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

+ **CS(COMM) 504/2017**

SOMANI RESEARCH & EDUCATION FOUNDATION

.....Plaintiff

Through: Mr. Rishi Agrawala, Ms. Aarushi Tiku and Ms. Tarini Khurana, Advocates along with Ms. Sabina Nagpal, AR.
Mr. Anil Sharma and Mr. Arpit Sharma, Advocates.

versus

M/S NANDLAL MEMORIAL EDUCATIONAL SOCIETY

.....Defendant

Through: Mr. Alok Kumar Aggarwal, Ms. Anushruti, Mr. Raj Duggal, Advocates.

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER

29.01.2025

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I.A. 2375/2025

1. The instant application under Order XXIII Rule 3 CPC has been jointly filed by the Plaintiff and the Defendants for passing a decree on the basis of the settlement agreement dated 24.01.2025 entered into between the parties.
2. The instant suit is one for recovery of a sum of Rs.11,02,36,510/- along with interest @ 12% per annum.
3. During the pendency of the suit, the parties have entered into a settlement agreement dated 24.01.2025. In the application under Order



XXIII Rule 3 CPC, the settlement deed dated 24.01.2025 has been filed, which is reproduced as under:-

“THIS DEED OF SETTLEMENT (hereinafter referred to as "Deed") is made and executed on this 24th day of January, 2025 ("Effective Date") at New Delhi.

BY AND BETWEEN

Somani Research and Education Foundation having Rio at 8B, Sagar, 6, Tilak Marg , New Delhi 110001 (hereinafter for the sake of brevity collectively referred to as the "First Party/ Plaintiff" (which expression unless repugnant to the context hereunder shall mean and include its heirs, successors, executors, assignees, agents etc.)

AND

Shri Nandlal Memorial Educational Society having Rio 59/3 Rajpur Road, Dehradun, 248001 (hereinafter for the sake of brevity collectively referred to as the "Second Party/ Defendant" (which expression unless repugnant to the context hereunder shall mean and include its heirs, successors, executors, assignees, agents etc.)

The First Party and Second Party are hereinafter collectively referred to as the "Parties" and individually referred to as the "Party".

WHEREAS the present Settlement Deed emanates from agreement to Sell dated 20.12.2010 ("Agreement") whereby the Defendant had agreed to sell the Property No. 28/3, Knowledge Park-III, admeasuring 24792.607 sq.rots) ("Subject Property") to the Plaintiff for total sale consideration of Rs. 29.50 crores (Rupees Twenty Nine Crores Fifty Lakhs Only). Pursuant to the



execution of the said Agreement, an amount of Rs.11,02,36,510/-(Rupees Eleven Crores Two Lakhs Thirty Six Thousand Five Hundred Ten Only) was paid by the Plaintiff to the Defendant. The Plaintiff in turn was handed over the original documents of the Subject Property. However, certain disputes arose between the Parties with respect to performance of the Agreement and a Suit being CS(OS) No. 1310 of 2014 was filed by the Plaintiff against the Defendant before the Hon'ble Delhi High Court. The Suit was subsequently renumbered as CS(Comm) No.504 of 2017. On 01.03.2018, the parties jointly got the matter referred to mediation by the Hon'ble Delhi High Court Mediation Centre. Pursuant to the efforts made in the mediation the parties have now settled the dispute as per the terms stated in this Settlement Deed.

WHEREAS with the object of resolving the aforesaid dispute arising out of the Agreement the parties hereto as stated above and for effectuating a permanent solution to all the outstanding disputes once and for all have arrived at a settlement for ensuring peace and harmony after considering the uncertainty of Litigation its associated expenses and what was best in the interest of the parties and in expectation that the one-time settlement agreement would result in achieving amity and goodwill among the Parties without getting into the merits of the dispute by the parties. It is agreed by the Parties that the settlement arrived at would be final and binding upon all the Parties hereto and avoid any further disputes and or differences amongst the parties hereto.

WHEREAS both the Parties now are desirous of settling the matter in the terms as mutually agreed and accepted by and between the Parties. The Parties have further agreed to act upon the settlement in letter and spirit and on the terms as appearing hereinafter.



