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

\+ **CS(OS) 418/2022 & I.A. 25118/2023**

SMT. USHA JOSHI ..... Plaintiff

Through: Ms. Alya Veronica, Adv. (M. 9871527099)

versus

SH. ASHOK KUMAR AHLUWALIA & ANR. ..... Defendants

Through: Mr. Sanjeev Sahay, Ms. Shagun Saproo, Ms. Bhavya Anand, Advs. (M. 9810199210)

CORAM:
JUSTICE PRATHIBA M. SINGH

O R D E R

% **08.01.2024**

1. This hearing has been done through hybrid mode.

2. The present suit had been filed by the Plaintiff- Smt. Usha Joshi seeking a decree of specific performance of the agreement dated 7th March, 2023 in respect of the suit property, i.e., B-4/2, Village Basai, Darapur Colony, Rajouri Garden, New Delhi- 110027. It is the case of the Plaintiff that the Defendants had agreed to sell to the Plaintiff the suit property. As per the agreement for sale which has been placed on record, the suit property is measuring 272.15 square yards and the agreement for sale for was a consideration of Rs. 8.5 crore (Rupees Eight Crore Fifty Lakh Only). Out of the aforesaid amount, a sum of Rs.85,00,000/- (Rupees Eighty-Five Lakh Only) has been paid by the Plaintiff to the Defendants as earnest money.

3. This suit was first listed before this Court on 22nd July, 2022 and on the said date, an undertaking with respect to further payments was recorded by the Court. The relevant extract of the said order is set out below:

> *"6. Counsel for the plaintiff, on instructions from the plaintiff, who is present in person, states that out of the remaining amount, a sum of Rs.2,00,00,000/- would be paid to the defendants on or before 31st July, 2022 and the remaining amount shall be paid on or before 20th August, 2022. Counsel for the defendants is agreeable to the same, provided the plaintiff pays interest on the amount paid after 31st July, 2022.*
> *7. Counsel for the plaintiff states that the plaintiff is agreeable to pay interest at the rate of 9% per annum on the balance amount that remains unpaid after 31st July, 2022.*
> *8. Accordingly, it is agreed between the parties that on the balance amount that remains unpaid as on 31st July, 2022, the plaintiff shall pay interest at the rate of 9% per annum to the defendants.*
> *9. It is also agreed that the plaintiff shall cooperate with the defendants in getting the FIR No. 390/2022 under Sections 420/406/34 of the Indian Penal Code, 1860 registered on 2nd July, 2022 at Kirti Nagar Police Station, quashed."*

4. Thereafter, the Plaintiff filed an application ***I.A. 11820/2022*** dated 25th July, 2022 seeking modification of the said order dated 22nd July, 2022. The said application was listed before the Court on 28th July, 2022 and on a joint request the parties were referred to Mediation.

5. Vide judgment dated 26th April, 2023, a ld. Single Judge decided several applications and directed the suit the proceed further. In the said judgment, the application for a decree on the basis of decision dated 22nd July, 2022 was rejected, an application seeking amendment of pleadings was allowed and an *ad-interim* injunction restraining the Defendants from selling the property. The relevant extracts of the said judgment are set out below:

"I.A. 5530/2023

5. This application has been filed by the defendant under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 (in short, 'CPC'), praying for a decree to be passed in terms of the order 22.07.2022 …

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7. The defendant states that though the matter stood settled between the parties by the above order, the plaintiff with a mala fide motive, filed an application seeking modification of the said order. The said application, however, was withdrawn by the plaintiff vide order dated 14.03.2023. With the withdrawal of the said application, settlement as recorded in the order dated 22.07.2022 has become final and binding and the suit deserves to be decreed in terms thereof.

8. On the other hand, the learned counsel for the plaintiff, placing reliance on the judgment of the Supreme Court in Gurpreet Singh v. Chatur Bhuj Goel, (1988) 1 SCC 270, submits that one of the preconditions for the application of Order XXIII Rule 3 of the CPC is that the settlement must be in writing and signed by the parties. In the present case, the purported settlement is not signed by the parties and, therefore, a decree cannot be passed on the basis thereof.

