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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **CS(OS) 2978/2012**

Date of Decision: 12.08.2015

IN THE MATTER OF  
JOGINDER KHURANA

.... Plaintiff

Through : Mr. Rohit Sharma, Advocate

versus

RAJINDER BHATIA

....Defendant

Through : None

**CORAM**  
**HON'BLE MS.JUSTICE HIMA KOHLI**

**HIMA KOHLI, J. (Oral)**

1. The plaintiff has filed the present summary suit under Order XXXVII of the Code of Civil Procedure, praying inter alia that a decree for recovery of a sum of ₹1,50,75,000/- be passed against the defendant along with *pendente lite* and future interest @ 18% p.a.

2. Before considering the submission made by learned counsel for the plaintiff, it is considered necessary to recapitulate the brief facts of the case as averred in the plaint. The plaintiff has averred that the defendant had contacted him at his Rohini address in Delhi, expressing his willingness to sell four plots of land bearing Nos.63,64, 66 and 67, situated at VGD Nagar, Bhuneshwar Nagar, Velachery, Chennai. As

the plaintiff had evinced interest in purchasing the said plots of land, the parties had entered into an agreement whereunder, they had agreed that the defendant will sell the subject plots to the plaintiff for a total sale consideration of ₹1,50,00,000/- . The Receipt/Agreement to Sell was executed by the defendant on 19.4.2011 wherein, he had confirmed having received the earnest money of ₹1,00,00,000/- (₹30,00,000/- through RTGS in February 2011, ₹10,00,000/- through RTGS on 19.4.2011 and cash of ₹60,00,00,000/- on 19.4.2011). The defendant had also agreed that before the sale deed is executed, he shall get all necessary clearances from the Government authorities and he shall also free the subject plots from all encumbrances. It was recorded in the Receipt/Agreement to Sell that the balance sale consideration shall be paid by the plaintiff on or before 30.6.2011.

3. It is averred in the plaint that as per the understanding with the defendant, the plaintiff had written to him on 24.6.2011, informing him that the balance sale consideration is ready and the sale deed in respect of the subject plots be executed in his favour on or before the agreed date, i.e., 30.6.2011. However, on 27.6.2011, the defendant had visited the plaintiff at his residence in Delhi and admitted to the fact that he was not the owner of the subject plots and therefore, the deal could not be materialized. The defendant had then proceeded to

issue a cheque dated 29.9.2011, drawn on Punjab National Bank, Anna Nagar, Chennai in favour of the plaintiff for a sum of ₹1,50,00,000/- towards the earnest money for a sum of ₹1,00,00,000/- received by him from the plaintiff at the time of executing the Agreement for Sale along with a sum of ₹50,00,000/-, as penalty.

4. When the plaintiff presented the aforesaid cheque issued by the defendant to his bankers, namely, Vijaya Bank, Rohini Branch, the same was returned vide memo dated 29.9.2011, stating *inter alia* that the drawer had insufficient funds in his account. Aggrieved by the dishonour of the cheque, the plaintiff had to serve a legal notice dated 19.10.2011 on the defendant calling upon him to pay a sum of ₹1,50,00,000/-, being the value of the dishonoured cheque within 15 days, failing which, he would be constrained to file a criminal complaint under Section 138 of the Negotiable Instruments Act. The said notice was dispatched to the defendant by registered AD post and courier and duly served through courier, on 25.10.2011. However, the defendant did not reply to the said notice.

5. Learned counsel for the plaintiff submits that having failed to receive any response from the defendant, his client was compelled to file a complaint case against him under Section 138 of the Negotiable

Instruments Act, in the court of the learned MM, Rohini, registered as CC No.15194/01/11, on which summons were issued to the defendant vide order dated 3.12.2011. He submits that after service, the defendant had appeared on a couple of dates whereafter, he had abruptly stopped appearing and non-bailable warrants had to be issued against him, which are pending service.

6. The plaintiff has averred that before filing the present suit, he had served a legal notice dated 10.4.2011 on the defendant intimating him about the pendency of the criminal complaint and calling upon him to pay the value of the dishonoured cheque, i.e, a sum of ₹1,50,00,000/- along with interest @ 12% p.a. The aforesaid legal notice was dispatched to the defendant by registered AD post and courier. The registered AD card shows proof of receipt of notice by the defendant on 16.4.2012. The tracking report of the notice despatched to the defendant through courier, has also been filed by the plaintiff. Based on the aforesaid averments, counsel for the plaintiff states that his client is entitled to recover a sum of ₹1,50,00,000/- from the defendant along with interest thereon calculated @ 18% p.a., till realisation.