WHEREAS all the Parties are fully competent to enter this Deed of Settlement, which is agreed upon by all the Parties in writing and is hence valid and binding upon both parties and shall be irrevocable. The recitals shall form part of the settlement.

WHEREAS the Parties understand and agree that the Settlement Amount represents compensation for resolution of disputes relating to a capital asset transaction and not revenue or income of the Plaintiff.

NOW THIS INDENTURE WITNESSES AS FOLLOWS:

1. That the parties hereby agree that the recitals contained herein above form a part and parcel of the present deed of settlement and shall be binding upon the parties.

2. That the Parties in full and final settlement of all its disputes, claims and counter claims have agreed for the sum of Rs.17,00,00,000/- (Rupees Seventeen Crores Only) as the Settlement Amount ("Settlement Amount/Decretal Amount") to be paid by the Defendant to the Plaintiff within 60 days of this Agreement i.e., on or before 25th March, 2025 ("Due Date") as compensation. The parties have further agreed that tax liability (if any) with respect to the receipt of the settlement amount shall be borne exclusively by the receiver i.e. the first party.

3. That the Defendant is in process of securing funds through its Bank/ Financial Institution, through arrangements made by it for making payment of the Settlement Amount to the Plaintiff.

4. That in terms of the agreement arrived at with the Bank/ Financial Institution it is mandatory for the



Defendant to get a 'permission to mortgage from Greater Noida Industrial Development Authority ("GNIDA"). For the said purpose, the Defendant shall forthwith, make an Application to GNIDA for obtaining the permission as per norms. The Defendant shall (i) provide a copy of such Application along with acknowledgment of filing to the Plaintiff within 2 working days of filing; (ii) promptly inform the Plaintiff of any queries/requirements raised by GNIDA; and (iii) provide copies of all correspondence with GNIDA regarding such permission. The Application shall be made on basis of the certified copy of the Lease Deed dated 20th December, 2004 of Subject Property submitted before the Hon'ble Delhi High Court. The Plaintiff/ First party shall also sign the permission to mortgage in case so required by the Defendant (second party) /Bank/GNIDA.

5. The Parties further agree that in case the mortgage is created, the Bank and financial institution shall make the first payment to the First party of the entire settlement amount of Rs.17,00,00,000/- (Rupees Seventeen Crores) (Settlement Amount/Decretal Amount) in the account as mentioned in Clause 7 of this Settlement Agreement and provide the UTR number of the remittance made to the Plaintiff forthwith. The mortgage shall be created only subject to the said condition and further the copy of the order passed by the Hon'ble Court as also copy of the present deed shall be made part of the mortgage application.

6. In these circumstances it is most humbly prayed that the decree be passed in favor of the Plaintiff and against the Defendant for the sum of Rs. 17,00,00,000/- (Rupees Seventeen Crores Only). The said Settlement Amount is to be paid by the Defendant either by way of loan financed through its Bank/Financial Institution or directly by the Defendant from his bank account on or



before the Due Date i.e. 25.03.2025. The payment made by way of RTGS/ bank transfer on or before the Due Date in the account of the Plaintiff as mentioned in Clause 7 shall be sufficient discharge of obligations undertaken by the Defendant.

7. The Settlement Amount shall be payable to the Plaintiff by the Defendant in the below account:

Somani Research And Education Foundation

Bank : Canara Bank

CA Account No 1588201001668

IFSC Code : CNRB0001588

Branch : Delhi Overseas Main Branch

8. Upon receipt and confirmation of credit of the entire Settlement Amount on or before the Due Date by the Plaintiff in its bank account specified in Clause 7, the Plaintiff shall hand over the vacant and physical possession of the Property to the counsel for the plaintiff who shall hand over at the time RTGS payment UTR number is generated, the counsel for the plaintiff shall Hand over the same to the Defendant (second party herein)/ the Bank contemporaneously on the RTGS amount being paid and reflected in the account of the plaintiff. The plaintiff shall ensure that possession is handed free and clear and without any obstruction and impediment in any manner. The plaintiff assures that there is no third party in possession of the property and there is no impediment in the plaintiff handing over the property on receipt of the settlement amount. The plaintiff undertakes to keep the property free, vacant so that possession can be handed over in terms of the present deed. Such handover shall be recorded in a possession memorandum to be signed by both Parties with date and time of handover clearly mentioned therein.



