintiffs and the defendant that about 20 acres of land shall be at a price of Rs. 25 lakhs per bigha and about 64 acres of land shall be at a price of 13.75 lakhs per bigha. On the date of execution of Memorandum of Understanding, the plaintiffs have paid Rs. 10,89,000/- as an advance to the defendant vide Cheque No. 786807 dt. 16.11.2017 of Axis Bank Limited by deducting an amount of Rs. 11,000/- as TDS being the total amount of Rs. 11,00,000/-. On 02.12.2017, the plaintiffs have transferred an amount of Rs. 49,50,000/- on deducting Rs. 50,000/- as TDS being total amount of Rs. 50,00,000/- in the account of the defendant and accordingly the defendant had acknowledged the receipt of both the amounts. Even after receipt of the advance amount of Rs. 61 lakhs, the defendant failed to register deed in favour of the plaintiffs in terms of the Memorandum of Understanding. On 19.05.2019, the plaintiffs have sent a notice to the defendant calling upon the defendant for the refund of the amount of Rs. 61 lakhs along with interest within 7 days from the date of

receipt of the notice. On receipt of the notice, the defendant had sent a reply on 04.09.2019 admitting that he has received the total amount of Rs. 61 lakhs but he will refund the said amount in installments within March, 2020 and the defendant had also issued six (6) nos. of cheques in favour of the plaintiff no. 2. In spite of the undertaking made by the defendant, the defendant failed to return the amount of Rs. 61 lakhs to the plaintiffs and accordingly again on 13.07.2020, the plaintiffs have sent a legal notice to the defendant calling upon the defendant to refund the amount of Rs. 61 lakhs along with interest @ 12% within 7 days from the date of receipt of the notice. On 10.09.2009, the defendant had sent a reply by admitting the claim of the plaintiffs and requested time for refund of the said amount till the month of December, 2020. As the defendant has not paid the said amount till the month of December, 2020, again the plaintiffs have sent a notice to the defendant informing the defendant that defendant has not paid the said amount and accordingly the plaintiffs will present the cheques issued by the defendant for encashment. The plaintiffs have presented the cheques in the bank for encashment but the said cheques were dishonoured on 10.03.2021 out of which one cheque was dishonoured for the reason 'fund insufficient' and other five cheques have been dishonoured with the endorsement 'exceeds arrangement'. After the dishonour of the said cheques, the Counsel for the plaintiffs had sent a legal notice to the defendant on 23.03.2021 calling upon the defendant for payment of the amount along with interest and damages failing which the plaintiffs will initiate appropriate legal action against the defendant. In spite of receipt of

the notice, the defendant has not paid the amount and accordingly the plaintiffs have filed the instant suit.

The plaintiffs have examined altogether two witnesses being P.W.1, namely, Lakshmi Kant Mandal and P.W.2, namely, Kalyan Kumar Ghosh. During the evidence of the witnesses, the plaintiffs have exhibited altogether 17 documents which are as follows:-

- (i) *Exhibit-1- Report submitted to Officer-in-Charge, Shakespeare Sarani Police Station dt. 11.05.2022 for missing of Original Memorandum of Understanding dt. 16.11.2017.*
- (ii) *Exhibit-2- Statement of account no. 917020044042155 of Axis Bank between 01.11.2017 to 30.11.2017 in the name of M/s. Celica Developers Pvt. Ltd.*
- (iii) *Exhibit-3- Statement of account no. 00000010945116304 of State Bank of India in the name of M/s. Celica Developers Pvt. Ltd.*
- (iv) *Exhibit-4- Money receipt dt. 16.11.2017 for Rs. 11 lakhs.*
- (v) *Exhibit-5- Money receipt dt. 02.12.2017 of Rs. 50 lakhs.*
- (vi) *Exhibit-6- Notice dt. 09.05.2019 issued by the plaintiffs to the defendant with postal receipt and track report.*
- (vii) *Exhibit-7- Certificate of Incorporation pursuant to change of name of the plaintiff company.*
- (viii) *Exhibit-8- Replies sent by the defendant to the plaintiffs dt. 04.09.2019.*
- (ix) *Exhibit-9- Six nos. of cheques with cheques return memos.*
- (x) *Exhibit-10- Notice dt. 13.07.2020 sent by the plaintiffs to the defendant along with postal receipt and track report.*
- (xi) *Exhibit-11- Notice dt. 03.09.2020 sent by the plaintiffs to the defendant along with postal receipt and track report.*
- (xii) *Exhibit-12- Reply sent by the defendant to the plaintiffs dt. 10.09.2020.*
- (xiii) *Exhibit-13- Notice dt. 28.09.2020 sent by the plaintiff to the defendant along with postal receipt and track report.*
- (xiv) *Exhibit-14- Legal notice dt. 23.03.2021 sent by the Counsel for the plaintiffs to the defendant along with postal receipt and track report.*
- (xv) *Exhibit-15- Letter dt. 29.09.2021 sent by the defendant to the plaintiff.*
- (xvi) *Exhibit-16- Letter sent by the defendant to the plaintiff dt. 03.11.2021.*
- (xvii) *Exhibit-17- Copy of the Memorandum of Understanding entered between the plaintiffs and the defendant dt. 16.11.2017.*

