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

+ **CS(COMM) 557/2022**

BASANT GOEL

.....Plaintiff

Through: Mr. Rupesh Tyagi and Mr. Samyak
Raj, Advs.

versus

SOM PRAKASH SETHI & ORS.

.....Defendants

Through: Mr. Saurabh Seth, Ms. Neelampreet
Kaur and Mr. Abhiroop Rathore,
Advs.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

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27.08.2025

1. The issue which arises for consideration of this Court *vide* this order relates to the fact that the Plaintiff has served upon the Defendants a rebuttal evidence affidavit dated 19.09.2024 ('rebuttal affidavit') after the Plaintiff's and Defendants' evidence had been concluded.

2. The Defendants as recorded in the order dated 17.12.2024 raised an objection to the said rebuttal affidavit of the Plaintiff.

Arguments of the Defendants

3. It is stated that the rebuttal affidavit seeks to prove facts which are admittedly beyond the pleaded case of the Plaintiff in the plaint.

3.1. It is stated that the rebuttal affidavit seeks to explain the circumstances under which a WhatsApp chat dated 21.09.2021 (Ex. PW1/D1) was exchanged between the parties. It is stated that the said fact of



WhatsApp chat dated 21.09.2021 has been concealed in the plaint and was not even pleaded in the evidence affidavit of 'PW-1' dated 17.02.2024.

3.2. It is stated that the WhatsApp chat dated 21.09.2021, now referred to in the rebuttal affidavit was always in the knowledge of the Plaintiff from the inception, as the same had already been filed along with the written statement by the Defendants. It is stated that even though the said WhatsApp chat was filed by the Defendants with the written statement, Plaintiff did not lead any evidence in his examination-in-chief. It is stated that Plaintiff had ample opportunity to deal with the WhatsApp chat in the evidence affidavit; and having failed to avail the said opportunity, the Plaintiff is seeking to explain its stand qua the said WhatsApp chat in the rebuttal affidavit.

3.3. It is stated that though the Plaintiff had filed replication to the written statement of the Defendants but the same was struck out of the record *vide* order dated 24.02.2023. It is stated that in the replication the Plaintiff had dealt with the WhatsApp chat, however the said pleading is not on record. However, this proves that Plaintiff had notice of the Defendant's reliance on the WhatsApp chat and ought to have dealt with it in its evidence affidavit as this would be a plea covered by Issue Nos. (a), (c) and (d) as well.

3.4. It is stated that by way of the rebuttal affidavit the Plaintiff seeks to prove the following points: (i) the meeting of 20.09.2021 between the parties, wherein the Defendant No.3 allegedly extended threats to the Plaintiff to forfeit the earnest money paid by the Plaintiff; (ii) the surrounding circumstance in which the WhatsApp chat dated 21.09.2021 was sent by the Plaintiff to the Defendant No.3; and (iii) that there was no concluded agreement between the Plaintiff and the Defendants on 21.09.2021 to modify the Agreement to Sell dated 27.06.2021.



3.5. It is stated that the Plaintiff has not moved any formal application or given any reason whatsoever as to why rebuttal affidavit is required to be led in the present matter.

3.6. It is stated that the matter is at the advance stage where the Plaintiff has already concluded his evidence, and thereafter, the Defendants have also concluded their evidence after examining three witnesses.

3.7. It is stated that the Plaintiff has already Cross-examined the Defendants' witness i.e., 'DW-1' (Mr. Raman Sethi) on the aspect of WhatsApp chat which is sought to be introduced in the rebuttal affidavit.

3.8. It is stated that contentions raised by the Plaintiff during oral arguments on 17.12.2024 was that since the onus to prove Issue No. (c) framed vide order dated 09.02.2024 which reads as "*Whether the terms of the agreement to sell dated 27.07.2021 have been modified? OPD*" is on the Defendants, the Plaintiff should be permitted to lead rebuttal evidence. It is stated that the said contention is completely fallacious, as a reading of the Issues Nos. (a), (b) and (d) framed by this Court shows that they are intertwined, and Issue No. (c) cannot be read in isolation.

3.9. It is stated that a party cannot be permitted to withdraw admissions or nullify the effect of the cross examination by either re-examining a witness or by leading rebuttal evidence to ensure that the lacuna in the evidence of 'PW-1', which already stands recorded is filled up.

