

25.02.2023

Present : Ms. Rashimi Sighla, ld counsel for plaintiff with plaintiff.

None for defendant.

File is perused.

Submissions have been heard on the application moved on behalf of defendant under Order 7 Rule 11 CPC r/w Section 151 CPC.

The plaintiff has filed the present suit for recovery of Rs.28,50,000/- alongwith interest with averments that he had entered into an agreement to sell with defendant on 16.11.2015 for flat bearing no. 31 B, Block and Pocket U&V, situated at Shalimar Bagh, Delhi-88 for total consideration amount of Rs.77,51,000/-. It is averred that the defendant had received Rs. 7,00,000/- as earnest money from the plaintiff at the time of signing the said agreement to sell and the balance amount was to be received by the defendant at the time of execution/registration of sale deed/documents. It is averred that the defendant had also received an amount of Rs. 50,000/- in cash as part payment and Rs. 6,00,000/- as further part payment and defendant as well as his son had put their signatures on the backside of stamp papers for agreement to sell thereby acknowledging the receipt of the said amount. It is averred that on 21.04.02016 the defendant again asked the plaintiff to pay Rs.15,00,000/- more as a part payment against the sale of suit property and accordingly plaintiff

paid Rs.3,00,000/- by way of cheque bearing no. 789928 dated 20.04.2016 and Rs.12,00,000/- in cash. It is averred that it was specifically mentioned that till 21.04.2016 the total amount received by the defendant comes to Rs.28,50,000/- and it was agreed between the parties that the final payment will be paid on or before 20.06.2016 and the defendant and his son put their respective signatures on the backside of agreement to sell thereby acknowledging the receiving of amount of Rs.28,50,000/- and extending the time for further payment upto 20.06.2016. It is averred that the plaintiff received a legal notice dated 13.06.2016 from counsel of defendant whereby defendant fraudulently denied receiving of further payment and extension of time and canceled the agreement to sell and forfeited the amount received by defendant illegally and unlawfully and agreed to refund only Rs. 3,00,000/- to the plaintiff. It is averred that the notice was duly replied by the plaintiff through counsel and defendant was asked to give the money back as the contract was canceled by him but the defendant pay no heed to the request of the plaintiff.

Now, the defendant is seeking rejection of the plaint by moving the present application with the averments that the claim of the plaintiff is based upon forged and fabricated documents and the writings at the back of agreement dated 16.11.2015 termed as bayana does not bear his hand writing and that the language is not clear as to when and who delivered such a huge cash. It is claimed that the document relied upon by the plaintiff is not written by him and does not amount to a binding contract hence the document is without consideration and suit based on such documents are liable to be dismissed outrightly. It

is further submitted that the alleged agreement/bayana which is alleged to have been written by him is in fact in the hand of plaintiff and does not reflect the name and signature of the plaintiff which in any manner cannot be termed as bilateral agreement. It is claimed that the alleged bayana has not notarized hence the documents is not an agreement and admissible in law as evidence and that the plaintiff has not filed any document showing the said huge amount in cash in his ITR regarding advancement of payment. It is claimed that the plaintiff suit is not maintainable as plaintiff is not a genuine buyer and knowingly and intentionally entered the said agreement to sell of suit property to some other genuine person to get premium and when he failed to get the genuine buyer due to down tread of property market or due to any other reason he threatened the defendant of dire consequences to return the earnest money.

In the reply to the application the contentions raised by the defendant is denied and it is claimed that the writing at the back of agreement are of defendant and the suit is well maintainable.

The plaint can be rejected only under the grounds disclosed in Rule 11 of Order 7 CPC, without providing parties to opportunity to prove their respective cases. The contentions raised in the application of the defendant are matter of trial and only during the trial it can be ascertained whether the writing at the back of agreement are of defendant or not. The defendant failed to show any provision of law which requires attestation of agreement to sell by a notary, during the course of submissions as such the said contention is liable to be rejected outrightly as is

without any merit.

Considering the contentions of the defendant raised by the present application, I am of the opinion that no case is made out to admit the application for rejection of the plaint. As such application is dismissed.

Put up for admission/denial of documents,
settlement of issues on **13.04.2023**.

(SUNIL CHAUDHARY)
ADJ-04, North West,
Rohini Courts, Delhi
25.02.2023