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

Date of decision:-16th January, 2024.

+ **CS(OS) 421/2020, I.As. 12021/2020 & 12022/2020**

SHRI ARJUN KANSAL

..... Plaintiff

Through: Mr. Fanish K. Jain, Mr. Rohit Yadav
and Mr. Kapil Chaudhari, Advs. (M.
8527499734)

versus

SHRI AJIT SINGH BAGGA

..... Defendant

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present suit for recovery has been filed by the Plaintiff-Shri Arjun Kansal S/o Late Shri Ram Kishore for the recovery of sum of Rs.2,77,50,000/- against the Defendant-Shri Ajit Singh Bagga S/o Shri Avtar Singh Bagga.
3. The Plaintiff's case is that the Defendant had given a proposal to sell the property bearing no. '**M-125, Guru Harkishan Nagar, Paschim Vihar, New Delhi**' admeasuring 339.73 sq. yards. Pursuant to the said proposal given by the Defendant, the parties agreed that the Plaintiff would purchase the property for the sum of Rs.7.75 crores, and Rs.20 lakhs was paid initially on 8th June, 2015 as part payment. Thereafter, further payments were made. The total payment, which was received, was a sum of Rs.2 crores.
4. It was stated that the Defendant did not honor the transaction, which



led to Plaintiff filing a criminal complaint. In the said criminal complaint, the Defendant filed a bail application being '**Bail Appl. No.1117/2017**' in which vide order dated 21st December, 2017, a settlement was recorded in the following terms.

"1. The learned counsel for the parties submit that they have settled the lis amicably in terms of the proposed list. The parties are present in the Court. They have been identified by the Investigating Officer of the case.

2. The petitioner has stated on affidavit that since the complainant does not wish to purchase the property in question, bearing No. M-125, Guru Harikrishan Nagar, Near Gurudwara, Paschim Vihar, Delhi, and has relinquished all his right, title and interest in the said property, admeasuring 339.73 sq. yds., therefore, the petitioner is ready and willing to pay an amount of Rs.2.31 crores which includes interest up to 15.02.2018 @ 6% p.a., from the date of the complainants payment, till 15.02.2018. Although the learned counsel for the respondent states that he should be protected for future interest as well since the payment is spread over a period of two years, Mr, Ohri, the learned Senior Advocate for the petitioner submits that the respondent has himself resiled from the agreement and the petitioner has had to service bank loans to the tune of Rs.2.08 crores pertaining to this property. Therefore, not only having to deal with the concomitant shortage of funds and jeopardy of his financial planning because of the deal having fallen through, the petitioner would have to arrange for the aforesaid refund monies, in right earnest. Especially, being conscious of the circumstance that he cannot default in the agreed payments as per this order. Therefore, he submits that no further interest should be payable on the said count. The Court would,



nevertheless, not lose sight of the fact that the respondent has had to resort to legal processes to reach at least to this stage where the petitioner has agreed to refund the said amount. He has incurred expenses. In the circumstances, the petitioner is directed to pay a consolidated amount of Rs.2 lacs towards legal expenses.

3. Mr. Ohri states upon instructions from the deponent that instead of 11 quarterly equivalent instalments mentioned in paragraph No. 5 of the affidavit, the same should be read as 9 quarterly equivalent instalments. It is so ordered.

4. The learned counsel for the respondent states upon instructions that that the said terms and quantum of repayment is acceptable to the respondent and orders may be passed on the same.

