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

% **Date of decision: 2nd February, 2022**

\+ **CS(OS) 83/2021, I.A.1811/2021 (u/O-XXXIX R-1 & 2 of the CPC) & I.A.14012/2021 (of the defendant No.3 for placing on record facts of subsequent events)**

RAJIV SAREEN ..... Plaintiff

Through: Mr. Manish Makhija, Advocate.

Versus

DIVYANSHU ENTERPRISES & ORS. ..... Defendants

Through: Mr. Om Prakash Pahuja, Advocate for defendant No.3.

CORAM:
HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

[VIA VIDEO CONFERENCING]

I.A.14422/2021 (of the defendant No. 3 u/O-VII R-11 of the CPC)

1. This application has been filed on behalf of the applicant/defendant No. 3 Punjab National Bank (hereinafter referred to as the 'defendant No. 3 Bank') under Order VII Rule 11 of the Civil Procedure Code, 1908 (CPC) seeking rejection of the plaint.

2. Notice in this application was issued on 9th November, 2021 and a reply has been filed on behalf of the non-applicant/plaintiff (hereinafter referred to as the 'plaintiff').

3. In the said plaint, it has been pleaded that:

(i) The plaintiff and the defendant No. 1 entered into a Memorandum of

Understanding (MoU) dated 31st July, 2017 pursuant to which the defendant No. 2 loaned Rs. 25,00,000/- to the plaintiff and the plaintiff handed over the original title deed of the suit property to the defendant No. 2. As per the said MoU, the total amount to be loaned was Rs. 65,00,000/-.

(ii) The defendant No. 2 did not pay the balance loan amount of Rs.40,00,000/- to the plaintiff and instead started to put pressure on the plaintiff to repay Rs.25,00,000/-.

(iii) The defendant No. 2 agreed to defer the return of the money and also agreed to pay the balance loan amount of Rs.40,00,000/-, subject to the plaintiff executing a sale deed qua the suit property in favour of the defendant No. 1.

(iv) On 22nd March, 2018, the defendant No. 2 transferred another sum of Rs.25,00,000/- to the plaintiff.

(v) On 22nd March, 2018 and on 23rd March, 2018, the defendant No. 2 forced the plaintiff to transfer a total of Rs.22,00,000/- to account of Ravi Enterprises, a firm owned by the defendant No. 2. Therefore, the plaintiff has effectively received only Rs.28,00,000/- from the defendant No. 2, that too in terms of the MoU.

(vi) The plaintiff forcibly executed a Sale Deed dated 3rd April, 2018 qua the suit property in favour of the defendant No. 1 without any monetary consideration and only to secure the loan amount. However, the plaintiff continued to be in possession of the property.

(vii) The Sale Deed records the consideration of Rs.2,50,00,000/-, however, no amount was received towards such sale by way of cheques as are detailed in the Sale Deed. The said sale deed was also registered in the records of the Sub-Registrar, Delhi.

(viii) The defendants No. 1 and 2 created an equitable mortgage in respect of the suit property and handed over the original Sale Deed to the defendant No. 3 Bank for availing credit facilities of Rs.9,00,00,000/-.

(ix) On the failure of the defendant No. 1 to repay the aforesaid due amount to the defendant No. 3 Bank, the defendant No. 3 Bank declared the account NPA and initiated the proceedings under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) by starting the process to sell off the plaintiff's suit property.

(x) The first e-auction notice was issued by the Oriental Bank of Commerce (now the defendant No. 3 Bank) on 16th November, 2019. The plaintiff replied to the same via notice dated 7th December, 2019.

(xi) Pursuant to meetings held between the parties, the defendant No. 2 agreed to settle his account and it was agreed that the defendants No. 1 and 2 shall pay Rs.35,00,000/- to regularize their account, and upon which assurance the defendant No. 3 Bank agreed to defer the sale of the suit property.

(xii) However, on 5th November, 2020, another e-auction notice in respect of the suit property was issued to the plaintiff.

(xiii) The plaintiff sent a notice dated 7th December, 2020 to the defendant No. 3 Bank and to the Sub-Registrar stating that the Sale Deed dated 3rd April, 2018 was obtained by fraud and coercion and was liable to be cancelled.

(xiv) The defendant No. 3 Bank sent a reply to said notice on 15th January, 2021 stating that the defendant No. 3 Bank had a valid and subsisting charge on the suit property and denied all allegations of the plaintiff.

