(2018) 01 DEL CK 0110
Delhi High Court
Case No: 2442 of 2011

M.L.GUPTA APPELLANT

Vs

AERENS GOLD SOUK INTERNATIONAL LIMITED AND OTHERS RESPONDENT

Date of Decision: Jan. 3, 2018

Acts Referred:

- Code of Civil Procedure, 1908, Order 12Rule 6

Hon'ble Judges: Sanjeev Sachdeva

Bench: Single Bench

Advocate: Manish Vashisht, Sameer Vashisht, Kaadambari Puri, Ratul Sen, Aditi Sharma

Final Decision: Allowed

Judgement

1. The plaintiff has filed the subject Suit seeking recovery of Rs.15,68,63,508/- (principal amount of Rs.14,27,81,000/- + Rs.1,40,82,508/-, as interest @ 18% as on the date of the filing of the Suit), besides pendente lite and future interest at the rate of 18%.

2. The case of the plaintiff is that the plaintiff and defendants 3 to 6 had earlier entered into a transaction with regard to purchase of a property, on account of which friendly relations developed between the plaintiff and defendant Nos.3 to 6. Because of the friendly relations, the plaintiff advanced several amounts as loan, to the Companies of defendants 3 to 6, i.e. defendant Nos.1 & 2. It is also contended that between plaintiff and defendants, there were several transactions for sale and purchase of properties in the name of the wife of the plaintiff, which transactions were concluded. The loan given to defendants 1 and 2, at the asking of defendants 3 to 6, was a friendly loan repayable on demand.

3. It is contended that defendants repaid a part of the loan leaving the balance of Rs.14,27,81,000/-. Since the defendants failed to repay the loan, plaintiff demanded the same. However, on defendants refusing to repay the loan and contending that there was an Agreement to Sell between the parties for purchase of Spaces in the projects being developed by defendant No.1 and as such, the amount was not repayable, the plaintiff filed the present Suit.

4. The defendants have opposed the Suit contending that the plaintiff had not advanced any loan to defendants, however, had entered into an Agreement to Sell dated 25.08.2009 for purchase of Spaces bearing No.GF-06 and FF-08 in the Commercial Complex named as Gold Souk, Jaipur situated at plot No.2, Jagatpura Road, Near Jawahar Circle, Jaipur, Rajasthan, for a total sale consideration of Rs.33,71,85,000/-, for which an Earnest Money Deposit of Rs.3,37,18,500/- was paid by the plaintiff. The remaining payments were towards part sale consideration of the said Units bearing No. GF-06 and FF-08. It is contended that apart from the said two Spaces, the plaintiff agreed to purchase other Units/Spaces being TF-2 to TF-14, GF-2, GF-3, GF-4 and FF-9 in the Project at Gurgaon, Haryana, in the name of his wife. It is contended that initially, it was agreed that on payment of the entire sale consideration of all the Spaces agreed to be purchased at Jaipur and Gurgaon, the sale documents would be executed, however, since payments for the Spaces agreed to be purchased at Gurgaon were made fully and finally, Transfer Documents in respect of the Spaces purchased in Gurgaon Project were executed in favour of the wife of the Plaintiff.

5. It may be pertinent to note that there is some dispute, inter alia, with regard to the Assured Return/lease rentals claimed by the wife of the plaintiff from the defendants for the Gurgaon properties, which is the subject-matter of independent arbitration proceedings. These proceedings are without prejudice to the said arbitration proceedings pending between the Defendants and the wife of the Plaintiff.

6. Pending the present Suit, plaintiff has filed the subject application under Order XII Rule 6, inter alia, contending that it is admitted by the defendants that the sum of Rs.14,27,81,000/- has been received by defendants 1 & 2; defendant No.1 having received Rs.11,77,81,000/- and defendant No.2 having received Rs.5,00,00,000/-. Defendant No.1 has re-paid a sum of Rs.2,50,00,000/- leaving a balance of Rs.9,27,81,000/-, as principal amount due and defendant No.2 has not refunded any amount. It is disputed that any Agreement to Sell dated 25.08.2009 was executed between the plaintiff and defendant No.1. The said Agreement is stated to be forged and fabricated.

7. It is contended that even if assuming that Agreement to Sell dated 25.08.2009 had

been executed, the same stipulates that in case the Vendee, i.e. the plaintiff fails to pay the balance sale consideration within 15 days from the date of the execution of the Agreement, the defendant No.1 would have full right to forfeit the said part-payments/Earnest Money. It is thus contended that even if assuming defendant No.1 was entitled to forfeit an amount of Rs.3,37,18,500/-, the said defendants are admittedly liable to refund Rs.10,19,32,002/-.

8. The defendants, in reply to the application, have relied upon the Written Statement and reiterated their stand as noticed above.

9. For a decree to be passed under Order XII Rule 6 of the Code of Civil Procedure (CPC), what is implicit is that there should be an unequivocal admission on the part of the defendants. The defendants have admitted the contention of the plaintiff; that defendant No.1 had received Rs.11,77,81,000/- and defendant No.2 has received a sum of Rs.5,00,00,000/-. It is not denied that defendant No.1 has re-paid a sum of Rs.2,50,00,000/-. Thus, there is admission on the part of the defendant that defendants 1 & 2 have received a total sum of Rs.14,27,81,000/-. The only contention of the defendants is that the said amount was paid as part-consideration for purchase of Units/Spaces bearing No.GF-06 and FF-08 in Gold Souk, under Agreement to Sell dated 25.08.2009.

