

**IN THE COURT OF Sh. MANISH SHARMA, ADJ - 01 (WEST),
TIS HAZARI COURTS, DELHI**

CS No. 611226/16

S. Harjeet Singh Kumar

..... Plaintiff

VERSUS

S. Avtar Singh

..... Defendant

ORDER :

1. Vide this order, I shall decide application U/o XII Rule 6 CPC r/w Section 151 CPC filed by the plaintiff.
2. Instant Suit is for recovery of Rs. 48,14,400/-.
3. Relevant facts, as set out in the plaint, to decide the application are as under:

Defendant represented himself to be the owner of the built up second floor (without roof rights) of the property bearing no. WZ-520, Shiv Nagar, New Delhi, measuring 200 sq. yards, in the portion of Plot No. E-83, part of Khasra No. 799 and 800, situated at revenue estate of village, Tihar, New Delhi (in short the Said Property). The defendant agreed to sell the said property to the plaintiff for a total sale consideration of Rs. 1,50,00,000/- (One Crore Fifty Lakhs). The parties entered into an agreement to

sell dated 23.11.2012. The plaintiff had paid a sum of Rs. 10 Lakh in cash, as earnest money, towards the sale consideration of the said property, and the balance consideration amount were to be paid by 23.03.2013. Thereafter, plaintiff paid a sum of Rs. 25,40,000 partly vide RTGS 19.12.2012, and partly vide cash on 05.12.2012 and 13.02.2013. In all, the plaintiff paid a sum of Rs. 35,40,000/- to the defendant for purchasing the said property. The plaintiff then requested the defendant to receive the balance amount of the sale consideration, but the defendant cancelled the agreement to sell on 22.03.2013, and undertook to refund the consideration amount of Rs. 35,40,000/- to the plaintiff. It further came to the knowledge of the plaintiff that the defendant sold the suit property to some other person and played a fraud upon him. The defendant thus induced the plaintiff to pay a sum of Rs. 35,40,000/- which caused wrongful gain to himself and wrongful loss to the plaintiff.

The plaintiff, vide the instant Suit, has *interalia* sought for recovery of the amount of Rs. 35,40,000/- along with the interest from the defendant.

4. The legal heirs of the defendant, in their written statement, admitted receiving of Rs. 35,40,000/-. However, they averred that the defendant had returned a sum of Rs. 30,00,000/- to the plaintiff, and merely a sum of Rs. 5,40,000/- is remaining to be paid to him. They further averred that the plaintiff wrongly

demanded Rs. 10 Lakhs therefore, the defendant did not pay Rs. 5,40,000/- to him.

5. Plaintiff accordingly moved an application U/o XII Rule 6 CPC for passing a decree for a sum of Rs. 5,40,000/- in favour of the plaintiff as the LR's of the defendant admitted to pay the aforesaid amount.

6. I have heard the Id. Counsels for the parties and perused the record.

7. The LR's of the defendant in their written statement has unequivocally admitted that a sum of Rs. 5,40,000/- is remaining to be paid to the plaintiff while submitting that other amount had already been paid.

The defendant submitted in their written statement as under:

"It is submitted that the plaintiff has no locus standi to file the present suit as the defendant has returned Rs. 30 Lacs (Rupees Thirty Lakhs only) to the plaintiff in five installments of Rs. 6 Lacs each in the presence of wife of Late Avtar Singh as the later refused to purchase the said property on account of recession in the property as the plaintiff deems fit not to purchase the said property. Due to which the defendant Avtar Singh returned part amount of Rs. 30 Lacs out of Rs. 35.40 Lacs and the final documentation was to be done after the entire payment of Rs. 5.40 Lacs was to be made to the plaintiff by the defendant but on account of adamant nature of the plaintiff who after accepting the amount of Rs. 30 Lacs started demanding interest on the entire amount and he started demanding Rs. 10 Lacs towards interest in addition to the balance payment of Rs.

5.40 Lacs as the defendant own payment was struck up on account of non payment of the balance payment by the plaintiff the defendant showed his helpless in paying the interest on account of recession in the property which lead to the filing of the present case."

Considering the unequivocally admission made by the LRs of the defendant in their written statement admitting that a sum of Rs. 5.40 Lacs is remaining unpaid to the plaintiff, the application filed by the plaintiff under Order XII Rule 6 CPC is allowed. Defendant is liable to pay a sum of Rs. 5,40,000/- to the plaintiff. Decree sheet be prepared accordingly.

(Manish Sharma)

ADJ-01/West/ 01.11.2021