4. Based on the aforesaid pleadings, the present suit has been filed seeking the following reliefs:

(a) *A decree for declaration in favour of the Plaintiff and against the Defendant no.1 & 2, thereby cancelling the sale deed and declaring the alleged Sale Deed dated 3/04/2018 document registered as* ***REGISTERD AS DOCUMENT NO. 4619 IN BOOK NO.1, VOLUME NO. 7461 AT PAGES 193 - 198 DATED 3/04/2018, REGISTERED WITH SUB REGISTRAR (SR-VI/A), AMBEDKAR BHAWAN, SECTOR-16, ROHINI, DELHI with respect to the property bearing no.*** *No. 43, Measuring 250.84 sq. yards as per lay out plan of the Delhi Sainik Vihar Cooperative House Building Society Limited, known as Sainik Vihar, Pitam Pura New Delhi-1100034 to be Null & Void, invalid, abi-nitio, illegal and unenforceable under the law and that the same does not confirm any right to the Defendant No.1 & 2 qua the suit property;*

(b) *A decree of Permanent and Mandatory Injunction be passed in favour of Plaintiff and against the defendant no.3, thereby directing the defendant no.3, its agents, executers etc to stop/restrain the auction proceedings being initiated against the sale of property bearing no.43, Measuring 250.84 sq. yards as per lay out plan of the Delhi Sainik Vihar Cooperative House Building Society Limited, known as Sainik Vihar, Pitam Pura New Delhi-1100034.*

(c) *Costs of the suit may also be awarded in favour of the Plaintiff and against the Defendants."*

5. The present application under Order VII Rule 11 of the CPC has been filed on behalf of the defendant No. 3 Bank on the following grounds:

(i) The plaintiff has already filed an application under Section 17 of the SARFAESI Act before the Debt Recovery Tribunal-III, Delhi and no interim relief was granted by the Debt Recovery Tribunal-III, Delhi.

(ii) Pursuant to the proceedings under the SARFAESI Act, the suit property has already been sold by the defendant No. 3 Bank in an e-auction held on 16th April, 2021 for a sum of Rs.2,26,00,000/-. On the receipt of the auction bid amount, the sale certificate has been issued in favour of the auction purchaser and the possession of the suit property has also been handed over to the auction purchaser on 17th July, 2021.

(iii) Once, the plaintiff has admitted in the plaint that the property has been sold through a registered Sale Deed to the defendant No. 1 and as per the covenants in the Sale Deed, the plaintiff had received full consideration and handed over the physical possession of the suit property to the defendant No. 1, the suit as filed is not maintainable.

(iv) The averments in the plaint that the entire sale consideration has not been realised by the plaintiff is in contradiction to the specific terms of the registered Sale Deed to the effect that the entire consideration has been received.

(v) No details have been provided by the plaintiff with regard to non-receipt of the sale consideration as detailed in the Sale Deed.

(vi) Even if the entire sale consideration in terms of the Sale Deed has not been paid, the Sale Deed would not become invalid in terms of Section 54 of the Transfer of the Property Act, 1882.

(vii) The plaintiff has failed to take any steps for non-realisation of the sale consideration against the defendant No. 1.

(viii) Even though the plaintiff has made allegations of fraud, no particulars in respect thereof have been pleaded by the plaintiff.

(ix) The MoU relied upon by the plaintiff in the suit document is a forged and manufactured document.

(x) The said MoU does not bear the signature of the father of the plaintiff, the late Mr. K.K Sareen, who is stated to be a co-owner of the said property till his death on 13th January, 2018.

(xi) Clause 3 of the said MoU is incomplete, therefore, leading to the conclusion that the MoU in question is a fabricated document.

(xii) There is a marked difference in the contents of the legal notices dated 7th December, 2019 and 7th December, 2020 and the MoU with respect to the amounts payable to the plaintiff pursuant to the execution of the MoU.

(xiii) The suit is not maintainable in view of Section 34 of the SARFAESI Act and furthermore, in respect of the prayer (b) of the plaint, the said prayer has become infructuous in view of the auction proceedings having being concluded.

6. Per contra, the counsel for the plaintiff submits that:

(i) It has been wrongly stated in the Sale Deed that the entire consideration has been paid by the defendant No. 1 (buyer) to the plaintiff (seller). None of the cheques, details of which are provided in the Sale Deed, have been encashed. The defendant No. 3 Bank ought to have filed the statements of account, which would have determined whether the said cheques have been cleared or not.

