IN THE COURT OF ADDITIONAL DISTRICT JUDGE-03
EAST DISTRICT, KARKARDOOMA COURTS: DELHI.

Presided by :SH. RAJESH KUMAR

CS No.161/2021

SHRI DEVENDRA NAGAR,
S/O SHRI CHATTAR NAGAR,
R/O B-1200, G.T. COLONY,
MAYUR VIHAR, PHASE-III,
DELHI-110096 **...PLAINTIFF**

Versus

SHRI VARUN CHANDELA,
S/O SHRI NEPAL CHANDELA,
R/O WZ-83, KHAYALA VILLAGE,
TILAK NAGAR, WEST,
DELHI-110018 **...DEFENDANT**

Date of Institution	**:**	**16.03.2021**
Date of Reserving Order	**:**	**30.08.2022**
Date of judgment	**:**	**07.09.2022**

J U D G M E N T

SUIT FOR SPECIFIC PERFORMANCE WITH POSSESSION AND INJUNCTION OR IN ALTERNATIVE FOR RECOVERY OF MONIES

1. Brief facts of the case are that the plaintiff has filed the suit for Specific Performance with Possession and Injunction or in Alternative for recovery of monies against the defendant. It is averred that in the month March, 2019, defendant approached the plaintiff, representing himself to be the owner of property no. M-65, Area 241.5 sq yards i.e. 201.91 sq mtrs, situated at Internal Abadi, Village Bishnpura, Sector-58, Noida District, Gautam Budh Nagar, Utter Pradesh (hereinafter referred as "Suit property") to sell the same to the plaintiff. Plaintiff in consultation with his elder brother Shri Mukesh Nagar and with an intent to purchase the suit property from the defendant entered into an agreement to sell. On 23.03.2019, the parties to the present suit executed an agreement to sell with the respect to the suit property for a total consideration of Rs.71,00,000/- in presence of two witnesses. Plaintiff through his elder brother Shri Mukesh Nagar paid an amount of Rs.10,00,000/- out of which Rs.50,000/- were paid by the plaintiff to the defendant on 22.03.2019 in cash, Rs.4,50,000/- by way of cheque no. 697159 dated 22.03.2019 drawn on Indian Overseas Bank, Phase-III Mayur Vihar Delhi and Rs.5,00,000/- were paid in cash on 23.03.2019 at the time of execution of agreement to Sell dated 23.03.2019.

As defendant was facing financial hardship, he requested the plaintiff to make further part payment with respect to the above mentioned agreement to sell. The plaintiff believing the defendant paid further amount to the defendant and as appended his signatures on the back page of Rs.100 Stamp Paper from time to time at the residence of the plaintiff. On 18.05.2019, at the request of defendant, plaintiff had paid a sum of Rs.41,00,00/- by cash. On 01.08.2019, at the request of defendant, plaintiff further paid a sum of Rs.5,00,000/- by way of two cheques. On 03.08.2019, plaintiff had further paid Rs. 1,00,000/- which was duly withdrawn by the plaintiff through his elder brother and handed over to the defendant. On 24.08.2019, at the request of defendant, plaintiff had paid a sum of Rs. 4,00,000/- in cash. Thus the defendant had received total amount of Rs.60,00,000/- out of the total sale consideration amount of Rs.71,00,000/-.

2. It is further averred that as per clause of 9 of the Agreement to Sell dated 23.03.2019 in case of breach of any clause of the said agreement by the defendant, the plaintiff has the right to get the sale deed registered of suit property through court of law. Defendant even after receiving an amount of Rs.60,00,000/- i.e. 85 % of the total saleable amount of Rs.71,00,000/- from the plaintiff, the defendant has failed till now to come forth and execute sale deed of the suit property in favour of plaintiff. It is further averred that plaintiff has time and again apprised the defendant that the plaintiff is always ready and willing to perform his part of contract but due to the failure on the part of the defendant to perform his part, the plaintiff was left with no other option except to issue a notice dated

22.02.2021 to the defendant thereby calling upon the defendant to come forth and execute the sale deed of the suit property, however, defendant did not reply the same. Thus, the plaintiff has prayed for recovery of Rs.60,00,000/- from the plaintiff. Hence, the present suit is filed.

3. Summons were issued to the defendant and defendant was served by way of publication in the news paper "Rashtriya Sahara", however, none has appeared on behalf of defendant, therefore, defendant was proceeded ex-parte vide order dated 26.02.2022. Matter was fixed for PE.

