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

\+ CS(OS) 555/2022 & I.A. 30947/2024 I.A. 33937/2024

JOGENDER SINGH RUHELLA & ANR .....Plaintiffs

Through: Mr. J. K. Jain, Advocate

versus

RAMA CHAUDHARY & ORS. .....Defendants

Through: Mr. Ravin Rao, Mr. Pallav Gupta, Mr. Akshit Sawal, Mr. Ayan Sharma, Mr. Yashasvi Yadav, Advocates

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

O R D E R

% **07.01.2025**

I.A. 30947/2024 (application on behalf of plaintiffs under Order 15A CPC)

1. This is an application filed by the plaintiffs under Order 15A CPC seeking a direction to the defendants to deposit the income of Rs. 1,10,000/- being derived by the defendants from three (3) flats admittedly standing in the name of the spouse of the plaintiffs.

2. The plaintiffs contend that out of three (3) flats, two flats are 3 BHK and one flat is 2 BHK. The plaintiffs rely upon lease agreements placed on record, which show that rental for a 3 BHK flat in the neighborhood area is around Rs. 36,000/- per month and rental for a 2 BHK flat is around Rs. 23,000/- per month.

3. In reply, the non-applicant/defendants state that it is admitted that the three (3) flats are being used and occupied by the defendants and their family members. It is stated that it is correct that the recorded owner of the

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said three (3) flats are the spouse of the plaintiffs. It is stated that the defendants are however unwilling to handover the peaceful vacant possession of the three (3) flats to the plaintiffs and/or the spouse i.e., recorded owner. It is stated that defendants are entitled to holdover the possession of the said three (3) flats as the plaintiffs have been unable to furnish NOC from their brother Dr. Virender Singh Rohella as per the terms of the Memorandum of Understanding executed between the parties.

3.1 The defendants contend that the monthly rental for a 3 BHK flat is around Rs. 25,000/- per month and 2 BHK flat is around Rs. 15,000 to 18,000 per month. It is stated that however the defendants do not have the financial wherewithal to pay the said amount.

4. This Court has considered the submission of the learned counsels for parties and perused the record.

5. The defendants admit that between 15.05.2019 to 28.10.2019, plaintiffs herein sold seven (7) Plots by seven registered sale deeds to the defendants for a total consideration of Rs. 4,60,20,000/- including Rs. 1,89,200/- as Tax Deducted at Source ('TDS'). The details of the seven (7) plots are set out in paragraph 1 of the plaint.

6. The defendants admit that they have the use and possession of the aforesaid seven (7) Plots.

7. Though, the seven (7) sale deeds recorded the consideration of Rs. 4,60,20,000/-, the defendants admit that no part of the sale consideration was not paid to the plaintiffs at the time of the execution of these seven (7) sale deeds. The defendants admit that the entire amount remains outstanding.

8. In this background, the defendants admit that parties entered into a memorandum of understanding ('MOU') dated 14.12.2021 for facilitating

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the payment of the sale consideration. In this MOU, the defendants agreed to pay part consideration in cash and remaining consideration was to be paid by executing sale deeds for flats constructed in the Property bearing no. 2154.

9. In furtherance of the MOU towards part-payment of the outstanding sale consideration to the plaintiffs, defendants by way of sale deeds transferred two flats of 3-BHK in property no. 2154 and 1 flat of 2-BHK in Property no. 2174. The sale deeds were executed in the favour of the plaintiffs' nominee i.e., spouse. The present application is concerned with mesne profits of these three (3) flats. The sale price of the said three (3) flats was a total of Rs. 1,25,00,000/-.

10. As per the plaintiffs, after accounting for sale price of aforesaid three (3) flats, a sum of Rs. 2,95,20,000/- is still due and payable by the defendants towards the outstanding sale consideration towards the sale consideration of seven (7) plots. It is stated that the cheques issued by defendants for the repayment of said sale price have been dishonored on presentation.

11. The defendants admit the MOU dated 14.12.2021 and their liability to pay the sale consideration of Rs. 4,60,20,000/-. The defendants admit that the sale deeds for the subject three (3) flats have been executed in favour of the respective spouse of the plaintiffs as their nominee towards re-payment of the sale consideration. The sale deeds record that the possession of the flats have been handed over to the recorded owner i.e., the spouse of the plaintiffs. Illustratively reference may be had to the sale deed dated 06.05.2022 qua flat bearing private no. UG-2 wherein clause 3 of the sale deed records as under:

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"That the VENDORS has handed over the vacant physical possession of the above said property to the VENDEES and **the VENDEES has taken over the vacant physical possession of the said property from the VENDORS.** That after the execution of this Sale Deed, the VENDEES are fully authorized and entitled to hold, use, enjoy, sell, let out, mortgage, gift or can do whatsoever with the said property as the VENDEES like. The VENDEES can execute all sorts of documents relating to the said property and can receive advance/earnest money or full sale consideration amount and can utilize the same in any manner as the VENDEES like."