(ii) Reliance is placed on the judgment of the Supreme Court in ***Kewal Krishan Vs. Rajesh Kumar & Ors***, 2021 SCC OnLine SC 1097, to contend that if a sale deed in respect of an immovable property is executed without payment of price and if it does not provide for the payment of price at a future date, it is not a sale at all in the eyes of law. Therefore, such a sale will be void and it will not effect the transfer of the immovable property

7. I have heard the counsels for the parties.

8. In respect of whether this suit is liable to rejected in terms of Order VII Rule 11 of the CPC, reference may be made to the judgment in ***Dahiben Vs. Arvindbhai Kalyanji Bhanusali and Ors.***, (2020) 7 SCC 366, wherein the Supreme Court was seized of an appeal impugning a judgment allowing the application filed by defendants therein under Order VII Rule 11 of the CPC. With regard to the scope of Order VII Rule 11 of the CPC, the Supreme Court made the following observations:

> *"**23.9. In exercise of power under this provision, the court would determine if the assertions made in the plaint are contrary to statutory law, or judicial dicta, for deciding whether a case for rejecting the plaint at the threshold is made out.***
>
> ***23.10. At this stage, the pleas taken by the defendant in the written statement and application for rejection of the plaint on the merits, would be irrelevant, and cannot be adverted to, or taken into consideration.***
>
> ***23.11. The test for exercising the power under Order 7 Rule 11 is that if the averments made in the plaint are taken in entirety, in conjunction with the documents relied upon, would the same result in a decree being passed.** This test was laid down in Liverpool & London S.P. & I Assn. Ltd. v. M.V. Sea Success I which reads as : (SCC p. 562, para 139)*
>
> > *"139. Whether a plaint discloses a cause of action or not is essentially a question of fact. But whether it does or does not must be found out from reading the plaint itself. For the*

said purpose, the averments made in the plaint in their entirety must be held to be correct. The test is as to whether if the averments made in the plaint are taken to be correct in their entirety, a decree would be passed."

23.12. In Hardesh Ores (P) Ltd. v. Hede & Co. the Court further held that it is not permissible to cull out a sentence or a passage, and to read it in isolation. It is the substance, and not merely the form, which has to be looked into. The plaint has to be construed as it stands, without addition or subtraction of words. If the allegations in the plaint prima facie show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact. D. Ramachandran v. R.V. Janakiraman.

23.13. If on a meaningful reading of the plaint, it is found that the suit is manifestly vexatious and without any merit, and does not disclose a right to sue, the court would be justified in exercising the power under Order 7 Rule 11 CPC.

23.14. The power under Order 7 Rule 11 CPC may be exercised by the court at any stage of the suit, either before registering the plaint, or after issuing summons to the defendant, or before conclusion of the trial, as held by this Court in the judgment of Saleem Bhai v. State of Maharashtra. The plea that once issues are framed, the matter must necessarily go to trial was repelled by this Court in Azhar Hussain case.

23.15. The provision of Order 7 Rule 11 is mandatory in nature. It states that the plaint "shall" be rejected if any of the grounds specified in clauses (a) to (e) are made out. If the court finds that the plaint does not disclose a cause of action, or that the suit is barred by any law, the court has no option, but to reject the plaint."

9. Accordingly, this Court must determine whether the plaint discloses a cause of action by scrutinising the averments in the plaint, read in conjunction with the documents relied upon, or whether the suit is barred by any law.

10. It is the settled position of law that payment of the entire sale consideration is not a condition precedent for completion of the sale. In this regard, reference may be made to Section 54 of the Transfer of Property Act, which is reproduced hereunder:

> *"**54. "Sale" defined**.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised.*
>
> ***Sale how made.**—Such transfer, in the case of tangible immoveable property of the value of one hundred rupees and upwards, or in the case of a reversion or other intangible thing, can be made only by a registered instrument.*
>
> *In the case of tangible immoveable property of a value less than one hundred rupees, such transfer may be made either by a registered instrument or by delivery of the property.*
>
> *Delivery of tangible immoveable property takes place when the seller places the buyer, or such person as he directs, in possession of the property.*
>
> ***Contract for sale.**—A contract for the sale of immoveable property is a contract that a sale of such property shall take place on terms settled between the parties.*
>
> *It does not, of itself, create any interest in or charge on such property."*