Exhibit-17 proves that the defendant had entered into a Memorandum of Understanding on 16.11.2017 wherein the defendant had agreed to make necessary arrangement for purchase of an agriculture land in favour of the plaintiffs and on the date of execution of the Memorandum of Understanding, the defendant had received an advance amount of Rs. 11 lakhs. Exhibit-1 proves that the original Memorandum of Understanding has been misplaced and the plaintiffs have made a written complaint to the Officer-in-Charge of Shakespeare Police Station. Exhibit-2 and Exhibit-4 prove the defendant had withdrawn an amount of Rs. 10,89,000/- from the account of the plaintiffs after deducting an amount of Rs. 11,000/- as TDS out of total amount of Rs. 11,00,000/-. Exhibit-3 and Exhibit-5 prove that an amount of Rs. 49,50,000/- was transferred from the account of the plaintiffs in favour of the defendant after deducting an amount of Rs. 50,000/- as TDS out of total amount of Rs. 50,00,000/-. Exhibit-6 proves that the plaintiffs have sent a notice to the defendant and the defendant had receipt the same. Exhibit-8 proves that the defendant had admitted regarding receipt of an amount of 61 lakhs from the plaintiffs and assured that the defendant will refund the said amount within March, 2020 and had also issued six (6) nos. of cheques in favour of the plaintiffs. Exhibit-9 proves that the defendant had issued six (6) nos. of cheques in favour of the plaintiffs and the said cheques have been dishonoured. Exhibit-10 and Exhibit-11 proves that the plaintiffs have sent notice to the defendant for refund of the amount along with interest and damages which was duly received by the defendant. Exhibit-12 proves that the defendant had again admitted with regard to receipt of the amount of Rs. 61 lakhs and has given

undertaking that he will return the same by December, 2020. Exhibit-13 proves that the plaintiffs have sent notice to the defendant informing the defendant that the plaintiffs will present the cheques for encashment. Exhibit-14 proves that after the dishonoured of the cheques, the plaintiffs have sent a legal notice to the defendant calling upon the defendant for return of the amount failing with appropriate legal action will be initiated. Exhibit-15 again proves that the defendant has admitted with regard to receipt of the amount of Rs. 61 lakhs and assured that he will return the said amount in six (6) monthly installments. Exhibit-16 further proves that the defendant has admitted the amount received by him and has given undertaking that he will return the said amount.

The oral evidence as well as the documentary evidence adduced by the plaintiffs proves the case of the plaintiffs as made out in the plaint. The plaintiffs have proved their case that the defendant had entered into a Memorandum of Understanding and had received an amount of Rs. 61 lakhs from the plaintiffs with the condition that the defendant will make necessary arrangement for registration of land in favour of the plaintiffs for their projects but inspite of receipt of the amount, the defendant failed to get the land register in favour of the plaintiffs. The defendant through his reply has admitted that he has received the amount of Rs. 61 lakhs from the plaintiffs and assured that he will return the same but inspite of the assurance, the defendant has not return the said amount to the plaintiffs.

In view of the above, this Court finds that the plaintiffs are entitled to get a decree against the defendant for a sum of Rs. 61 lakhs along with the

interest @ 12% per annum from 16.11.2017 till 05.05.2021 on an amount of Rs. 11 lakhs total amounting to Rs. 04,39,397.26/- and interest @ 12% per annum from 02.12.2017 to 15.03.2021 on the amount of Rs. 50 lakhs total amounting to Rs. 19,70,958.90/- and further interest pendent lite and interest upon judgment @ 12% per annum till the realization of the said amount.

CS 98 of 2021 is **allowed** and accordingly **GA 1 of 2021** is also **disposed of**.

Decree be drawn accordingly.

(Krishna Rao, J.)