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

% ***Date of Decision: 28.05.2025***

\+ **C.R.P. 7/2025 & CM APPL. 1543/2025**

THE LAYMENS EVANGELICAL FELLOWSHIP .....Petitioner

Through: Mr. Arun Saxena, Mr. Rahul Kr. Singh & Mr. Amit Verma, Advocates.

versus

ABHISHEK BUILDCON PVT LTD .....Respondent

Through: Mr. Ankit Siwach, Advocate.

CORAM:
HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed on behalf of the Petitioner under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] against the order dated 26.09.2024 passed by learned District Judge, Patiala House Courts, New Delhi, [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the Application under Order VII Rule 11 of the CPC filed by the Petitioner/Defendant has been dismissed by the learned Trial Court giving a finding that the dispute is essentially centred on the interpretation of the clauses of the indemnity bond, and at the stage of consideration of Order VII Rule 11 of the CPC, it would not be permissible to take the interpretation of the Petitioner/Defendant to be correct and conclusive.

2. The brief facts relevant for this Petition are that a suit for specific performance, mandatory injunction, declaration and damages was filed by the Respondent (Plaintiff before the learned Trial Court). It was stated in the said Suit that in pursuance of an agreement executed between the Respondent/Plaintiff and the Petitioner/Defendant, the Petitioner/Defendant

agreed to buy 1000 sq. yards out of the larger property owned by the Respondent/Plaintiff admeasuring 3475 sq. yards at Block-88, Plot No.4A, known as 1-Doctor's Lane, Gole Market, New Delhi. The consideration for the property was Rs.9 crores.

2.1 Subsequently, another 200 sq. yards of land was also agreed to be sold between the parties for an additional consideration of Rs.3 crores. The amounts were re-negotiated between the parties and it was decided that an additional 300 sq. yards were also to be sold by the Respondent/Plaintiff to the Petitioner/Defendant for a sum of Rs.7.2 crores.

2.2 A Memorandum of Understanding was executed on 25.07.2014 between the parties recording an indemnity for the income tax commitment regarding the property. Pursuant thereto, an Indemnity Bond dated 12.12.2014, was executed by the Petitioner/Defendant in favour of the Respondent/Plaintiff, [hereinafter referred to as the "Indemnity Bond"]. The Indemnity Bond sets out that the Respondent/Plaintiff would be indemnified with regard to differential gain accrued to the Respondent/Plaintiff in respect to the agreements to sell which are registered as Sale Deeds.

2.3 On 20.03.2017, after calculating the amounts due to be paid to the income tax authorities, a demand was raised by the Respondent/Plaintiff to make payment in terms of the Indemnity Bond in the sum of Rs.8,44,88,192/- plus interest to be paid.

2.4 The money was neither deposited directly with the Income Tax Department nor was the payment sent to the Respondent/Plaintiff. The Respondent/Plaintiff filed the Suit for failure of the Petitioner/Defendant to honour the Indemnity Bond and for breach of the Indemnity Bond.

2.5 The Respondent/Plaintiff has averred that the Petitioner/Defendant is liable to pay Rs.8,44,88,192/- plus interest as income tax/deferential gain tax. The relevant paragraphs of the Plaint setting out these averments are extracted below:

> *"31. The Defendant is in breach of the contract and agreement between the parties. Such breach has caused the Plaintiff loss which is not compensable in terms of money, since the Plaintiff faces a potential 1 high monetary income tax demand, and an additional reputational and credit loss which is not compensable in terms of money. Therefore the Plaintiff is in law and equity entitled to seek a direction to the Defendant to comply with the terms of the agreement. The Plaintiff is therefore entitled to a decree of mandatory injunction directing the Defendant to pay such tax liability as may be assessed by the income tax Department on account of income tax.*
>
> *32.**In the first instance, without prejudice, the Plaintiff submits that the Defendant is liable to pay a sum of Rs. 8,44,88,192 plus interest as income tax/differential gain tax. This amount will either be paid directly to the income tax Department by the Defendant, or may be paid by the defendant to the Plaintiff to enable the Plaintiff to onward pay the same to the income tax Department or the Defendant may prepare a demand draft favouring the income tax Départment and provide the same to the Plaintiff to enable the plaintiff to deposit the same with the Department.**"*
>
> [Emphasis Supplied]