11. The validity of a sale deed, even if the entire sale consideration has not been paid, has also been determined in ***Dahiben*** (supra), where the Supreme Court in similar facts and circumstances observed as under:

"29.1. On a reading of the plaint and the documents relied upon, it is clear that the plaintiffs have admitted the execution of the registered sale deed dated 2-7-2009 in favour of Defendant 1-Respondent 1 herein. Para (5) of the plaint reads as:

> *"(5) … Thus, subject of the aforesaid terms the plaintiffs had executed sale deed selling the suit property to Opponent 1 vide sale deed dated 2-7-2009 bearing Sl. No. 5158…"*

(emphasis supplied)

29.2. The case made out in the plaint is that even though they had executed the registered sale deed dated 2-7-2009 for a sale consideration of Rs 1,74,02,000, an amount of only Rs 40,000 was paid to them. The remaining 31 cheques mentioned in the sale deed, which covered the balance amount of Rs 1,73,62,000 were alleged to be "bogus" or "false", and allegedly remained unpaid. We find the averments in the plaint completely contrary to the recitals in the sale deed dated 2-7-2009, which was admittedly executed by the plaintiffs in favour of Respondent 1. In the sale deed, the plaintiffs have expressly and unequivocally acknowledged that the entire sale consideration was "paid" by Defendant 1-Respondent 1 herein to the plaintiffs.

…

29.4. The sale deed records that the 36 cheques covering the entire sale consideration of Rs 1,74,02,000 were "paid" to the plaintiffs, during the period between 7-7-2008 to 2-7-2009.

29.5. If the case made out in the plaint is to be believed, it would mean that almost 99% of the sale consideration i.e. Rs 1,73,62,000 allegedly remained unpaid throughout. It is, however, inconceivable that if the payments had remained unpaid, the plaintiffs would have remained completely silent for a period of over five-and-half years, without even issuing a legal notice for payment of the unpaid sale consideration, or instituting any *proceeding for recovery of the amount, till the filing of the present suit in December 2014.*

29.6. The plaintiffs have made out a case of alleged non-payment of a part of the sale consideration in the Plaint, and prayed for the relief of cancellation of the sale deed on this ground.

29.7. Section 54 of the Transfer of Property Act, 1882 provides as under:

> *"**54. "Sale" defined**.—"Sale" is a transfer of ownership in exchange for a price paid or promised or part-paid and part-promised."*

<u>The definition of "sale" indicates that there must be a transfer of ownership from one person to another i.e. transfer of all rights and interest in the property, which was possessed by the transferor to the transferee. The transferor cannot retain any part of the interest or right in the property, or else it would not be a sale. The definition further indicates that the transfer of ownership has to be made for a "price paid or promised or part-paid and part-promised".</u> *Price thus constitutes an essential ingredient of the transaction of sale.*

29.8. In Vidhyadhar v. Manikrao this Court held that the words "price paid or promised or part-paid and part-promised" indicates that actual payment of the whole of the price at the time of the execution of the sale deed is not a sine qua non for completion of the sale. ***<u>Even if the whole of the price is not paid, but the document is executed, and thereafter registered, the sale would be complete, and the title would pass on to the transferee under the transaction. The non-payment of a part of the sale price would not affect the validity of the sale. Once the title in the property has already passed, even if the balance sale consideration is not paid, the sale could not be invalidated on this ground. In order to constitute a "sale", the parties must</u>***

intend to transfer the ownership of the property, on the agreement to pay the price either in praesenti, or in future. The intention is to be gathered from the recitals of the sale deed, the conduct of the parties, and the evidence on record.

29.9. In view of the law laid down by this Court, even if the averments of the plaintiffs are taken to be true, that the entire sale consideration had not in fact been paid, it could not be a ground for cancellation of the sale deed. The plaintiffs may have other remedies in law for recovery of the balance consideration, but could not be granted the relief of cancellation of the registered sale deed. We find that the suit filed by the plaintiffs is vexatious, meritless, and does not disclose a right to sue. The plaint is liable to be rejected under Order 7 Rule 11(a)."

