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

+ **CS(OS) 1287/2012**

% ***Judgment dated 30.09.2014***

AMANJEET SINGH Plaintiff
Through Mr.Sunil Dalal, Adv.

versus

YASHPAL SINGH CHAUHAN & ANR Defendants
Through

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S. SISTANI, J (ORAL)

1. Plaintiff has filed the present suit for recovery of Rs 1,00,000,00 (One Crore Only) along with pendente lite and future interest.
2. Summons in the suit were issued on 07.05.2012. Counsel for the defendants entered appearance on 08.11.2012. In the order dated 05.03.2013, it was noticed that despite time being granted no written statement was filed by defendants no. 1 and 2 and the matter was put up for evidence of the plaintiff.
3. Since none appeared on behalf of the defendants in the matter, vide order dated 02.09.2014, right of the defendants to cross examine PW1 was closed and the defendants were proceeded ex parte.
4. Plaintiff, Mr Amanjeet Singh, has filed his affidavit by way of evidence and the same has been exhibited as **Ex.PW1/A**. As per the evidence of the plaintiff, present suit has been filed against the defendants for recovery of monies arising out of the non-performance of the Agreement to Sell dated 06.03.2010 executed between the plaintiff and the defendant no.1 and the Memorandum of Understanding dated 22.03.2010.

5. PW1 has deposed that the Agreement to Sell dated 06.03.2010 and the Memorandum of Understanding dated 22.03.2010 were executed between the plaintiff and defendant no. 1 and witnessed by Sh. H. S. Yadav and Sh. Harwinder Singh and bears signature of the plaintiff, defendant no. 1 and the above mentioned witnesses. The plaintiff has identified the signatures of the defendant no. 1 and the witnesses as they had signed in plaintiff's presence. Copy of the Agreement to sell dated 06.03.2010 has been exhibited as **Ex. PW1/1** and the copy of the Memorandum of Understanding dated 22.03.2013 executed between plaintiff and the defendant no. 1 has been exhibited as **Ex. PW1/2**.
6. PW1 has further deposed that the Mr Ashok Kumar (defendant no. 2) stood as a surety of the defendant no. 1 and agreed to indemnify the plaintiff in case defendant no. 1 did not adhere to the promise made vide Memorandum of Understanding dated 22.03.2010.
7. PW1 has next deposed that two persons namely Sh. Hari Singh Yadav and Sh. Harvinder Singh, in the month of February or early March 2010, represented themselves as property brokers working in the area of Karol Bagh and approached plaintiff with an offer of sale of property bearing no. 65/4, situated at New Rohtak Road, Karol Bagh, New Delhi-110005 which had been purchased by one of their client, Sh. Yashpal Singh Chauhan (the defendant no. 1) from one Mohd. Yahya and the property is in possession of the defendant no. 1
8. Mr Amanjeet Singh, PW1 has further deposed that plaintiff was induced by the defendants and the two brokers to purchase the said property for a lesser price and on enquiring about the title of the defendant no.1, the defendant no.1 apprised the plaintiff that he has entered into an agreement to sell with the erstwhile owner of the property and also had the authority to sell the same.