5. It is accordingly ordered that Rs. 2.31 crores shall be paid by the petitioner in the following manner:

- (i) the first instalment amount of Rs.25 lacs shall be paid on or before 20.02.2018 into the bank account of the respondent;**
- (ii) the remaining instalments of Rs. 25 lacs shall be paid on or before every 90 days thereafter;**
- (ii) the last instalment would be of Rs.31 lacs;**
- (iii) the cost of Rs.2 lacs shall be paid within a period of one year from today;**
- (iv) for every infraction in payment of the aforesaid amount either in quantum or date, the petitioner shall pay a cost of Rs.25,000/- for every month or part thereof;**
- (v) on the payment of the last instalment and upon an application by the petitioner, the complainant shall have no objection to the quashing of the FIR registered in this case.**



6. *Let an affidavit of the complainant in acceptance of aforesaid settlement on terms be filed by 15.01.2018.*
6. *Since the complainant himself does not wish to pursue the complaint any further in view of the aforesaid settlement, further proceedings apropos the complaint shall remain stayed.*
7. *The petition is disposed off in the above terms.*
8. *A copy of the order be given dasti to the learned counsel for the parties under the signatures of the Court Master."*
5. After this settlement was entered into, an affidavit dated 21st December, 2017 was also filed by the Defendant, agreeing to make the payments in terms of the said order. The said affidavit reads as follows:
- "1. That I am petitioner in the above noted case and am fully conversant with the facts of the case and competent to file and swear the present affidavit.
2. That FIR No. 193/2017 under section 420/406/34 IPC has been registered at Police Station Mianwali Nagar, Delhi by one Mr. Arjun Kansal S/o Shri Ram Kishore against the me.
3. I state that the complainant has alleged in the said FIR an amount of Rs.2 Crores with regard to purchase of property basement and ground floor without roof right admeasuring 339.73 sq. yds at Guru Harikrishan Nagar, New Delhi vide an agreement to sell dated 20.06.2015.
4. That as the complainant does not want to purchase the said property and he relinquished all his right, title or interest in the aforesaid property and shall not claim the aforesaid property in any manner in future and the deponent shall be free to sell the property without any hindrance and objection.
- 5. The deponent undertake to pay Rs.2.31 Crores including past, present future interest to the**



complainant in 11 (eleven) quarterly equivalent installment first installment starting from 20th February, 2018. The said amount of Rs.2.31 Crores is the full and final settlement in all respects.

6. That the parties have further agreed that the complainant shall cooperate in quashing of the aforesaid FIR and till then they shall not pursue the criminal case/FIR against any of the accused.

7. That in case of any default the deponent shall pay Rs.25000/- for each default.

8. That any document taken by the complainant as well as the said agreement to sell dated 20.06.2015 shall be deemed to be null and void and unenforceable under the law on filing of this affidavit before this Hon'ble Court.

9. That the complainant shall not misuse the agreement to sell as well as the FIR in future and the said agreement to sell shall be destroyed in the presence of the deponent within two days from filing of this affidavit and any complaint made in any other authority/department shall be withdrawn.

10. That in case the deponent does not pay the entire amount of Rs.2.31 crores as agreed by both the parties, then the complainant shall be at liberty to proceed further in the aforesaid matter. I shall be bound by this undertaking/ affidavit."

Thus, in terms of the above affidavit, it is clear that the Defendant agreed to settle the dispute by payment of sum of Rs.2.31 crores, which included the interest component.

6. It is averred that the Defendant failed to adhere to the terms and conditions. A sum of only Rs.3 lakhs is also stated to have been paid to the Plaintiff, pursuant to the settlement and the Defendant, thereafter, failed to make any payments. The present suit has, thereafter, been filed seeking recovery.

7. In the plaint, the following are the prayers.



*“a) A decree of Rs.2,77,50,000/- (Rupees Two Crores Seventy Seven Lacs Fifty Thousand Only) along with pendente lite and future interest @12% p.a. may kindly be passed in favour of the Plaintiff and against the Defendant.
b) Award the cost of the present suit in favour of the plaintiff and against the defendant.”*

8. Written statement is stated to have been filed by the Defendant. The same is not on record. Replication is also filed. The copy of the Written statement has been handed over to the Court.