12. Similarly, a Coordinate Bench of this Court has held in ***Praleen Chopra Vs. Honey Bhagat & Ors.***, MANU/DE/0924/2020, that in the event that the entire sale consideration had not been paid to the seller, the remedy of the seller would only be to recover the same from the buyer. In the aforesaid case as well, the plaintiff therein had claimed non-receipt of the entire sale consideration in terms of the registered sale deed, though the registered sale deed noted that the entire sale consideration had been paid and the title and possession of the property has been handed over by the seller to the buyer. In the aforesaid factual scenario, the following observations made by this Court are relevant and are set out below:

"36. A reading of the Sale Deed leaves no manner of doubt that the plaintiff, on execution and registration of the Sale Deed divested himself of all rights with respect to the third floor of the property and vested title therein in favour of defendants no. 1 to 3. ***Though there is no clause in the registered Sale Deed, as is usually found, of delivery of possession of the property sold, but that to my mind is not relevant at this stage. Once the title in the***

property stood conveyed from the plaintiff or whosoever on whose behalf the plaintiff was acting in the matter of execution of Sale Deed, in favour of defendants no.1 to 3, the defendants no. 1 to 3 under the law became entitled to deal with the said third floor of the property and such dealing with the third floor of the property by the defendants no. 1 to 3, including by execution of Sale Deed dated 25th May, 2016 in favour of defendant no.5, cannot be avoided on the ground of the unregistered MoU, as also held by this Court in judgment dated 23rd December, 2014 in W.P.(C) no.8963/2014 which has attained finality. In the registered Sale Deed, there was no bar to the defendants no. 1 to 3 dealing with the property and the said bar could have been altered only by a subsequent registered document and not otherwise.

37. Section 91 provides that when the terms of a contract or of a grant or of any other disposition of property, have been reduced in the form of a document, and in all such cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract, grant or other disposition of property, or of such matter, except the document itself. *The present case does not fall in either of the two exceptions thereof. Section 92 provides that when the terms of any such contract grant or other disposition of property, or any matter required by law to be reduced to the form of a document, have been proved according to Section 91, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument or their representatives in interest, for the purpose of contradicting, varying, adding to, or subtracting from, its terms. Though proviso 2 thereto permits proof of existence of any separate oral agreement as to any matter on which a document is silent and which is not inconsistent with its terms, but in the present case the clause in the MoU to the effect that the defendants no.1 to 3 will have no right or authority* *to enter into any third party agreement with respect to the portion aforesaid of the third floor, till the time complete payment of Rs.2,81,00,000/- along with interest if any is cleared to the plaintiff, is inconsistent to the clause in the sale deed whereunder the plaintiff sold, conveyed, granted, transferred and assigned all his rights, title and interest in the said portion to the defendants no.1 to 3, to have and to hold the same absolutely and forever, as well as to the clause in the sale deed that the plaintiff was left with no right, title, interest, claim or lien of any nature whatsoever in the property sold and the same had become the absolute property of the defendants no.1 to 3 with the right to use, enjoy, sell and transfer the same by whatsoever mean, without any demand, objection or interrupton by the plaintiff or any person claiming under the plaintiff…* ***The plaintiff, by executing the sale deed in favour of defendants no.1 to 3, with the language as reproduced above, entitled any person dealing with the defendants no.1 to 3 on the basis of the said sale deed to believe that the defendants no.1 to 3 were absolute owners of the property and entitled to deal with the same without any claim or interference from the plaintiff. In fact the defendant no.4, on the basis of the said sale deed dealt with the defendants no.1 to 3 as absolute owners of the property, entitled to mortgage the same, and subsequently the defendant no.5, on the basis of the said sale deed dealt with the defendants no.1 to 3 as absolute owner of the property and purchased and acquired title in the property from the defendants no.1 to 3. The plaintiff, after having so led the defendants no.4&5 into dealing with the defendants no.1 to 3, is estopped from challenging the title of defendants no.1 to 3 to the property, thereby pulling the rug from under the feet of defendant no.4 and particularly defendant no.5.*** *Reference in this context may also be made to* ***A. Entertainment Pvt. Ltd. Vs. Applause Entertainment Pvt. Ltd.*** *(2013) 197 DLT 174 (DB) and* ***Gaurav Monga Vs. Premier Inn India Private Limited*** *2017 SCC OnLine Del 6405. Thus, the plaintiff is barred from leading any evidence* *including in the form of MoU aforesaid or otherwise, contradicting the terms of the sale deed executed by the plaintiff in favour of the defendants no.1 to 3. Reference may further be made to* ***Nageshwar Pandey Vs. Karan Madaan*** *2016 SCC OnLine Del 816 (DB).*