4. The Defendants have relied upon the judgment of the Supreme Court in the case of **Arikala Narasa Reddy v. Venkata Rama Reddy & Anr.**¹ and **Prakash Rattan Lal v. Mankey Ram**² to contend that the in the

¹ (2014) 2 SCR 291.

² CM (Main) 976/2007 dated 19.01.2010.



absence of pleading the evidence if any produced by the parties cannot be considered.

5. The Defendants have filed a written submission dated 14.01.2025.

Arguments of the Plaintiff

6. It is stated that the onus to prove the Issue No. (c) as framed vide order dated 09.02.2024 is upon the Defendants. It is stated that the Plaintiff has initially filed its evidence in 'Affirmative Evidence' only with a heading to that effect making it clear that the Plaintiff is reserving his right to lead rebuttal evidence. It is stated that therefore, the requirement under Order XVIII Rule 3 of CPC, 1908 have been complied with.

6.1. It is stated that it is the settled position of law that Order XVIII, Rule 3 of CPC, 1908 does not require any separate application to be filed or reasons to be given by the Plaintiff for leading evidence in rebuttal, since the rebuttal evidence is directed against the evidence of the Defendants on the issue for which the Defendants have onus to prove.

6.2. It is stated that the Defendants have been unable to prove as to what lacuna the Plaintiff is trying to bridge in.

6.3. It is stated that at the time of filing its affidavit in Affirmative Evidence or leading affirmative evidence, Plaintiff was not aware as to what evidence or what would be the nature of evidence which would be led by the Defendants to prove the aforesaid Issue No. (c), or as to what would be stated by DWs in their depositions in evidence or who would be DWs. It is stated that for this reason the Plaintiff reserved his right for the rebuttal evidence.

6.4. It is stated that the rebuttal evidence is mainly directed to explain the circumstances in which the WhatsApp Chat dated 21.09.2021 was held



between the parties, in light of the evidence led by the Defendants to prove the Issue No. (c). It is stated that the said Issue No.(c) was framed with the consent of the parties and Defendants have also led their evidence on the same.

6.5. It is stated that the Plaintiff has himself annexed along with his plaint reply dated 06.10.2021 sent by the Defendants in response to the legal notice dated 28.09.2021 issued by the Plaintiff. It is stated that the said WhatsApp chat dated 21.09.2021 is mentioned in the said reply.

6.6. The Plaintiff has filed written submissions dated 06.02.2025 in rebuttal to the written submissions filed by the Defendants.

Analysis and Findings

7. This Court has heard learned counsel for the parties and perused the record.

8. The issues in this suit were framed dated 09.02.2024 and the issues as framed read as under: -

- “a. Whether the Agreement to Sell contemplated reciprocal promises? (onus of proof on both parties)
- b. If yes, which party failed to perform its obligation in terms of the Agreement to Sell dated 27.06.2021? (onus of proof on both parties)
- c. Whether the terms of the agreement to sell dated 27.06.2021 have been modified?-OPD
- d. Whether the defendants have violated the terms of the agreement to sell dated 27.06.2021 and / or amendment (if applicable)?-OPP
- e. Relief.”

9. In the written submissions, Plaintiff has pithily set out the facts which it seeks to prove by leading rebuttal evidence. The relevant Section D, reads as under: -

- “i. Rebuttal evidence is mainly directed to explain the circumstances · in which the WhatsApp chat dated 21.09.2021 was held between the parties,



in light of the evidence led by the defendants to prove the aforesaid issue no. c, as explained/averred under heading B above.

ii. Further the plaintiff has also specifically taken the plea in para no.8 of the plaint that plaintiff requested the defendants for completion of the compulsory requirements however, instead of completing the obligations of clearing the loan of hidiabulls (IVL Finance Limited) and other dues of the said property from their own resources, the defendants started putting undue pressure upon the plaintiff to pay Indiabulls the balance loan amount of Indiabulls for getting the said property released from mortgage/security of Indiabulls.

iii. The threats given by Defendant No. 3 in meeting dated 20.09.2021 for forfeiture of advance and part payment of Rs.1.5 Crore paid by the plaintiff were the undue pressures pleaded in para 8 of the, plaint, and the same also became background of WhatsApp message dated 21.09 .2021.