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12. <u>Though there can be no dispute on the fact that the order dated 22.07.2022 clearly records the terms of the settlement arrived at between the parties, the fact remains that the same has not been signed by the parties.</u>

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14. The submission of the learned counsel for the defendants that the decree can still be passed recording the satisfaction of the claim of the plaintiff, also cannot be accepted as the defendant is not conceding to the prayers made in the suit. The plaintiff *is also not conceding that the claim in the suit stood satisfied with the order of 22.07.2022. She, in fact, does not wish to abide by the same.*

15. In view of the above, I have no option but to dismiss the present application.

IA 20189/2022

16. This application has been filed by the plaintiff under Order VI Rule 17 of the CPC, praying for permission to amend the Plaint so as to add the following prayer in the alternative: -

> *"Or in the alternative b. Pass a decree in favour of the plaintiff and against the defendants thereby directing the defendants to refund the entire earnest money to the plaintiff amounting to Rs. 85 lacs illegally and unjustifiably withheld by the defendants apropos the Agreement to Sell dated: 07.03.2022, along with an interest @ 9% p.a."*

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23. Section 22 of the Specific Relief Act provides that where the plaintiff has not claimed a relief, inter alia, of refund of the earnest money or deposit paid or made by him under the Agreement to Sell, the Court shall, at any stage of the proceedings, allow him to amend the plaint on such terms as may be just for including a claim for such relief.

24. In view of the above provision, the plaintiff is within his rights to now add the alternate prayer, especially as the suit is at the initial stage itself with the defendants not even having filed their Written Statement. Whether the alternate prayer can or cannot be granted, is not to be considered by this Court at the stage of considering the present application. The same would necessarily have to await the formal amendment to the plaint. The submissions of the learned counsel for the defendants are primarily on the merit of the *prayer which now is sought to be added by the plaintiff in the plaint. The <u>consideration of the merit of the prayer has to await and cannot be a reason for rejecting the amendment.</u>*

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28. <u>Accordingly, the present application is allowed. The amended plaint is taken on record.</u>

<u>I.A. 11267/2022</u>

34. This application has been filed by the plaintiff praying for the following relief:-

> *"a) Pass an ex-parte ad-interim order injuncting and restraining the Defendants, their agents, delegates, representatives, assignees, legal representatives, legal heirs etc. from creating any third party interest, selling, alienating, offering for sale, dealing with or making any alteration or construction of any kind in the suit property for which the agreement to sell dated 07.03.2022 had been signed and executed by the Defendants in favour of the Plaintiff pending disposal of the present suit."*

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37. It is a matter of record that the plaintiff defaulted in complying with the terms of the settlement, and instead, filed an application, being I.A. No.11820/2022, inter alia praying for modification of the order dated 22.07.2022, contending therein that the above settlement was not consented to by the plaintiff but was wrongly conceded to by the then counsel of the plaintiff. The said application, however, has been withdrawn by the plaintiff by the order dated 14.3.2023. With the withdrawal of the said application, two consequences follow:-

(a) The parties had entered into a settlement

whereby, in spite of a prima facie default of the plaintiff to comply with the terms of the agreement to sell, the defendant had agreed to give further time to the plaintiff to comply with the terms of the settlement, subject to payment of interest on the amount outstanding;

(b) The plaintiff defaulted in complying with even this concession. In fact, the plaintiff remains in default even till date.

38. The learned counsel for the plaintiff submits that the plaintiff had, in fact, obtained in-principle approval of a home loan from the Axis Bank. He submits that the transaction could not be completed for want of co-operation from the defendants. This is disputed by the learned counsel for the defendants. He submits that, in fact, the Bank Loan was withdrawn by the plaintiff prior to the filing of the present suit.

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41. Be that as it may, the fact remains that the plaintiff has neither complied with terms of the agreement to sell dated 07.3.2022 nor with the settlement terms as recorded in the order dated 22.7.2022. In terms of Section 16 of the Specific Relief Act, therefore, prima facie the plaintiff would not be entitled to a relief of specific performance of the Agreement to Sell. The plaintiff has now also sought an alternate relief of refund of the earnest money deposited by the plaintiff. The said relief has been allowed to be added to the Plaint by the order passed today.

43. In view of the above, I find no prima facie case made out by the plaintiff for grant of relief. The balance of convenience is also in favour of the defendants and against the plaintiff. In fact, the very pendency of the suit can result in a gross irreparable damage to the defendants inasmuch as, the value of their property shall stand depreciated in view of the present suit.

45. In the present case as well, taking into account the

conduct of the plaintiff, I am of the view that the likelihood of the plaintiff succeeding is remote and that great prejudice would be caused to the defendants if the doctrine of lis pendens is to apply against the Suit property merely because summons in the Suit have been issued.
46. In view of the above, in my opinion, the doctrine of lis pendens shall not apply against the subject property.
45. Accordingly, I find no merit in the present application. The same is dismissed holding that even the doctrine of lis pendens shall not apply to the Suit property."