38. That brings me to another aspect. Per Section 55(4)(b) of the Transfer of Property Act, 1882, in the absence of a contract to the contrary, where the ownership of the property has passed to the buyer before payment of the whole of the purchase-money, the seller is entitled only to a charge upon the property in the hands of the buyer, or in the hands of any transferee without consideration or in the hands of any transferee with notice of payment, for the amount of the purchase money remaining unpaid together with interest thereon. It is evident from the clauses of the sale deed executed by the plaintiff in favour of the defendants no.1 to 3 that the ownership of the property sold thereunder passed to the defendants no.1 to 3 and there was no contract to the contrary in the sale deed. ***Had the plaintiff desired ownership of the property not to pass to the defendants no.1 to 3 notwithstanding the execution of the sale deed, the plaintiff ought to have provided so in the sale deed and which the plaintiff did not. Once it is so, according to law the plaintiff is not entitled to void the sale deed for the reason of entire agreed consideration having not been paid but is only entitled to recover the balance consideration from the defendants no.1 to 3, as also from any transferee without consideration from defendants no.1 to 3, as well as from any transferee from the defendants no.1 to 3 with notice of non-payment.***

...”

13. At this stage, the relevant clauses of the Sale Deed dated 3rd April, 2018 may be reproduced below:

*"That in **<u>consideration said sum of Rs.2,50,00,000/- (RUPEES TWO CRORE FIFTY LAKHS ONLY) has received from the VENDEE by the VENDOR and thus left with no balance/no claim thereto whatsoever</u>**. The details of payment are given hereunder:*

a. Rs.30,00,000/- VIDE CHEQUE NO.095322 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
b. Rs.30,00,000/- VIDE CHEQUE NO.095323 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
c. Rs.30,00,000/- VIDE CHEQUE NO.095324 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
d. Rs.30,00,000/- VIDE CHEQUE NO.095325 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
e. Rs.30,00,000/- VIDE CHEQUE NO.095332 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
f. Rs.30,00,000/- VIDE CHEQUE NO.095333 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
g. Rs.30,00,000/- VIDE CHEQUE NO.095335 DATED 28.03.2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.
<u>h.Rs.25,00,000/- THROUGH R.T.G.S. VIDE U.T.R. NO.ORBCH17213062366 DATED 1/8/2017 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.</u>
<u>i.RS.25,00,000/- THROUGH R.T.G.S. VIDE U.T.R. NO.ORBCH18081066498 DATED 22/3/2018 DRAWN ON O.B.C., OLD RAJINDER NAGAR, NEW DELHI.</u>
j. Rs.2,50,000/- has been deducted as TDS @ 1% under Section 194-IA of the total sale consideration amount by the VENDEE and the VENDEE shall provide TDS Certificate to the VENDOR in due course.

*2. **<u>That the actual physical possession of the said PROPERTY has been delivered to the VENDEE by the VENDOR on the spot.</u>***

...

5. That the VENDOR do hereby sell convey, transfer and assigns the said PROPERTY unto the VENDEE, absolutely and forever and the VENDEE shall use, hold or enjoy the same in any manner as he like.

...

***11. That the VENDEE thus enjoy all rights of ownership/possession of the said PROPERTY and shall be liable to get it transferred/mutated with the concerned authority, under the departmental policy by virtue of this sale deed**."*

14. Given the observations of the Supreme Court in ***Dahiben*** (supra), this Court in ***Praleen Chopra*** (supra), and the clauses of the Sale Deed as set out above, there is no doubt in my mind that the plaintiff had absolutely transferred all rights and title in the suit property in favour of the defendant No. 1 vide the Sale Deed. A perusal of the Sale Deed shows that the actual physical possession of the suit property had been delivered to the defendant No. 1 on the spot. Furthermore, the Sale Deed aforesaid clearly demonstrates that the plaintiff had received the entire sale consideration as mentioned in the Sale Deed and had also passed on the title in respect of the suit property to the defendant No. 1. There is no clause in the Sale Deed, which provides that the title in the suit property would be restored in favour of the plaintiff upon the sale consideration not being received by the plaintiff. Pursuant to the said Sale Deed, the defendants No. 1 and 2 acquired valid title in the suit property and the same was mortgaged by them with the defendant No. 3 Bank. Subsequently, the suit property has been

sold by the defendant No. 3 Bank towards the recovery of its dues against the defendants No. 1 and 2 and third-party rights had been created in respect of the suit property and this factum has attained finality. Therefore, at this stage, the plaintiff cannot undo the subsequent transactions in respect of the suit property by seeking cancellation of the Sale Deed.

