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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RSA 142/2011 & CM No.16123/2011 (for stay)
MAHAMAYA BUILDERS PVT LTD Appellant
Through: Mr. Ravikant Chadha, Sr. Adv. with
Mr. Manish Sharma & Mr. Mayank
Sharma, Advs.

Versus

KULDEEP SINGH HOODA & ANR Respondents
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.09.2018

CM No.34514/2018 (u/O XLII R-1 read with O-XLI R-19 CPC) and CM No.34515/2018 (for condonation of 1289 days delay in filing application)

1. This order is in continuation of the earlier order dated 27th August, 2018.
2. The senior counsel for the appellant / applicant / plaintiff has in response to the query as recorded in the order dated 27th August, 2018 relied on the dicta of the Supreme Court in *Sucha Singh Sodhi Vs. Baldev Raj Walia* (2018) 6 SCC 733 and particularly to para no.29 thereof.
3. The reliance on the judgment aforesaid is misconceived. The said judgment arose from a suit for injunction by an agreement purchaser in possession of the property agreed to be purchased, in part performance of the agreement to sell, to restrain the seller from forcibly dispossessing the agreement purchaser from the property. It was the plea of the seller / defendant that the plaint was liable to be rejected under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) as the remedy of the agreement

purchaser was to sue for specific performance. Faced therewith, the agreement purchaser withdrew the suit with liberty to sue for specific performance and subsequently filed the suit for specific performance. The question for adjudication was, whether the subsequent suit for specific performance was barred by Order II Rule 2 of the CPC.

4. The position here is entirely different. The appellant / applicant / plaintiff, as agreement purchaser, instituted the suit for permanent injunction, to restrain the respondents / agreement sellers from creating third party interest in the property. The suit, from which this appeal arises, was instituted as far back as in the year 2010 and till date there is no suit for specific performance. The senior counsel for the appellant / applicant / plaintiff also admits that the appellant / applicant / plaintiff is not in possession of the property. Rather, it is stated that the appellant / applicant / plaintiff cannot possibly be in possession. A copy of the order dated 17th August, 1993 of the Supreme Court in SLP(C) No.5031/1990 titled ***J.S. Bali Vs. Union of India*** is handed over in the Court. It is stated that J.S. Bali was entitled to certain agricultural land from the Union of India and which land was found to be non-existent and vide the aforesaid order dated 17th August, 1993, alternate land was ordered to be given to J.S. Bali. It is stated, that J.S. Bali assigned his rights in the land to be so allotted and which rights ultimately were purchased by the respondents / defendants and who in turn agreed to assign the same to the appellant / applicant / plaintiff.

5. On enquiry, whether any alternate land has been awarded, the answer is in the negative and it is contended that steps have be taken for the same also.

6. The order aforesaid of the Supreme Court is of 17th August, 1993 and if the appellant / applicant / plaintiff has not taken any steps for the last 25 years, the alternate land cannot be said to be still available.
7. It is quite evident from the aforesaid that the appellant / applicant / plaintiff is pursuing a wild goose chase, without taking the appropriate remedy.
8. However, the aforesaid was only to satisfy the judicial conscience that no important right of the appellant / applicant / plaintiff was being prejudiced by dismissal of the applications for restoration of the appeal and condonation of delay in applying thereof and which, as recorded in the order dated 27th August, 2018 have no merit. Rather, on knowing the facts, it is confirmed that there is no real chance of the appellant / applicant / plaintiff succeeding and only the courts are being kept busy by pursuing misconceived pleadings.
9. The senior counsel for the appellant / applicant / plaintiff states that there can be no suit for specific performance.
10. I am unable to agree. The suit for specific performance should have been filed, by impleading the respondents / defendants, J.S. Bali as well as Union of India.
11. Resultantly, the application for condonation of 1289 days delay in filing the application for restoration of the appeal and the application for restoration of the appeal are dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 04, 2018

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