



2025:DHC:9521



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 578/2020, I.A. 12698/2020 & I.A. 22021/2025**

Date of Decision: **14.10.2025****IN THE MATTER OF:**

ANIL SHARMA

.....Plaintiff

Through: Mr. A. S. Chandhiok, Sr. Adv. with
Mr. Vinod Tyagi, Mr. Sidharth Tyagi,
Ms. Jagriti Kedia and Mr. Abhishek
Grover, Advs.

versus

ATUL GUPTA & ORS.

.....Defendants

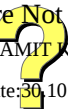
Through: Mr. S. C. Singhal and Mr. Ritvik
Madan, Advs. for D-7.
Mr. Amrit Jain, Sr. Adv. with Mr.
Vidit Gupta, Mr. Eish Kesarwani and
Mr. Parth Gautam, Advs. for D-21.

CORAM:**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV****JUDGEMENT****PURUSHAINDRA KUMAR KAURAV, J. (ORAL)**

1. Heard Mr. A. S. Chandhiok, learned senior counsel appearing for the plaintiff, Mr. Amrit Jain, learned senior counsel appearing for defendant Nos.21 and Mr. S. C. Singhal, learned counsel appearing for defendant No.7.
2. At the outset, it be noted that defendant Nos.7 and 21 have no objection if the suit is decreed in terms of prayers (i) and (ii). It be also noted

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that the right to file the written statement of the defendants has been closed *vide* order dated 05.09.2022, 08.05.2023 and 26.05.2023.

3. The only defendant who has filed the written statement i.e., defendant No.7 has also supported the case of the plaintiff.

4. The facts regarding service, appearance and status of pleadings is presented by way of a note by Mr. Chandhiok, which is extracted as under:

DEFENDANT NO.	SERVICE VIDE ORDER	APPEARANCE VIDE ORDER	STATUS OF PLEADINGS
1.	08.03.2021		Right to WS closed on 05.09.2022
2.	08.03.2021		Right to WS closed on 05.09.2022
3.	08.03.2021		Right to WS closed on 05.09.2022
4.	08.03.2021	04.08.2021	Right to WS closed on 05.09.2022
5.	08.05.2021		Right to WS closed on 08.05.2021
6.	18.11.2021		Right to WS closed on 05.09.2022
7.	18.11.2021	18.11.2021	WS taken on record on 18.11.2021. Right to file replication given by Plaintiff up on 21.03.2022
8.	24.12.2020	24.12.2020	Right to WS closed on 05.09.2022
9.	18.11.2021		Right to WS closed on 05.09.2022
10.	24.12.2020	24.12.2020	Right to WS closed on 05.09.2022
11.	08.03.2021	18.11.2021	Right to WS closed on 05.09.2022
12.	08.03.2021	18.11.2021	Right to WS closed on

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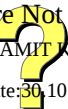
			05.09.2022
13.	08.03.2021		Right to WS closed on 05.09.2022
14.	08.03.2021		Right to WS closed on 05.09.2022
15.	24.12.2020	24.12.2020	Right to WS closed on 05.09.2022
16.	08.03.2021		Right to WS closed on 05.09.2022
17.	24.12.2020	24.12.2020	Right to WS closed on 05.09.2022
18.	04.03.2021	04.03.2021	Right to WS closed on 05.09.2022
19.	08.03.2021		Right to WS closed on 05.09.2022
20.	08.05.2023		Right to WS closed on 08.05.2023
21.	24.12.2020	24.12.2020	Right to WS closed on 05.09.2022
22.	18.11.2021	18.11.2021	Right to WS closed on 05.09.2022
23.	18.11.2021	18.11.2021	Right to WS closed on 05.09.2022
24.	08.03.2021		Right to WS closed on 05.09.2022
25.	08.03.2021	18.11.2021	Defense struck off on 26.05.2023
26.	08.03.2021		Right to WS closed on 05.09.2022
27.	08.03.2021		Right to WS closed on 05.09.2022

5. It is thus seen that despite opportunity, no written statement has been filed by any of the other defendants. The facts and the assertions mentioned in the plaint have not been opposed by any of the parties.

6. The facts of the case indicate that the plaintiff and defendant No. 21

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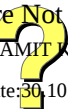




had incorporated the defendant No. 5 company. The defendant No. 5 company led a consortium of five business entities leading to the incorporation of defendant No. 24, which is a Special Purpose Company, in which defendant No. 5 had fifty-five per cent shares, and was allotted *vide* allotment letter dated 18.08.2010 Plot No. GH-12A (ad-measuring land admeasuring 68,166.07 sq. mtrs. land on long lease hold basis) at Sector-1, Greater Noida, U.P by defendant No. 25. The consortium was to develop residential apartments in the said land.