15. Even if the entire sale consideration had not been paid to the plaintiff that would not affect the validity of the Sale Deed. The remedy of the plaintiff would only be to recover the same from the defendants No. 1 and 2. The plaintiff cannot seek cancellation of the said Sale Deed on account of not receiving the entire sale consideration.

16. In light of the legal position illustrated above, whether the plaintiff has received the entirety of the sale consideration or not is not relevant. The judgment relied upon by the plaintiff in ***Kewal Krishan*** (supra) to establish the invalidity of the Sale Deed upon the non-receipt of sale consideration is not applicable to the facts and circumstances of the present case as in the said case there were specific pleadings and evidence to the effect that no consideration was paid by the purported purchasers. In the present case, the plaintiff in the plaint himself admits to the receipt of Rs.50,00,000/- from the defendants No. 1 and 2.

17. The aforesaid pleadings in the plaint are also hit by the bar under Section 91 and Section 92 of the Indian Evidence Act, 1872, whereby no evidence can be given in respect of a written document for the purpose of contradicting, varying, adding to, or subtracting from, its terms.

18. In respect of the contention of the plaintiff that the payments as received from the defendants No. 1 and 2 were received pursuant to the terms of the MoU, this Court also finds merit in the submission of the

defendant No. 3 Bank that though the father of the plaintiff, the late Mr. K.K Sareen, is a party to the MoU dated 31st July, 2017 as a joint owner of the property, however, the said MoU does not bear his signatures. That apart, the MoU is an unregistered document and it cannot override the terms contained in the registered Sale Deed entered into between the defendant No. 1 and the plaintiff.

19. Coming to the contention of the plaintiff that the Sale Deed dated 3rd April, 2018 was obtained by fraud and coercion and thus, the present suit seeking cancellation of the Sale Deed was maintainable before this Court and not barred by Section 34 of the SARFAESI Act, it is noted that no particulars of the fraud have been given in the plaint. It is the settled position of law that mere allegations of fraud cannot establish fraud. Specific details and particulars of the alleged fraud have to be given, which have not been given in the present case. A pleading using the word 'fraud'/'fraudulent' without any material particulars would not tantamount to pleading of 'fraud'. In this regard, reference may be made to the judgment of the Supreme Court in ***Electrosteel Castings Limited Vs. UV Asset Reconstruction Company Limited. & Ors.***, 2021 SCC OnLine 1132 and ***Neha Aggarwal Vs. PNB Housing Finance***, MANU/DE/1576/2016 [Special Leave Petition No.5756/2017 preferred whereagainst was dismissed on 27th March, 2017]. The allegations of fraud, thus, in the plaint appear to be nothing but a product of clever drafting only with a view to bring the suit maintainable before the civil court despite the bar under Section 34 of the SARFAESI Act.

20. It is also relevant to note that while the plaintiff has alleged various coercive acts against the defendants No. 1 and 2 to the effect that the loan

amount mentioned in the MoU and the sale consideration mentioned in the Sale Deed have not been honoured, but till date the plaintiff has failed to file any complaint or initiate any recovery proceedings against the defendants No. 1 and 2 in respect of the same.

21. In view of the discussion above, I am of the view that the suit is manifestly vexatious, without any merit, and does not disclose a right to sue. Therefore, prayer (a) in the plaint is liable to be rejected under Order VII Rule 11(a) of the CPC.

22. As regards prayer (b) in the suit, the counsel for the plaintiff himself conceded in the course of the arguments before this Court that the said prayer would not be maintainable in view of the bar contained in Section 34 of the SARFAESI Act and the said prayer has already become infructuous in view of the fact that the suit property has already been sold by the defendant No. 3 Bank pursuant to proceedings under SARFAESI Act and the possession has been handed over to the auction purchaser.

23. Accordingly, the present application is allowed. Therefore, in exercise of powers under Order VII Rule 11 (a) and (d) of the CPC, the plaint is rejected.

AMIT BANSAL, J.

FEBRUARY 02, 2022
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