9. PW1 has also deposed that the defendant no.1 further assured the plaintiff that he will get the sale deed executed by the erstwhile owner on account of the clause in the agreement to sell, whereby he could get the sale deed executed in the name of his nominee or assignee and handed over a photocopy of agreement to sell dated 19.01.2010 executed by Mohd. Yahya S/o Sheikh Mohd. Yahya in favour of the defendant no.1 in respect of the said property. Copy of the Agreement to sell dated 19.01.2010 executed between the erstwhile owner and defendant no. 1 has been exhibited as **Ex. PW1/3**.
10. PW1 has also deposed that the defendant no.1 agreed to sell the property to plaintiff for a sum of Rs. 5 Crores and plaintiff paid a sum of Rs. 51, 000, 00/- to defendant no.1 as earnest money. The earnest money was paid by the plaintiff in the following manner: -
- i) Cheque No. 499747, dated 06.03.2010, amount of Rs. 5, 50,000/-drawn on Allahabad Bank, Karol Bagh, New Delhi;
 - ii) Cheque No. 352293, dated 06.03.2010, amount of Rs. 5,50,000/-drawn on Karnataka Bank Ltd., Karol Bagh, New Delhi;
 - iii) Rs. 40, 000,00/- in cash.
11. PW1 has further deposed that as per the agreement to sell dated 06.03.2010, the defendant No.1 promised to get the sale deed executed from the owner of the property i.e. Mohd. Yahya on or before 15.12.2010 and further assured the plaintiff that the possession of the entire ground floor was with the defendant no.1 and the possession of the entire building/property would be handed over to plaintiff after the sale is complete.

12. PW1 has also deposed that the defendant no. 1 handed over the physical possession of entire ground floor except the two rooms on the ground floor to the plaintiff in the presence of the Sh. Hari Singh Yadav, Harvinder Singh and Ashok Kumar (defendant no. 2) on 06.04.2010 and after obtaining the possession of the entire ground floor, plaintiff had put locks and deputed private security guards at the said property. Possession letter was also delivered to the plaintiff on 06.04.2010 in the presence of witnesses Sh Hari Singh Yadav and Harvinder Singh. Copy of the possession letter dated 06.04.2010 executed by the defendant no. 1 and signed by defendant no. 1 and two witnesses has been exhibited as **Ex. PW1/4.**
13. PW1 has also deposed that the defendants and the brokers assured the plaintiff that the title of the property would be cleared at the time of execution of the sale deed and the sale deed would be executed by the registered owner of the property and there would be no legal impediment in execution of the sale deed.
14. Mr Amanjeet Singh, PW1 has further deposed that after the execution of agreement to sell dated 06.03.2010, plaintiff came to know that Mohd. Yahya is not the only registered owner of the property but the property stands in the name of his other two brothers in addition to him.
15. PW1 has also deposed that the defendant No.1 informed the plaintiff that he had filed a suit for specific performance against Mohd. Yahya and once a decree is passed in his favour, he will get the sale deed executed in plaintiff's favour. However, the said suit was unconditionally withdrawn by the defendant.
16. PW1 has next deposed that the defendant no.1 assured plaintiff that he is negotiating with all the three brothers, who were the owners of the property and further assured the plaintiff that Mohd. Yahya has taken the General

Power of attorney and relinquishment deed from his two other brothers and would provide the same to the plaintiff.

17. PW1 has also deposed that the defendant no.1 promised to handover the peaceful and permanent possession of the two rooms on the ground floor to plaintiff and a memorandum of understanding was executed by the defendant no. 1 with the plaintiff on 22.03.2010 wherein the defendant no. 1 promised that if he fails to provide the General Power of Attorney & Relinquishment deed in favour of Mohd. Yahya to the plaintiff and fails to provide the possession to the plaintiff, defendant no. 1 will be liable to pay a sum of Rs 1 crore to the plaintiff and agreed that after payment of Rs 1 crore to plaintiff, the agreement between the parties shall stand cancelled. Further defendant no. 1 executed an undertaking to that effect. Copy of the undertaking dated 21.10.2010, duly notarized, has been exhibited as **Ex. PW1/5**.
18. PW1 has further deposed that the defendant no. 2, as surety of the defendant No.1, issued a cheque on 22.03.2010 in favour of plaintiff for a sum of Rs. 61 lacs vide cheque No. 650395 dt. 18.09.2010 drawn on HDFC Bank Ltd and the defendant no. 1 promised to complete the transaction within six months and in case of failure, plaintiff would recover one crore rupees from the defendants. However all the promises made by the Defendants turned out to be false and the cheque handed by the defendant no.2 for a sum of Rs. 61 lacs was dishonoured on presentation for want of sufficient funds. Copy of the cheque return memo has been exhibited as **Ex. PW1/7** respectively. Copy of cheque No. 650395 dt. 18.09.2010 drawn on HDFC Bank Ltd for Rs 61 lacs has been exhibited as **Ex. PW1/6**.
19. PW1 has next deposed that the defendant no.1 failed to adhere to his promises and could neither get the sale deed registered in plaintiff's favour nor return double of the earnest advance money paid to him by plaintiff.