iv. It is respectfully submitted that otherwise also it is settled position of law that the pleadings should receive a liberal construction, no pedantic approach should be adopted to defeat justice on hairsplitting technicalities. Sometimes, pleadings are expressed in words which may not expressly make out a case in accordance with strict interpretation of law, in such a case it is the duty of the Court to ascertain the substance of the pleadings to determine the question. If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it. Reliance is placed on the Judgments of Hon'ble Supreme Court in RAM SARUP GUPTA (DEAD) BY LRS Vs BISHUN NARAIN INTER COLLEGE & ORS, (I 987) 2 SCC 555, and BHAGWATI PRASAD VS CHANDRAMAUL, 1965 SCC Online SC 111.

v. In the present case issue no c. has been framed with the consent of parties, and defendants have also led their evidence on the same.”

10. This Court has perused the plaint and more specifically paragraphs ‘9’ to ‘11’ therein. The plaint fails to make any reference to the meeting dated 20.09.2021 and the WhatsApp chat dated 21.09.2021.

10.1. In the considered opinion of this Court, the Plaintiff had sufficient opportunities to set out the meeting and the chat in the plaint, in the first



instance itself. However, the Plaintiff having failed to make any reference to the meeting and the WhatsApp chat, this Court finds merit in the submission of the Defendants that the case now being set up in 'Section D' of the written submissions as extracted above is beyond the pleadings set out in the plaint.

10.2. Notwithstanding above, the Defendants admittedly referred to the WhatsApp chat dated 21.09.2021 in its written statement and also placed the said chat on record as a document.

10.3. The Plaintiff therefore, had due notice of the defense raised by the Defendants.

11. Keeping in view issues nos. (a), (b) and (d), in the considered opinion of this Court the Plaintiff had full opportunity to deal with the WhatsApp chat dated 21.09.2021 and the meeting dated 20.09.2021 in the evidence affidavit dated 17.02.2024 itself.

11.1 However, Plaintiff consciously elected not to deal with the said document in its evidence affidavits. These facts were material for the Plaintiff while pleadings its case under issue no. (d). The Plaintiff cannot now seek to bring its version on record after its cross examination has been concluded and Defendant's evidence has also been closed.

11.2 As Defendants has rightly pointed out it appears that the Plaintiff wishes to fill up the lacunas which have come in the evidence on this specific issue of WhatsApp chat dated 21.09.2021.

12. The Plaintiff has alleged in its written submission that Plaintiff has no opportunity during his cross examination to explain his stand qua WhatsApp chat dated 21.09.2021 as its was not put to him during his cross



examination. The relevant plea raised in the written submission at Section B reads as under:

“B.....

v. No question seeking any explanation about the said WhatsApp chat dated 21.09.2021 was put to Plaintiff/P W-I during his cross examination.”

12.1. The aforesaid submission of the Plaintiff is incorrect as in the cross examination of ‘PW-1’ held on 10.04.2024, the Plaintiff has been cross examined on the WhatsApp chat exhibited as Ex. PW-1/D-1. The Plaintiff therefore, had an opportunity to give its explanation qua the said chat during his cross examination.

12.2. In addition, WhatsApp chat exhibited as Ex.PW-1/D-1 was also relied upon by ‘DW-1’ in its examination-in-chief and the Plaintiff had an opportunity to put its version to the said witness qua the meeting dated 20.09.2021 and the WhatsApp chat dated 21.09.2021 during the cross examination on 24.05.2024. It is pertinent to note that at least, six (6) questions³ were put to the witness i.e., ‘DW-1’ by the counsel for the Plaintiff.

13. Thus, this Court is of the considered opinion that the Plaintiff has failed to show sufficient cause for being permitted to lead rebuttal evidence, in the facts of this case.

14. In view of the fact that evidence stands concluded, the matter has now set down for final hearing.

³ Question Nos. 3, 5, 6, 7, 8, 14, 18 and 20.



15. List before the Roster Bench on **12.09.2025** for fixing a date for final hearing.

MANMEET PRITAM SINGH ARORA, J
AUGUST 27, 2025/