10. The contention of the defendants is that the total sale consideration agreed to was Rs.33,71,85,000/- and Rs. 3,37,18,500/- was received as part payment/earnest money.

11. The stand of the plaintiff is that the Agreement to Sell dated 25.08.2009 is a forged and fabricated document. This is a disputed question of fact on which parties would be required to lead evidence. Only after a trial the genuineness or otherwise of the said Agreement to Sell can be established. However, for the present application and in these circumstances, assuming the Agreement to Sell dated 25.08.2009 to be a valid document, what is borne out is that admittedly defendant No.1 has received the said sum of Rs.9,27,81,000/- and defendant No.2 has received the sum of Rs.5,00,00,000/-, though allegedly towards part sale consideration. The Agreement to Sell dated 25.08.2009 is only between plaintiff and defendant No.1. Defendant No. 2 is not a party to the said agreement to Sell.

12. Clause (2) of the said Agreement to Sell reads as under-

> "2. That out of the Total Sale Consideration of Rs.33,71,85,000/- (Rupees Thirty Three Crores Seventy One Lacs Eighty Five Thousand Only), the Vendor has received a sum of Rs.3,37,18,500/- (Rupees Three Crores Thirty Seven Lacs Eighteen Thousand Five Hundred Only) towards the part-payment/earnest

money from the Vendee, through cheque(s), as per details herein below:-

Cheque No.	Amount(Rs.)	Dated	Drawn On
389603	3,37,18,500/-	25.08.2009	HDFC Bank Ltd., Greater Kailash-I, New Delhi-110048.
TOTAL	3,37,18,500/-	(Rupees Three Crores Thirty Seven Lacs Eighteen Thousand Five Hundred Only)	

the receipt of which, the Vendor hereby admits and acknowledges the same and the balance sale consideration of Rs.30,34,66,500/- (Rupees Thirty Crores Thirty Four Lacs Sixty Six Thousand Five Hundred Only) shall be paid by the Vendee to the Vendor within 15(fifteen) days from the date of execution of this Agreement to Sell. In case the Vendee fails to pay the abovesaid balance sale consideration to the Vendor within 15(fifteen) days from the date of execution of this Agreement to Sell, i.e. on or before 11.09.2009, then in that event, the Vendor has full right to forfeit the abvoesaid part payment/earnest money."

13. Reading of Clause (2) of the said Agreement shows that the plaintiff is alleged to have paid a sum of Rs. 3,37,18,500/- towards part-payment/Earnest Money for purchase of two Units bearing No. GF-06 and FF-08. The said clause stipulates that in case balance sale consideration of Rs. 30,34,66,500/- is not made within 15 days of

the execution of the said Agreement, the Vendor has full right to forfeit the above-referred part-payments/Earnest Money. What is borne out from the Agreement is that in case on default of the plaintiff, the defendant No.1 would have a right to forfeit only a sum of Rs.3,37,18,500/-, out of the entire payment made. Plaintiff has not paid the alleged entire balance sale consideration. Admittedly, defendant No.1 has received a sum of Rs.9,27,81,000/-. Even though it is not the case of the defendants that the defendants have exercised the option of forfeiture of the Earnest Money, at best, under clause (2), defendant No.1 would be entitled to forfeit the sum of Rs.3,37,18,500/-, out of the entire alleged part-consideration amount received.

14. Learned counsel for the plaintiff has very categorically stated that the plaintiff is not interested in purchase of the said two Units and is not seeking specific performance of the Agreement to Sell dated 25.08.2009. This submission is without prejudice to the contention that the Agreement to Sell dated 25.08.2009 is a forged and fabricated document.

15. In the above circumstances, what is evident is that defendants 1 & 2 together have received a sum of Rs.14,27,81,000/- from the plaintiff. At best defendant No.1 could forfeit a sum of Rs.3,37,18,500/. Since there is an unequivocal admission on the part of the defendants, that defendants 1 & 2 have received the above-referred amount, which has not yet been re-paid and no justification is forthcoming for retention of the same. Defendant No.1 is clearly liable to repay to the plaintiff a sum of Rs.5,90,62,500/- (i.e. Rs.9,27,81,000/- ? Rs.3,37,18,500/-) and defendant No.2 is liable to repay the amount of Rs.5,00,00,000/- totalling to Rs.10,90,62,500/-.

16. Plaintiff has claimed refund of the amount with interest at the rate of 18% per annum. The stand of the defendants, in the written statement, is that the defendant No.1 is ready and willing to execute the documents of Transfer Deed in favour of the plaintiff provided the plaintiff clears the balance sale consideration along with interest at the rate of 18% per annum on the balance amount due. The defendants themselves in the written statement have referred to ''18%'' as the rate of interest, which the plaintiff would be liable to pay, for delay in payment. The said stand of the defendants shows that the said rate of 18% is the rate which should be adopted for the delay in repayment of the amount by the defendants.

17. In view of the above, the application is allowed. Part decree on admissions is passed in favour of the plaintiff and against defendant No.1 in the sum of Rs. Rs.5,90,62,500/-. Further part decree is passed in the sum of Rs.5,00,00,000/- in favour of the plaintiff and jointly and severally against defendants 1 & 2. The above-referred amount shall also carry interest at the rate of 18% per annum from the date of the filing of the Suit till payment in full. Decree sheet be drawn up accordingly.

18. It is clarified that this decree is without prejudice to the claim of the plaintiff for the balance amount claimed in the Suit and the period for payment of interest, which would be determined after the trial is concluded.