(Emphasis Supplied)

12. In its written statement, defendants have relied and referred to the sale deeds executed in respect of the subject three (3) flats to contend that indeed part sale consideration of Rs. 1,25,00,000/- stands paid to the plaintiffs. The defendants on this basis have sought the dismissal of the plaint. The defendant cannot resile from the admissions made in the written statement. The relevant portion of the written statement reads as under:

"22. **That it is an admitted fact that defendants have executed and registered two sale deeds of two flats in favour of the plaintiffs wives for total consideration of Rs.1,25,00,000/- as is clear from paras 7 and 9 of the plaint** and Rs.40,00,000/- which the plaintiffs admit in para 11 and 12 thus making total amount of Rs. 1,65,00,000/- and after adjusting this amount the plaintiffs have filed suit for recovery of Rs.2,95,00,000 /-.

…

26. **That plaintiffs herein have themselves mentioned in para 7 and 9 of the plaint that the plaintiffs have adjusted Rs.1,25,00,000/- for three flats.** Similarly, in their sale deeds whatever cheques are mentioned which have not been given to defendants as plaintiffs had no funds and simply

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adjusted from the total sale consideration of seven sale deeds. The plaintiffs herein cannot be permitted approbate and reprobate at the sam breadth. One side they are relying upon both the MoUs dated 15.3.2021 and 14.12.2021 and taking benefit out of the sad MoUs.

…

Para 9 is wrong and denied except that the defendants have sold three flats to plaintiffs as mentioned in para under reply. It is vaguely alleged that defendants have sold 5 flats to their near relations in fraudulent manner to avoid payment of remaining balance sale consideration to plaintiffs. It is reiterated that admittedly three flats are sold to plaintiffs. Rest of the para is denied. The preceding paras may be read as reply to this para also."

(Emphasis Supplied)

13. In these facts, the stand of the defendants that it will neither handover the peaceful and vacant possession of the three (3) flats to the plaintiffs nor pay mesne profits for continuing to occupy the three (3) flats is without any legal basis. The defendants on the basis of their written statement itself are liable to handover possession of the said flats to the plaintiffs.

14. The defendants during arguments had sought to allege that since actual monies were not transferred by the plaintiffs to the defendants for the aforesaid subject three (3) flats, the sale deeds are invalid. The said argument of the defendants is contrary to its written statement wherein the defendants relies upon the genuineness and validity of the three sale deeds for the subject flats as noted in the previous paragraphs. So also, the defendants in the written statement had sought to defend the legality validity of the seven (7) sale deeds executed in their favour by the plaintiffs, without receiving sale consideration. The legal submission made in the written statement paragraph 27 of its preliminary submissions, reads as under:

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> "……Even otherwise if whole of the price is not paid the transaction of sale will take effect as the plaintiffs agree and they had intention to pass on the ownership and title to the property pass on to the purchaser even if the sale price or part thereof is not paid."

15. Thus, on the defendants own showing, the sale deeds qua the three (3) flats are valid and binding.

16. The defendants during arguments admit that they do not have funds to pay the mesne profits. The defendants during hearing were called upon to handover the possession of the subject three (3) flats to the plaintiffs to mitigate the losses of the plaintiffs. The defendants have during the hearing declined to handover the possession.

17. The defendants on the other hand admittedly are enjoying the exclusive possession of the seven (7) plots sold by the plaintiffs to the defendants, for which as well the defendants have not paid the sale consideration to the plaintiffs. The stand of the defendants in continuing with the possession of the subject three (3) flats, where the title stands transferred to the nominee of the plaintiffs are therefore not only illegal but also inequitable qua the plaintiffs.

18. In view of the admission of the defendants as regard the prevalent rent of the flats in the neighbourhood, defendants are hereby directed to pay

i. Sum of Rs. 25,000/- per month for flat bearing private no. 202 at property no. 2154, 2nd floor out of Khasra no. 32 min., situated in the area of village Khampur, Delhi State abadi known as Guru Arjun Nagar, New Delhi-110008, with effect from the date of the filing of the suit and during the pendency of the suit.

ii. Sum of Rs. 25,000/- per month for flat bearing private no. 102 at

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property no. 2154, 2nd floor out of Khasra no. 32 min., situated in the area of village Khampur, Delhi State abadi known as Guru Arjun Nagar, New Delhi-110008. with effect from the date of the filing of the suit and during the pendency of the suit.

iii. Sum of Rs. 18,000/- per month for flat bearing private no. UG-2, 2174, out of Khasra no. 30 min., situated in the area of village Khampur, Delhi State abadi known as Guru Arjun Nagar, New Delhi-110008 with effect from the date of the filing of the suit and during the pendency of the suit.

19. The arrears will be paid within eight (8) weeks in two equal installments.

20. The current mesne profits for the month of February 2025 will be paid on or before 07th of February and so on for the following calendar months.

21. With the aforesaid directions, the application stands allowed.

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22. Learned counsel for the plaintiff states that Joint Document Schedule has been circulated to the defendant since February, 2024 and defendants have not circulated the Joint Document Schedule again.

23. Learned counsel for the defendants seeks last opportunity by way of one (1) week to circulate the Joint Document Schedule to the plaintiffs and finalize the same.

24. It is made clear that in case the defendants fail to circulate the Joint Document Schedule within one week, the learned Joint Registrar shall proceed with recording admission/denial of documents on the basis of the Joint Document Schedule filed by the plaintiffs.

25. List before the learned Joint Registrar (J) on 05.02.2025.

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26. List before Court on 28.04.2025.

MANMEET PRITAM SINGH ARORA, J

JANUARY 7, 2025/hp/AKT

Click here to check corrigendum, if any

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