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

Date of decision: 20.04.2010

+ CS(OS) 719/2009

SHRI HIRA PRASAD MISHRA

..... Plaintiff

Through : Mr. K.R. Gupta and Ms. Kiran Dharam, Advocates.

versus

M/S LOGICAL ESTATE PVT. LTD & ANR

..... Defendants

Through : Mr. Amitabh Chaturvedi and Mr. Jeevesh Nagrath, Advocates.

**CORAM:**

**MR. JUSTICE S. RAVINDRA BHAT**

1. Whether the Reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to Reporter or not? Yes.
3. Whether the judgment should be reported in the Digest? Yes.

**S.RAVINDRA BHAT, J. (OPEN COURT)**

**I.A. No. 5349/2009**

1. Heard counsel for the parties.
2. This Court had, by an order dated 24.04.2009 directed as follows:

“XXXXXX XXXXXX XXXXXX

*Notice returnable on May 25, 2009.*

*In the meanwhile, defendants shall not create any third party interest in the suit property.*

XXXXXX XXXXXX XXXXXX”

3. Briefly, the plaintiff seeks a decree for a sum of Rs.15,03,28,084/- against the defendants.

The claim is premised upon an agreement said to have been arrived at pursuant to a meeting dated 02.01.2006 with the defendants and their sister companies. The suit sets-out the land that was agreed to be purchased with the assistance of the plaintiff and also the terms of purchase, in

para 4. The plaintiff submits that in furtherance of the agreement, the properties which had been agreed upon, further to the understanding were in fact purchased and registered on various dates, and discloses the same in a chart set-out in para 6. It is urged that the plaintiff paid the sum of Rs.7,14,30,000/- as consideration to the land owners, which was treated to be paid on behalf of the defendants in the agreement originally entered into. It is urged that the plaintiff was entitled to a share of profits (tax-free), to the tune of Rs.7,45,19,596/-. On these averments, the plaintiff claims that he is entitled to Rs.14,59,49,596/-. The plaintiff claims that since the defendants did not comply with the terms of the understanding, he is entitled to 18% interest with effect from 09.02.2009, when a legal notice was issued. On the strength of these averments, the Court, by an *ex-parte* order (as is apparent, without recording any reasons), directed the defendants not to create third-party rights.

4. The defendants, in their written statement, deny the transaction, as alleged, and urge that the money paid for the acquisition of the property was, in fact given by them. The defendants point-out that the plaintiff had filed two previous suits, CS(OS) 2356/2008 and CS(OS) 260/2008, where the amounts were claimed. It is further urged that in those suits, the plaintiff clearly admitted that the amounts paid as consideration were given by the present defendants.

5. The plaintiff relies upon certain documents, such as his account statements issued by the Oriental Bank of Commerce, IndusInd Bank and the State Bank of India, which evidence that certain amounts existed at the relevant dates and were utilized for the acquisition of the lands. The plaintiff, therefore, submits that the *ex-parte* interim injunction granted earlier should be confirmed.

6. During the pendency of the proceeding on a previous date of hearing, the Court had directed the plaintiff to file copies of his income returns. In response, the plaintiff filed an

affidavit, which *inter alia* states as follows:

“XXXXXX

XXXXXX

XXXXXX”

9. That the agreements between the seven landowners and the plaintiff, the receipts of payments made to the said land owners and the certified copies of the sale deeds executed by the said landowners are at pages 14 to 293 of the plaintiff’s list dated 13.04.2009 in part III. The plaintiff’s five bank accounts from which the payments through cheques were made to the said landowners are at pages 294 to 326 of the said list in part III.

10. That during the assessment years 2003-2004, 2004-2005 and 2005-2006 (financial years 2002-2003, 2003-2004 and 2004-0200), the deponent’s income was below taxable limit and therefore he did not file any income tax return for the said assessment years. Obviously, no balance sheets and other financial statements were required to be filed for the said years with the Income Tax Department and, as such, not prepared.

XXXXXX

XXXXXX

XXXXXX”

7. Apart from reiterating the submissions made in the written statement, the defendants further rely upon the copies of the account statements filed by them along with their list of documents. It is submitted that these clearly show that the amounts said to have been utilized by the plaintiff in fact were given over by the defendants. The defendants also rely upon certificate issued by the Bank of India, which is at page 63 of the list of documents.

8. The Court has considered the submissions of the parties and the materials on record, carefully. It is evident that the suit is premised on a simple money claim.

9. The plaintiff has not shown that he is entitled to the security of the property or proceeds arising on account of the profit (after sales), all of which would constitute his prior claim or that he has any lien over the same. In these circumstances, the plaintiff is under a duty to *prima facie* prove that he is entitled to the amounts. No doubt, the plaintiff has placed on record copies of bank statement which disclose that at the relevant time, he had substantial amounts. At the same time, the defendants’ documents disclose that the said amount had been credited from their

accounts. The purport of the bank's certificate – copy of which is part of the record, is also the same. Coupled with these is the circumstance that the plaintiff admits in the affidavit filed pursuant to this Court's direction that he did not possess adequate income even to file Tax Returns for the years 2003-04 and 2004-05, as his income was below the taxable limit.

10. The Court is mindful of the requirement in Order 39 Rule 1 that while making an *ex-parte ad interim* order, the brief reasons for so doing are to be recorded. This is to indicate the rationale for the order, and assure that there was due application of mind. Further, Courts are to be alive to the obligation cast on them that their powers are used appropriately, and interim orders made only in deserving cases, or else the anxiety to do justice would in fact result in oppression. Here, no reasons for the order were recorded, and the interim order has subsisted for over a year.

11. In the circumstances of this case, the Court is satisfied that there are not special circumstance or equities warranting the kind of interim order sought for, which has subsisted all this while. Accordingly, the interim order made on 24.04.2009 is hereby vacated. I.A. No. 5349/2009 is, therefore, dismissed.

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12. The parties may file additional documents, if any, within four weeks. Thereafter they shall exchange affidavits, clearly admitting each others' documents, within eight weeks.

13. List before the Joint Registrar on 21.07.2010, for scrutiny. List before the Court on 24.09.2010, for framing issues.

**S. RAVINDRA BHAT  
(JUDGE)**

**APRIL 20, 2010  
'ajk'**