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

\+ RFA 612/2019

MADHU AGGARWAL AND ANR. .....Appellants
Through: Mr. Kushagra Bansal, Advocate.

versus

SMT SHAKILA JAIN AND ANR. .....Respondents
Through: Mr. Durgesh Gupta, Advocate.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

O R D E R

% 06.03.2025

1. This appeal is preferred by the Appellants laying a challenge to order dated 01.06.2019 passed by the learned Trial Court, whereby preliminary decree was passed in favour of the Respondents directing the Appellants to return an amount of Rs.25 Lacs within one week, failing which Appellants shall be liable to pay interest @ 18% per annum from the date of the agreement till realisation. Appellants were Defendants before the Trial Court while Respondents were the Plaintiffs and parties are hereinafter referred to by their litigating status before this Court, for the ease of reference.

2. Factual matrix to the extent necessary is that Respondent No.1 entered into an Agreement to Sell with Appellant No.1 on 19.07.2018 for sale of property bearing No. A-122, First Floor, State Bank Colony, near Rana Pratap Bagh, Delhi admeasuring 200 sq.yds. with proportionate land rights and common amenities. Total sale consideration was agreed at Rs.1,82,00,000/- out of which Appellants received a sum of Rs.55 Lacs. Out

of Rs.55 Lacs, Rs.2 Lacs was paid by cash against a written receipt while Rs.3 Lacs and Rs.25 Lacs were paid by separate Demand Drafts dated 06.07.2018 and 02.07.2018 respectively. The remaining sum of Rs.25 Lacs was paid through RTGS transfer from Oriental Bank of Commerce on 03.09.2018 from the bank account of Respondent No.2 into the bank account of Appellant No.1 held jointly with Appellant No.2. Receipt of Rs.55 Lacs is an undisputed fact between the parties.

3. Case of Respondent No.1 before the Trial Court was that she was always ready and willing to perform her part of the contractual obligation under the Agreement to Sell dated 19.07.2018 and had taken an appointment with the Sub-Registrar-VI-A, Pitampura on 07.09.2018 for registration of the Sale Deed, however, Appellant No.1 failed to turn up and Sale Deed could not be executed. On the same day, Respondents had got a loan sanctioned from Aditya Birla Housing Finance and a cheque for a sum of Rs.80,90,000/- payable to Appellant No.1 was prepared to pay the remaining part of the sale consideration.

4. It was pleaded by the Respondents in the plaint that since the Appellants were not coming forth for execution of the Sale Deed, legal notice was sent but even to that there was no response and finally a suit for recovery of Rs.83,80,000/- was filed before the Trial Court.

5. Respondent No.1 filed an application under Order XXXVIII Rule 5 CPC, which was listed for arguments on 01.06.2019. During the arguments, it was brought forth by Respondent No.1 that admittedly a sum of Rs.53 Lacs was received by Appellant No.1 and therefore, even assuming that there was a dispute with respect to Rs.28 Lacs which was the Earnest Money, balance of Rs.25 Lacs was payable to Respondent No.1. After

hearing arguments on this issue, the learned Trial Court passed a preliminary decree directing Appellant No.1 to pay a sum of Rs.25 Lacs to Respondent No.1 within one week failing which she will be liable to pay interest @ 18% per annum from 19.07.2018, i.e. the date of Agreement till realisation. The reason for passing the preliminary decree, as reflected from the impugned order, was that as per Clause 16 of the Agreement to Sell, in the event of the breach being established on the part of Respondent No.1, at the highest Appellant No.1 could forfeit the Earnest Money which was Rs.28 Lacs and once Appellant No.1 had admitted receipt of Rs.53 Lacs, after deducting Rs.28 Lacs, Rs.25 Lacs was legitimately due to Respondent No.1. Application filed by Respondent No.1 under Order XXXVIII Rule 5 CPC was adjourned for hearing.

6. Heard learned counsels for the parties.

7. Learned counsel for Appellants fairly and candidly does not dispute that a sum of Rs.53 Lacs was received from Respondent No.1 and this is an admitted fact even in the written statement. Counsel is unable to dispute that as per the Agreement to Sell the total Earnest Money payable and paid was Rs.28 Lacs and as per Clause 16, even if Respondents were not successful in the suit, at the highest, the Earnest Money could be forfeited. In light of these facts, this Court finds no infirmity in the preliminary decree passed by the Trial Court directing Appellant No.1 to refund of Rs.25 Lacs to Respondent No.1. Insofar as payment of interest is concerned, it needs to be noted that Appellants had challenged the impugned preliminary decree immediately on the passing of the same and by order dated 08.07.2019, Court had stayed the decree and interim order has continued till date and therefore, Appellants cannot be saddled with the interest component.

8. Accordingly, this appeal is dismissed upholding the preliminary decree passed by the Trial Court to the extent of the direction to return a sum of Rs.25 Lacs only. Interim order dated 08.07.2019 is vacated to the extent operation of the preliminary decree was stayed. However, interim order to the extent Court had directed the parties to maintain *status quo qua* title and possession of the subject property shall continue to operate during the pendency of the suit.

9. Appeal stands disposed of in the aforesaid terms. It is made clear that this Court has not expressed any opinion on the merits of the case and the Trial Court shall proceed with the suit in accordance with law and uninfluenced by any observation made in this order, which is for the limited purpose of deciding this appeal.

10. Before drawing the curtains, for the sake of correcting the record, I may note that in the interim order dated 08.07.2019, it is mentioned on the asking of the Appellants that the terms of the Agreement to Sell did not clearly specify the amount of Earnest Money. This is incorrect on a factual note and counsel for the Appellants fairly concedes that inadvertently a wrong impression was given to the Court since the exact amount of Earnest Money is mentioned in the Agreement. Accordingly, order dated 08.07.2019 is modified and corrected to this extent, with the consent of the counsels for the parties.

JYOTI SINGH, J

MARCH 6, 2025
B.S. Rohella