3. Although, the Plaint filed was valued for the purposes of specific performance on Rs.3,00,001/- for which Court fee was paid. The plaint sets out that the decree sought by the Respondent/Plaintiff was for specific performance and for mandatory injunction for directions to the Petitioner/Defendant to make payment of Rs.8.44 crores and other reliefs including of damages.

3.1 It is apposite to extract the prayers in the Plaint for directions, which read as follows:

> *"a. **Pass a decree of specific performance and/or mandatory injunction directing the Defendant to pay a sum of Rs. 8,44,88,192 (Eight crores***

forty four lakhs eighty eight thousand one hundred and ninety two only) plus interest as income tax/differential gain tax against the transaction described in the present suit, either by paying the said sum (i) directly to the income tax department (rtgs/neft/account details of income tax department would be provided by the plaintiff at the time the direction is issued by the Court to enable the details to be current) or (ii) to the Plaintiff to enable the Plaintiff to onward forward the same to the income tax Department, or (iii) the Defendant may be directed to prepare a demand draft favoring the income tax department (details of person in whose name the DD to be prepared would be provided by the Plaintiff upon direction being issued by this Hon'ble Court so as to enable the details to be current) and provide the same to the Plaintiff to enable the plaintiff to deposit the same with the Department;

Alternatively, in case the department rejects the calculation of the Plaintiff and imposes a different demand, direct the Defendant be directed to satisfy such liability and demand as raised by the Income Tax Department upon the Plaintiff, on the same terms as above i.e. either by paying to the income tax department directly, or paying to the plaintiff to enable the plaintiff to onward pay to the Department, or by directing the Defendant to prepare a demand draft favouring the Department and handing over the same to the Plaintiff, and in any event direct the Defendant to satisfy, by any and all means, whatever liability and demand is raised by the Income Tax Deaprtment upon the Plaintiff in connection with the transaction described in the present suit i.e. in respect of the differential gain tax/income tax chargeable upon the Plaintiff in respect of sale of the suit property to the Defendant;

b. In the alternative to the above reliefs, ***pass a decree directing the Defendant to pay as damages to the Plaintiff, such sums of money, equivalent to the demand raised by the Income Tax Department upon the Plaintiff****, in respect of income tax chargeable upon the transaction as described in the present suit i.e. in respect of the income tax differential gains tax liability qua the Plaintiff in respect of sale of the suit property to the Defendant;*

c. Pass a decree declaring that the Defendant is in breach of its obligations under the contract with the Plaintiff constituted by the agreements to sell, sale deed, memorandum of understanding, indemnity bond etc. (as detailed above in the plaint) and declare that the defendant is liable to and also obligated to perform its obligations, to pay and to satisfy whatever liability and demand as is raised by the Income Tax Department upon the Plaintiff in connection with the transaction of sale of the suit property by the Plaintiff to the Defendant."

[Emphasis Supplied]

4. The perusal of the Plaint as well as the prayers reflect that the Suit that has been filed by the Respondent/Plaintiff is beyond the pecuniary jurisdiction of the learned Trial Court.

5. At this stage, learned Counsel for the Respondent/Plaintiff submits that he will be filing appropriate proceedings before the learned Trial Court in view of the objection *qua* pecuniary jurisdiction that has been taken.

6. Learned Counsel for the Petitioner submits that, in view of the aforegoing statement of the learned Counsel for the Respondent/Plaintiff, the present Petition would become infructuous. Learned Counsel for the Petitioner seeks and is granted permission to withdraw the present Petition.

7. The Petition is dismissed as withdrawn. The pending Application also stands closed.

8. The parties shall act based on the digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 28, 2025/ *ha*/**pa**

Click here to check corrigendum, if any