4. At the outset, it is pertinent to mention that plaintiff has filed the present suit for Specific Performance with possession and injunction or In alternative for recovery of money. However, vide order dated 17.04.2021, Ld. counsel for plaintiff has submitted that "*he wishes to confine the present suit only and only for the relief of recovery of money. Accordingly, on he submission of plaintiff's counsel, the relief of specific performance and the relief to restrain the defendant from creating third party interest stand dropped. The present suit is now only and only for the relief of recovery of money as sought for in the plaint*".

EX-PARTE PLAINTIFF'S EVIDENCE.

5. Plaintiff examined only himself as PW-1. He deposed in the affidavit reiterating the plaint averments and relied on

1. Ex. PW1/2- original plaint.

2. Ex. PW1/3 (OSR)- copy of Original agreement to sell dated 23.02.2019.

3. Ex. PW1/4 (OSR)- copy of original pass book of Indian Overseas bank.

4. Ex. PW1/5- CD containing video graph of the parties to the present suit at the residence of plaintiff.

5. Mark-B-copy of notice dated 22.02.2021. (however, in the affidavit the same is exhibited as Ex. PW1/6, hence the same is de-exhibited).

6. Ex. PW1/7 (OSR)- copy of original pass book of Canara Bank in the joint name of plaintiff and his elder brother.

7. Mark- A copy of Aadhar card of defendant.

PE was closed vide order dated 23.03.2022.

EX-PARTE FINAL ARGUMENTS

6. Heard the ld. Counsel for plaintiff and perused the record. It has been argued on behalf of the plaintiff that defendant has defrauded the plaintiff. Defendant has cancelled the deal with the plaintiff to execute the agreement to sell of suit property. He further submitted that plaintiff has informed the defendant towards part payment of the sale consideration amount and the defendant also assured that he will execute the sale deed as per agreement to sell dated 23.02.2019 which is Ex. PW1/B. Defendant did not comply with the terms and conditions of said agreement to sell. He further argued that a decree of recovery of money only be passed in favour of the plaintiff.

FINDINGS

7. PW-1 in his testimony had reiterated the plaint averments and further proved Ex. PW1/3 the agreement to sell dated 23.02.2019, copy of original pass book of Indian Overseas Bank & Canara Bank which are Ex. PW1/4 (OSR) & Ex. PW1/7 and legal notice dated 22.02.2021 which is at Mark-B. These documents proved that agreement to sell was executed between the plaintiff and Dependant and defendant had received payment of Rs.60,00,000/- from the plaintiff. The averments of the plaintiff and testimony of plaintiff goes unrebutted since despite service, the defendant did not turn up to defend the case and he was proceeded ex-parte.

8. However, the point that arises for consideration is *"whether the plaintiff is entitled for the recovery of the suit amount from the defendant alongwith pendente lite and future interest @ 18 % p.a."*?

9. To answer this point, the evidence is perused. The aforesaid documents relied upon by the plaintiff proves that defendant had executed the agreement to sell and he had received part payment of Rs.60,00,000/- as sale consideration of the suit property.

11. In view of the above discussion, this court is of the view that the plaintiff has been able to prove that the agreement to sell Ex. PW1/3 which was executed between the plaintiff and defendant. It is also proved that plaintiff has paid Rs.60,00,000/- as advance/ part payment to the defendant. These facts goes unrebutted since the defendant did not turn up and was proceeded ex-parte. The testimony of PW-1 is corroborated by the

documentary evidence and also the same remains unrebutted. There is no reason to disbelieve the testimony of PW-1. Thus, plaintiff is entitled to an amount of Rs. 60,00,000/-.

12. As far as interest is concerned, 18 % per annum is a bit excessive. More so, nothing has been placed on record to suggest that the agreed rate of interest was @ 18 % per annum. Keeping in mind the prevailing rate of interests and nature of transaction, it would be proper and reasonable to grant interest @ 8% p.a. in view of Section 34 CPC.

RELIEF

13. In view of above discussion, plaintiff has been able to prove his case. Hence, the following order:

<u>ORDER</u> :

The suit of the plaintiff is decreed with costs. The defendant is directed to pay the plaintiff a sum of Rs.60,00,000/- (Rupees Sixty Lakhs only) along with interest pendente lite and future interest at the rate of 8 % per annum from the date of filing of the present suit till realization of the amount. Decree sheet be drawn accordingly.

File be consigned to Record Room.

RAJESH KUMAR

Digitally signed by RAJESH KUMAR
Date: 2022.09.07 15:59:26 +0100

Typed to the dictation directly, corrected and pronounced in open court on 07.09.2022

(Rajesh Kumar)
Additional District Judge-03,
EAST/KKD Courts, Delhi.