

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

+ CS (OS) 2844/2012

Date of Decision: 29.11.2013

**HOUSING DEVELOPMENT FINANCE CORPORATION LTD.
..... PLAINTIFF**

Through: Mr. Neeraj Kumar, Advocate.

Versus

DEEPAK KUMAR SHARMA & ANR. DEFENDANT

Through: None.

**CORAM:
HON'BLE MR. JUSTICE M.L. MEHTA**

M.L. MEHTA, J. (Oral)

1. The matter is placed before the court by the learned Joint Registrar recording that no-one has been appearing for the defendants No. 1 and 2 despite their having been served of the summons in the prescribed form under Order 37 CPC on 21.11.2012 and 22.07.2013 respectively. It is also recorded that not only that no-one has been appearing on behalf of defendants No. 1 and 2, but, even the appearance i.e. mandatorily required to be filed as per the provisions contained in Order 37 Rule 2 (3) CPC, is not filed. As per the

provisions contained in Rule 2 Sub-Rule 3 of Order 37 CPC, the allegations contained in the plaint are to be deemed to be admitted on the part of the defendants and the plaintiff entitled to a decree for a sum as mentioned in the summons.

2. Briefly stated, the facts are that the plaintiff is a company engaged in business of granting loans, specially loans in the category of housing. It is the case of the plaintiff that the defendants No. 1 and 2 jointly approached it in their capacity as borrower and builder for availing housing loan by defendant No. 1 for the purchase of a flat to be constructed by defendant No. 2. The loan amounting to Rs. 36 lakhs was sanctioned by the plaintiff in favour of the defendant No. 1 with the consent and acknowledgment of defendant No. 2. In pursuance thereto, the plaintiff disbursed Rs. 34 lakhs on behalf of the defendant No. 1 to defendant No. 2 at the request of the former. The defendant No. 1 executed documents such as promissory note of Rs. 36 lakhs in favour of the plaintiff and as per the loan agreement, the equated monthly installments (EMI) were to be paid by defendant No. 1 to the plaintiff along with the interest as agreed. Further, as per the

Tripartite Agreement executed between the plaintiff and the defendants, the defendant No. 1 agreed to secure with the plaintiff, the flat by way of mortgage, and which was agreed to and confirmed by the defendant No. 2. Defendant No. 2 also undertook not to create any third party rights or security in the said flat, without the prior consent of the plaintiff. It was specifically agreed to that in the event of cancellation of allotment of the flat by the defendant No. 2, the refund of the amounts paid by defendant No. 1 were to be paid by the defendant No. 2 directly to the plaintiff. It is averred that therefore, as per the terms of the Tripartite Agreement, the defendant No. 2 is under an obligation to return the payments/deposits by defendant No. 1 to the plaintiff. It is averred that the defendant No. 1 has failed and defaulted in remitting the outstanding PEMIs of Rs. 1,87,002/- as also the principal outstanding amount of about Rs. 34,00,000/-, the additional interest amounting to Rs. 9,822/- and the incidental charges of Rs. 1,345/-, thereby totaling to Rs. 35,98,169/-.

3. The plaintiff has prayed for a decree of this amount against the defendant No.1 along with the pendente lite and future interest @ 18%

per annum from the date of filing of the suit till its realization, and in the alternative, in terms of the Tripartite Agreement, a decree against defendant No. 2 of this amount along with the pendente lite and future interest @18 % per annum from the date of filing of the suit till its realization.

4. As is noted above, the defendants having failed to enter appearance, the allegations as briefly narrated above, are deemed to be admitted on the part of the defendants. It stands established that defendant No. 1 has defaulted in making payment of outstanding EMIs as per the Loan Agreement. Thus, the plaintiff is entitled to a decree of Rs. 35,98,169/- (Rupees Thirty Five Lakhs Ninety Eight Thousand One Hundred Sixty Nine only) as claimed in the plaint. However, since the relief that is claimed against the defendant No. 2 is in the alternative, and there being nothing on record to suggest that the allotment of the flat in favour of the defendant No. 1 stood cancelled by defendant No. 2, it could not be said that the plaintiff was entitled to seek any return of the payments/deposits of defendant No. 1 from the defendant No. 2. The obligation of the defendant No. 2 in this regard

arises only in the event of the allotment in favour of defendant No. 1 having cancelled by defendant No. 2. That being not the case of the plaintiff on record, the plaintiff would be entitled to a decree of aforesaid amount against the defendant No. 1 only. Consequently, a decree of Rs. 35,98,169/- (Rupees Thirty Five Lakhs Ninety Eight Thousand One Hundred Sixty Nine only) along with the pendent lite and future interest @ 18% per annum from the date of filing of suit till its realization is passed in favour of the plaintiff and against the defendant No. 1. Suit stands disposed of. Decree be drawn accordingly.

M.L. MEHTA, J.

NOVEMBER 29, 2013

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