9. In the event the entire Settlement Amount is received and credited in full in the specified bank account of the Plaintiff from the Defendant/ Bank/ Financial Institution or directly from Defendant's bank account on or before the Due Date, the Plaintiff shall have no further right/ title or interest in the Property and all permissions/ concessions licenses which had been granted to the Plaintiff regarding the subject property institution to be run thereon shall automatically stand cancelled/ nullified and all relevant authorities including GNIDA on being approached shall process the documents for cancellation of such permissions, etc.

10. The Defendant shall remain bound to pay the Settlement Amount to the Plaintiff in terms of this Deed of Settlement within the timeframe as agreed hereinabove.

11. Notwithstanding anything stated herein, in the event the Defendant fails to make the payment of Rs.17,0000,000/- (Rupees Seventeen Crores) Settlement Amount/Decretal Amount) by 25.03.2025 i.e. the Due Date, for any reason whatsoever, including but not limited to non-issuance of requisite permissions from GNIDA or any other authority, inability to secure a loan from its Bank/Financial Institution etc., the Plaintiff will be at liberty to file an appropriate Application/Petition before the Hon'ble High Court of New Delhi for getting the Subject Property sold by way of Auction by the Hon'ble High Court . The Defendant shall raise no objection whatsoever to such Application being filed by the Plaintiff and shall provide all assistance as may be required by the Plaintiff for filing such application and conducting the auction proceedings as per Hon'ble High Court directions.

12. In such an event, the Plaintiff shall be entitled to



receive the sum of Rs.17,00,00,000/(Rupees Seventeen Crores) along with (i) an interest at the rate of 12% per annum from the Effective date till actual payment is made to the Plaintiff by the Hon'ble Court from the sale of the Subject Property pursuant to completion of the auction proceedings and (ii) a further sum of Rs.8,00,00,000/- (Rupees Eight Crores) as default compensation on account of default of the Defendant and (iii) all costs, charges and expenses including legal fees incurred by the Plaintiff in conducting such auction proceedings. The balance amount, if any received from the sale of the subject property shall be handed over to the Defendant by the Hon'ble Court only after satisfaction of the above amounts in full.

13. The Plaintiff shall be entitled at its sole discretion to bid for the Subject Property as any other bidder in the auction conducted by the Hon'ble Court, and shall be entitled to set off the Settlement Amount including default compensation and interest due from the auction price if it is the successful bidder.

14. In case the total amount realised from the auction of the subject property is less than the Amount as mentioned in Clause 12 of this Settlement Deed, the Defendant shall remain bound and liable to make the payment of balance amount to the Plaintiff within 3 months from the date of auction.

15. The Plaintiff has assured the Defendant that the Property documents have been genuinely lost for which NCR/ complaint was also recorded on 14.10.2015. Since the Plaintiff has stated that the original documents have been lost by the agent of the Plaintiff, the Plaintiff has deposited in court the certified copy of the Lease deed. The parties agree that the certified copies filed in the court would be treated as the original document.



16. That since, the original title deeds of the property have been misplaced/ lost by the Plaintiff, the right, title and interest of the Defendant is not affected by the loss of the documents of the property and the Defendant shall be entitled to sell/mortgage the property on basis of the Certified Copy of the Lease Deed dated 20th December, 2004, subject to Plaintiff receiving from the Defendant in full the Settlement Amount on or before the Due Date. The parties have jointly signed an application for release of the certified copy to the plaintiff by the Hon'ble Court. The said certified copy deposited by the plaintiff in the Hon'ble Delhi High Court bearing no 66/2015 shall be released to the counsel for the plaintiff then further to the defendant/ financial institution at the time of making payment of the settlement amount by generation of UTR number of RTGS. The said certified copy shall be treated as original for all purposes.

a. The certified copy which shall be handed over to the counsels for the plaintiff shall be used only for the purposes of handing over to the defendant at the time of making of the payment on or before the Due Date and for no other purpose without the leave of the Hon'ble Court.