7. For the purpose of the aforesaid allotment, the consortium was initially required to deposit an amount of Rs.12,34,95,409/- of which, the plaintiff and defendant No. 21 had contributed an amount of Rs. 9,95,95,409/- (Rupees Nine Crore, Ninety-Five Lakh, Ninety-Five Thousand, Four Hundred and Nine only). The consortium was required to pay a further amount of Rs. 13,73,54,631/- (Rupees Thirteen Crore Seventy-Three Lakh Fifty-Four Thousand Six Hundred and Thirty-One only) to defendant No. 25.

8. Defendants No. 1 to 4, through their company Real Gains Infrastructure Pvt Ltd agreed to grant an unsecured loan of Rs.10,00,000/- (Rupees Ten Crore only) for the aforesaid project. Under the terms of the said arrangement, Real Gains Infrastructure Pvt Ltd was to extend loans of Rs. 25,00,000/- each (Rupees Twenty Five Lakh each) to the plaintiff and defendant No. 21, and Rs. 9,50,00,000/- (Rupees Nine Crore and Fifty Lakh) to defendant No. 5. However, the plaintiff claims that Real Gains Infrastructure Pvt Ltd only disbursed Rs. 25,00,000/- (Rupees Twenty Five Lakh) each to the plaintiff and defendant No. 21, and Rs. 4,50,00,000/- (Rupees Four Crore and Fifty Lakh) to defendant No. 5. The balance of Rs.





5,00,00,000/- (Rupees Five Crore) was unpaid.

9. As per the terms of the arrangement, defendants No. 1 to 4 were also appointed as additional directors at the defendant No. 5 company as part of the said arrangement. They are stated to have proceeded to siphoned off funds meant for the aforesaid development project illegally against which the plaintiff and various others had instituted various petitions before the Company Law Board. Defendants No. 1 to 4 thereafter produced Share Purchase Agreement dated 24.04.2012 (*the SPA*) in the said proceedings, under the terms of which, all the shares in defendant No. 5 owned by the plaintiff and defendant No. 21 were allegedly sold to Real Gains Infrastructure Pvt. Ltd. The plaintiff claims that the signatures of the plaintiff and defendant No. 21 affixed to the said SPA, were obtained fraudulently, without disclosing to them the actual contents of the same.

10. Further, during the pendency of the said petitions before the Company Law Board, conciliation proceedings were initiated between defendants No. 1 to 4 and the plaintiff and defendant No. 21. The said proceedings culminated in Settlement Agreement dated 25.07.2014 (*Settlement Agreement*). It is the plaintiff's case that the Settlement Agreement is vitiated by fraud and misrepresentation on the part of defendants No. 1 to 4.

11. The plaintiff prays that the SPA and the Settlement Agreement be declared null and *void ab-initio*, in terms of clause (i) and (ii) of the prayer clause in the plaint, which is extracted below, for reference:

- i. *"To pass a Decree n r Declaration. in favour of the Plaintiff against the Defendant No. 1 to 5 declaring that the share purchase agreement executed by the Plaintiff and Defendant No. 21 in favour of the Real Gains Infrastructure Pvt. Ltd. /the Defendants No. 1 to 4 was null and void ab initio as the patties were not consensus ad- idem to the contents thereof and any transfer of Defendant No. 5 by Defendant No 1 to 4*



was also patently illegal, null and void;

AND

- ii. *To pass of Decree of Declaration in favour of the Plaintiff against the Defendant No. 1 to 5 declaring that Settlement Agreement dated 25.07.2014 and all documents executed in pursuance thereto, executed between the parties herein were and are null and void ab initio and are not binding on the Plaintiff and Defendants No. 6 to 27 and had failed on repudiation thereof by the Defendant No. 1 to 5 and on insolvency I striking off the name of Real Gains Infrastructure Pvt. Ltd. and Zaza Construction Pvt. Ltd. and Connoisseur Buildcon Pvt. Ltd. and upon arrest/incarceration of the Defendants No. 1 to 4 in jail;*

AND

- iii. *In the alternative, the Defendants No. 1 to 5 who received a large amounts from the Plaintiff and the Defendants No. 6 to 23 and 26 and 27 thereunder, are bound to restore it, to the Plaintiff and the Defendants No. 6 to 23 and 26 and 27 or to make compensation for it to the Plaintiff and the Defendants No. 6 to 23 and 26 and 27 from whom the same had been duly received by them, as per Section 65 of the Contract Act, together with interest thereon at the commercial rate of 18% per annum, for breach of Contract by the Defendants No. 1 to 5 in favour of the Plaintiff and the Defendants No. 6 to 23, 26 and 27 as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case and that the Defendants No. 24 and 25 are bound by such Declarations as may be made in this suit and' that in view thereof, no coercive action qua Defendant No. 5 may be contemplated by them;*