9. Further, the admission/denial list filed on behalf of the Defendant is relevant, and the same is extracted below:

*“1. That I am the above named Deponent and the Defendant in the above mentioned Suit and hence, I am fully conversant with the facts and circumstances of the present case and hence competent to swear the present affidavit.
2. That following documents of Plaintiff are admitted /denied : -*

<i>S.No.</i>	<i>PARTICULARS/ DOCUMENTS</i>	<i>PAGE</i>	
<i>1.</i>	<i>Receipt Cum Agreement dated 08.06.2015.</i>	<i>6-9</i>	<i>Admitted</i>
<i>2.</i>	<i>Agreement to Sell dated 08.06.2015</i>	<i>10-16</i>	<i>Admitted (hand written contents denied)</i>
<i>3.</i>	<i>Receipt Dated</i>		<i>Admit</i>



	20.06.2015	17-18	
4.	Receipt Dated 11.08.2015	19-20	Admit
5.	Notice dated 05.10.2015	21-23	Denied
6.	Corrigendum Dated 05.10.2015	24	Denied
7.	Notice dated 07.12.2015	25-26	Admit
8.	Reply dated 14.12.2015	27-32	Admit
9.	Rejoinder Dated 29.12.2015	33-37	Admit
10.	Complaint dated 07.03.2017	38-47	Admit
11.	FIR dated 13.04.2017	48-64	Admit
12.	Order dated 14.11.2017	65-66	Admit
13.	Order dated 21.12.2017	67-70	Admit
14.	Affidavit of Defendant dated 21.12.2017	71-74	Admit
15.	Affidavit of Plaintiff dated 22.12.2017	75- 78	Admit
16.	Cheque dated 30.04.2018	79	Admit



17.	<i>Cheque Return Memo dated 02.05.2018</i>	80	<i>Admit</i>
18.	<i>Cheque dated 30.06.2018</i>	81	<i>Admit</i>
19.	<i>Cheque Return Memo dated 03.07.2018</i>	82	<i>Admit</i>
20.	<i>Order dated 20.09.2018</i>	83-84	<i>Admit</i>
21.	<i>Order dated 02.09.2019</i>	85- 88	<i>Admit</i>
22.	<i>Sale Deed dated 06.06.2017</i>	89- 112	<i>Admit</i>
23.	<i>Sale deed dated 06.06.2017</i>	113- 136	<i>Admit</i>
24.	<i>Seizure Memo</i>	137	<i>Admit</i>

..”

10. A perusal of the above affidavit of admission/denial dated 10th November, 2021, filed with the Written statement handed over in Court, reveals that the Defendant has admitted most of the documents, including agreement to sell, receipts, notices, replies as also the orders dated 14th November, 2017 and 21st December, 2017 and the affidavit filed by the Defendant dated 21st December, 2017. In the said affidavit, the Defendant



had agreed to make the payment as recorded in the settlement.

11. Since there is no appearance for the Defendant, even after perusing through the Written statement, this Court is of the opinion since the suit was filed based on an order of settlement recorded before a Id. Single Judge of this Court, the Defendant cannot be allowed to renege from the settlement.

12. The admission of the receipt of amounts in the written statement, and the agreement to sell, in any event, leaves the Defendant with no defense. The Plaintiff is entitled to a decree both in view of the admissions and in view of the orders dated 14th November 2017 and 21st December 2017, which recorded the settlement.

13. In light of these facts and circumstances, and considering that the Defendant had admitted to paying a sum of Rs.2.31 crores, the suit is decreed for a sum of Rs.2.31 crores, along with Rs.46,50,000/- as delayed payment in accordance with the terms of the settlement. In addition, 6% interest on the entire decretal amount shall be payable from the date of the institution of the suit, i.e., 5th December 2020. Ordered accordingly.

14. The suit is decreed in the above terms. Decree sheet be drawn accordingly. All pending applications are disposed of.

PRATHIBA M. SINGH
JUDGE

JANUARY 16, 2024/dk/dn