17. That the Plaintiff has further assured that the documents were not used for entering into hypothecation, mortgage transaction, sale, etc., by the Plaintiff. The Plaintiff shall remain responsible for any loss that the Defendant or the bank may suffer on account of the usage of the original title deeds of the property.

18. That the parties have agreed that the Suit filed by the Plaintiff and the Counter Claim filed by the Defendant pending before the Hon'ble High Court of New Delhi being CS(Comm) No. 504 of 2017 be



disposed off in terms of this Settlement Deed leaving the parties to bear their own costs.

19. That the amount agreed to be paid by the Defendant to the Plaintiff is in full and final settlement to the claims of the Plaintiff and there shall be no claims inter se between the parties or to any of the representatives or assignees etc., with respect to the Subject property.

20. That the parties have agreed that on receipt and credit of the entire Settlement Amount by the Plaintiff from the Defendant on or before the Due Date, there shall be no civil or criminal liability of the Plaintiff and/or Defendant and both the Plaintiff and Defendant their assignees/ representatives etc. shall withdraw any and all complaints, suits counter claims which may have been filed by the parties against each other based on Agreement To Sell dated 20.12.2010 and the Subject Property. Each party shall file necessary withdrawal applications within 30 days of such payment of the Settlement Amount.

21. The terms of settlement have been drawn on the basis of the mutual agreement between the parties and assurance of the Defendant to make payment to the Plaintiff on or before the Due Date.

22. That the parties to the present settlement agreement confirm that the terms and conditions contained herein shall be binding upon the parties and they have ascribed their signatures on the present agreement without any pressure or coercion from either of the parties.

23. The Parties have arrived at this settlement of their own free will to preserve amity and honour and to put an end to the uncereemonious litigation/ arbitration



between the parties. Further, that the parties hereto undertake to remain bound by the terms of this Deed for recording the terms of compromise arrived at between the parties.

24. That the present Deed of Settlement shall not be subject to change or modification except by execution of another instrument in writing duly executed with the mutual consent of the parties.”

4. A perusal of the settlement deed indicates that the Plaintiff is prepared to accept a sum of Rs.17 crores as a full and final settlement towards all the claims arising under the suit. The said amount is to be paid on or before 25.03.2025.
5. Mrs. Sabina Nagpal, who is the Authorized Representative on behalf of the Plaintiff, which is a society under the Societies Registration Act, is present in Court today. She has also produced a copy of the resolution passed by the Society, authorizing her to appear in Court for the purpose of recording the statement. Ms. Sabina Nagpal has been identified by the learned Counsel for the Plaintiff.
6. Mr. Sachin Garg, i.e., Defendant No.2 herein, who also represents Defendant No.1, is also present in Court. He has been identified by the learned Counsel for the Defendant.
7. The authorized representatives of the Plaintiff and Defendant No.1 state that the settlement agreement has been arrived at between the parties without any coercion or undue influence and the parties are well aware of the terms of the settlement agreement and agree to abide by the settlement agreement.
8. It is made clear that the amount shall be paid on or before the date



fixed.

9. Let the decree sheet be drawn in terms of the settlement deed which has been entered into between the parties. The parties are bound by the settlement agreement.

10. The suit is disposed of along with pending application(s), if any.

11. The Registry is directed to release the certified copy of the Lease Deed No.66/2015 which has been deposited by the Plaintiff before the Court in the suit so that the parties can fulfil their obligations under the settlement agreement.

12. Since the matter has been settled, keeping in mind the spirit of Section 89 CPC and in terms of Section 16 of the Court Fees Act, let the entire court fee be refunded to the Plaintiff.

13. The next date already fixed in the matter, i.e., 25.03.2025, stands cancelled.

14. The application is disposed of.

SUBRAMONIUM PRASAD, J

JANUARY 29, 2025

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