7. A perusal of the file reveals that summons were issued in the suit on 28.9.2012, returnable on 21.1.2013. The defendant was served with the summons through ordinary process on 12.12.2012. The prescribed period of 10 days for filing the memo of appearance, if reckoned from 13.12.2012, would have expired on 23.12.2012. Since 23.12.2012 was the first holiday after the High Court had closed for the winter vacations, the defendant ought to have filed the memo of appearance on the court reopening on 2.1.2013. However, he failed to take necessary steps in that regard. Nor was a memo of appearance filed even thereafter. On 13.9.2013, learned counsel for the plaintiff had stated before the Joint Registrar that he had received an advance copy of an application, described as a leave to defend application, but no such application was found to be on the record, nor had the defendant appeared directly or through counsel to offer for any explanation. The position remains the same till date. The leave to defend application purportedly filed by the defendant, is not on record. Counsel for the plaintiff states that while the index of the advance copy of the leave to defend application furnished to him mentions that the same is running into 10 pages, only four pages were served on him. In any case, the defendant has not taken any steps to file the memo of appearance, nor has any application been filed for

seeking condonation of delay. Resultantly, summons of judgment could not be issued in the suit and therefore, the question of filing the leave to defend application or taking it on record, does not arise.

8. Counsel for the plaintiff states that he has filed the certified copies of the documents relied upon by him under index dated 31.8.2012. The originals thereof are stated to have been filed before the learned MM, Rohini Courts, in CC No.15194/01/11 that is pending adjudication. The certified copies of the documents filed by the plaintiff include a copy of the Agreement to Sell dated 3.12.2011 executed by the defendant in respect of the four plots in question wherein, he had acknowledged having received a sum of ₹30,00,000/- from the plaintiff in February 2011 through RTGS, another sum of ₹10,00,000/- through RTGS on 19.4.2011 and a cash amount of ₹60,00,000/-, on 19.4.2011. The statement of account maintained by the plaintiff with Vijaya Bank, Rohini Branch shows two RTGS entries and mentions the defendant as the beneficiary for ₹30,00,000/- on 20.2.2011 and of ₹10,00,000/- on 19.4.2011. Plaintiff has filed a photocopy of the cheque dated 29.9.2011 issued by the defendant in his favour for a sum of ₹1,50,00,000/- drawn on Punjab National Bank, Anna Nagar, Chennai along with the return memo issued by the plaintiff's bankers, Vijaya Bank, Rohini Branch indicating that the

captioned cheque had been dishonoured on account of insufficient funds. Apart from the aforesaid documents, the plaintiff has filed copies of the legal notices dated 19.10.2011 and 10.4.2012 despatched to the defendant, duly accompanied by the proof of delivery on him. Copy of the complaint dated 15.10.2011 filed by the plaintiff against the defendant with the SHO, PS Prashant Vihar and copies of the proceedings before the learned MM, Rohini Courts arising out of CC No.15194/01/11 have been filed with the list of documents.

9. After being served with the summons in the suit in the prescribed format, the defendant has failed to enter appearance or file his memo of appearance. As a result, the averments made in plaint have remained uncontested and are deemed to be true and correct. In view of the averments made in the plaint, the documents placed on record and the submissions made by the learned counsel for the plaintiff, the present suit is decreed in favour of the plaintiff and against the defendant for a sum of ₹1,50,00,000/-. As for the interest claimed by the plaintiff on the cheque amount, it has been noticed that in the legal notice dated 10.4.2012, issued by the plaintiff, he had demanded interest @ 12% p.a. which is found to be reasonable. It is ordered that if the defendant pays the decretal amount to the plaintiff within three months from today, then the interest payable on the

principal amount will be maintained @ 12% p.a., failing which the interest payable shall be raised to 18% per annum, till realization. The plaintiff is also awarded costs of the suit.

10. Decree sheet be drawn accordingly.

11. The suit is disposed of.

**HIMA KOHLI, J**

**AUGUST 12, 2015**

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