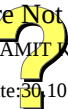
AND

- iv. *To pass any other further order or orders, as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case may also be passed in favour of the Plaintiff against the Defendants."*

12. The allegations of fraudulent conduct on the part of defendants No. 1 to 4 have not been denied. Further, the terms of the SPA and the Settlement Agreement seem to be heavily lopsided and against the plaintiff and defendant No. 21; by virtue of the aforesaid instruments, the plaintiff and defendant No. 21, being the original promoters of defendant No.5, were excluded from the aforesaid development project, despite having invested an amount of Rs. 9,95,95,409/- (Rupees Nine Crore, Ninety-Five Lakh, Ninety-Five Thousand, Four Hundred and Nine only). The said position supports the case of the plaintiff that there did not exist any *consensus ad-idem*

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between the parties with respect to the terms thereof.

13. Under these circumstances, there is no impediment in invoking the powers under Order VIII Rule 10 of the Code of Civil Procedure, 1908. The said provision is extracted below, for reference:

“10. Procedure when party fails to present written statement called for by Court.—Where any party from whom a written statement is required under rule 1 or rule 9 fails to present the same within the time permitted or fixed by the Court, as the case may be, the Court shall pronounce judgment against him, or make such order in relation to the suit as it thinks fit and on the pronouncement of such judgment a decree shall be drawn up:”

14. The contours of the power under the said provision have been elucidated by the Supreme Court in its decision in the case of **Balraj Taneja v. Sunil Madan**.¹ The relevant portion of the said judgment is extracted below, for reference:

“29. As pointed out earlier, the court has not to act blindly upon the admission of a fact made by the defendant in his written statement nor should the court proceed to pass judgment blindly merely because a written statement has not been filed by the defendant traversing the facts set out by the plaintiff in the plaint filed in the court. In a case, specially where a written statement has not been filed by the defendant, the court should be a little cautious in proceeding under Order 8 Rule 10 CPC. Before passing the judgment against the defendant it must see to it that even if the facts set out in the plaint are treated to have been admitted, a judgment could possibly be passed in favour of the plaintiff without requiring him to prove any fact mentioned in the plaint. It is a matter of the court's satisfaction and, therefore, only on being satisfied that there is no fact which need be proved on account of deemed admission, the court can conveniently pass a judgment against the defendant who has not filed the written statement. But if the plaint itself indicates that there are disputed questions of fact involved in the case regarding which two different versions are set out in the plaint itself, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts so as to settle the factual controversy. Such a case would be covered by the expression ‘the court may, in its discretion, require any such fact to be proved’ used in sub-rule (2) of

¹ (1999) 8 SCC 396



Rule 5 of Order 8, or the expression 'may make such order in relation to the suit as it thinks fit' used in Rule 10 of Order 8."

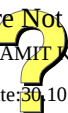
15. The aforesaid decision was followed by the Supreme Court, recently, in the case of ***Asma Lateef v. Shabbir Ahmad***.² The relevant portion of the said decision is extracted below, for reference:

"28. What emerges from a reading of Balraj Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] , with which we wholeheartedly concur, is that only on being satisfied that there is no fact which needs to be proved on account of deemed admission, could the court pass a judgment against the defendant who has not filed the written statement; but if the plaint itself suggests involvement of disputed questions of fact, it would not be safe for the court to pass a judgment without requiring the plaintiff to prove the facts. Balraj Taneja [Balraj Taneja v. Sunil Madan, (1999) 8 SCC 396] also lays down the law that provision of Order 8 Rule 10CPC is by no means mandatory in the sense that a court has no alternative but to pass a judgment in favour of the plaintiff, if the defendant fails or neglects to file his written statement."

16. It is seen that the Court, while exercising its power under Order VIII Rule 10 of the CPC, is required to be satisfied that there does not exist any disputed question of fact, necessitating evidence to be led by the plaintiff for proving his/her case. While the Court is not mandated to always pass a judgment against the defendant if no written statement is filed, if the Court is of the opinion that the case of the plaintiff stands proved in light of its deemed admission by the defendant, the Court may pronounce such a judgment.

17. In the present case, the terms of the impugned agreements being heavily one-sided against the plaintiff and defendant No. 21, the case set up by the plaintiff that there did not exist any *consensus ad-idem* between the parties to the agreement, seems to be highly probable. Therefore, this Court

² (2024) 4 SCC 696





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is satisfied that there does not exist any disputed question of fact requiring the plaintiff to lead evidence and prove.

18. Under these circumstances, the suit stands decreed in terms of the prayers (i) & (ii). Let the decree sheet be drawn accordingly, by the registry.

19. The suit stands disposed of.

PURUSHAINdra KUMAR KAURAV, J
OCTOBER 14, 2025/P/AMG.

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