6. An appeal was preferred against the said judgement by the Plaintiff and the parties were referred to Mediation by the ld. Division Bench. Thereafter, vide judgement dated 18th September 2023, the ld. Division Bench had recorded a settlement entered into by the parties under the aegis of the Delhi High Court Mediation and Conciliation Centre. The terms of the said settlement dated 14th September, 2023 were also recorded in the said judgement by the ld. Division Bench. In terms of the settlement, the agreement to sell dated 7th March, 2022 in respect of the suit property stood cancelled, subject to payment of Rs. 85,00,000/- by the Defendants to the Plaintiff. The relevant extract of the judgement of the ld. Division Bench is set out below:

"1. The present appeal under Section 10 of the Delhi High Court Act, 1966, has been instituted on behalf of the appellant, assailing the order dated 26.04.2023, rendered by the learned Single Judge, in I.A. No. 11267/2022, passed in CS (OS) No. 418/2022, titled 'Smt. Usha Joshi Vs. Sh. Ashok Kumar Ahluwalia & Anr.'
2. During the pendency of the appeal, the parties had

sought time to arrive at an amicable resolution of the underlying disputes. Subsequent thereto, by way of an application, being CM APPL. 48156/2023, instituted within the meaning of Order XXIII Rule 3 of the Code of Civil Procedure, 1908, has been filed jointly, on behalf of the parties; wherein it has been mutually agreed by and between the parties, to comply with the terms and conditions, as contained in the Settlement Agreement dated 14.09.2023.

3. The Settlement Agreement, dated 14.09.2023, has been arrived at, between the parties, with the aid and assistance of the Delhi High Court Mediation and Conciliation Centre, Delhi High Court, which is duly supported by affidavits, on behalf of the parties, and is also counter-signed by learned counsel representing them.

4. We have perused the terms and conditions agreed, by and between the parties, in relation to the performance of the reciprocal obligations. A perusal of the above-mentioned Settlement Agreement also reflects, that the terms and conditions of the settlement arrived at, between the parties are legal and lawful.

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6. The parties are present before this Court, in-person today, along with their counsel, and undertake to comply with the terms and conditions, as elaborated in the said Settlement Agreement. The undertaking furnished on behalf of the parties is hereby accepted.

7. In view thereof, the only course of action, that commends itself to us, is to take the said Settlement Agreement on record; and direct the parties to comply with the reciprocal obligations, as contained in the said Settlement Agreement, forthwith, without demur.

8. In view of the above, the application is allowed; and disposed of accordingly.

9. We are informed at the Bar, that in pursuance to the said Settlement Agreement dated 14.09.2023, FIR No. 390/2022, dated 02.07.2022, under Section 420, 406 *and 34 of the Indian Penal Code, 1860, registered at Police Station: Kirti Nagar, has been quashed by the learned Single Judge, vide order dated 18.09.2023, passed in W.P. (CRL) 2684/2023.*

10. Additionally, the original Demand Drafts have been handed-over to learned counsel appearing on behalf of the appellant, who admits to be in receipt of the same thereof, subject to encashment. A photocopy of the said Demand Drafts, is annexed as Annexure A (colly), to the Settlement Agreement dated 14.09.2023, the details of which are as follows:

S.NO.	DD NUMBER	DATE	AMOUNT
1	**013235**	21.07.2023	15,00,000
2	**010252**	13.09.2023	27,50,000
3	**504848**	21.07.2023	15,00,000
4	**504881**	13.09.2023	27,50,000
Total Amount- Rs. 85,00,000 (Rupees Eighty Five Lakhs Only)			

11. In view of the foregoing, the original Agreement to Sell dated 07.03.2022, referred to in the pleadings of the instant appeal, stands cancelled.

12. In terms of the order above, it is directed that a Compromise Decree, based upon the terms and conditions, agreed to, by and between the parties, as reflected herein above, be drawn up, forthwith.

13. The Registrar General, Delhi High Court, is further directed to process the application for refund of court fee, filed on behalf of the appellant, in terms of Section 16 of the Court Fees Act, 1870; as well as in the backdrop of the Settlement Agreement.

14. In view of the foregoing, the suit for specific performance of the said Agreement to Sell, being CS (OS) 418/2022; and the instant appeal being FAO(OS)

74/2023 (arising from the subject suit) stand disposed of, in the afore-mentioned terms. Pending applications, if any, also stand disposed of."

7. Initially, when the mater came up for hearing, Passover was sought by the ld. Counsel for the Plaintiff to seek instructions if the terms of the settlement have been complied with by the parties including encashment of the Demand Draft and destruction of the Agreement to Sell for the suit property.

8. On second call, ld. Counsel for the Plaintiff after seeking instructions submits that the requisite Demand Drafts have been encashed and the Agreement to Sell for the suit property has also been destroyed.

9. In view thereof, the apprehension expressed by the Respondents are fully assuaged.

10. No further orders are called for in this suit. The suit is accordingly decreed in terms of the ld. Division Bench judgement dated 18th September, 2023. Decree sheet be drawn accordingly.

PRATHIBA M. SINGH, J.

JANURARY 08, 2024
mr/am