Further, the possession of the Ground floor of the property was also taken over by the owners of the property from plaintiff on 17.02.2012.

20. Mr Amanjeet Singh, PW1 has also deposed that sufficient time was provided to the defendants to fulfill their promise under the memorandum of understanding and several requests were made to the defendants to honor the memorandum of understanding and for payment of Rs. one crore which was to be paid by the defendants but the defendants and the brokers kept on delaying the matter and did not give any heed to plaintiff's requests and started threatening the plaintiff.
21. PW1 has further deposed that the plaintiff received a threatening call on his mobile from mobile no. 9810087146 by one Mr Surinder Chauhan, who claimed to be an Advocate and threatened to implicate plaintiff in false criminal cases, if plaintiff insists on the payment from the defendants.
22. PW1 has also deposed that the defendants and their accomplices have defrauded and cheated the plaintiff and taken a sum of Rs 51,00,000 (Fifty one lacs) from the plaintiff on the basis of forged and fabricated documents and caused financial loss to the plaintiff.
23. PW1 has next deposed that a complaint was made to the police officials of P.S. D.B.G Road, New Delhi on 20.10.2010 which was duly received in the police station and DD No. 62B was registered on 20.10.2010. Copy of the complaint dated 20.12.2010 and another complaint dated 30.12.2010 to the DCP Daryaganj, have been exhibited as **Ex. PW1/8** and **Ex. PW1/9** respectively. Plaintiff thus prays for a decree.
24. I have heard counsel for the plaintiff and carefully perused the plaint along with the documents (Originals produced before Joint Registrar, which were seen and returned) which have been placed on record and affidavit by way of evidence. Since the evidence of plaintiff has gone unchallenged and un rebutted, plaintiff has been able to prove that the plaintiff was induced to

enter into an Agreement to Sell (**Ex.PW1/1**) dated 06.03.2010 with the defendant no. 1 and plaintiff made a payment of Rs 51 lacs as earnest money towards the sale consideration. Further plaintiff has been able to prove that the defendant no.1 failed to get the sale deed executed from the owner of the property in favour of the plaintiff and refund the amount of earnest money paid by the plaintiff.

25. Having regard to the evidence on record I am of the view that defendant no.1 after getting Memorandum of Understanding (**Ex.PW1/2**) dated 22.03.2010 executed with the plaintiff and sufficient time being granted failed to honor the same. Further defendant no. 1 failed to refund the double of the earnest money paid by the plaintiff despite giving an undertaking (**Ex.PW1/5**) dated 21.10.2010 to pay a sum of Rs 1 crore by 25.10.2010. According to the plaintiff, defendant no. 2 stood as a surety to the defendant no. 1 and indemnify plaintiff incase defendant no.1 did not honour the memorandum of understanding dated 22.03.2010 and issued the cheque (**Ex.PW1/6**) dated 18.09.2010 for 61 lacs. However the cheque issued by the defendant no. 2 was dishonoured and returned vide return memo (**Ex.PW1/7**) for want of sufficient funds which clearly shows that the intention of defendant no. 1 was dishonest and he hatched a conspiracy to extract money from the plaintiff with no intentions to refund the earnest money received by him from the plaintiff thereby causing financial loss to the plaintiff.
26. In view of the above, the present suit is decreed in favour of the plaintiff and against the defendants in the sum of Rs 1,00,000,00 with pendent lite and future interest at 8% . Let the decree sheet be drawn up accordingly.

G.S.SISTANI, J

SEPTEMBER 30, 2014 ssb