

THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment delivered on: 29.04.2015

+ **FAO(OS) 35/2015**

KUSHAL K RANA

... Appellant

versus

M/S ET INFRA DEVELOPERS PRIVATE LIMITED ... Respondent

Advocates who appeared in this case:

For the Appellant : Ms Smita Maan and Mr Vishal Maan

For the Respondent : Mr Akhilesh Arora

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No. 1209/2015

This is an application for condonation of delay.

The delay in filing is condoned.

FAO(OS) 35/2015 and CM No. 1207/2015

1. This appeal is directed against the order dated 30.10.2014 passed by a learned Single Judge of this court whereby the objection with regard to the maintainability of the suit raised by the appellant / defendant has been rejected. The appellant had raised the objection that the suit was not

maintainable in view of the provisions of Section 144 CPC which deals with restitution. It was contended that in the plaint it has been stated in paragraph 15 as also in other places that the entire suit is founded on the stay order which was passed by the Supreme Court on 30.01.2012 and which was vacated on 16.02.2012. Paragraph 15 of the plaint reads as under:-

“That the cause of action arose on 04.02.2012 when the stay order dated 30.01.2012 passed by the Hon’ble Supreme Court of India was communicated to the plaintiff and in deference with the same all construction activities going on at the site of subject project were ceased. As already detailed above, the cessation of the construction activities caused a huge financial loss to the plaintiff. The cause of action is still continuing as the plaintiff is still facing the after effects of releasing and remobilizing man-power, machinery and resources and the defendant has not yet compensated the plaintiff.”

2. The learned Single Judge after considering the contentions raised by the parties was of the view that Section 144 CPC deals with restitution wherever any property has been delivered to a person in pursuance of any orders passed by the court and the said orders are reversed either by the same court or by the appellate court. The learned Single Judge felt that the present case was not covered under Section 144 CPC and, therefore, the bar under Section 144(2) CPC would not be applicable.

3. We have heard the learned counsel for the parties and are of the view that no interference with the impugned order is called for. First of all, the proceedings which went up to the Supreme Court where the stay order was first passed and then vacated arose from a writ petition under Article 226 of the Constitution and, therefore, strictly speaking the provisions under Section 144 CPC shall not be applicable. Secondly, there was no delivery of property which needed restitution. All that the respondent / plaintiff has claimed in the suit is that because of the stay order which was obtained at the instance of the appellant / defendant, work under the project had to be stopped and as a result of which he suffered losses. The suit has been filed for damages for those losses.

4. In view of the foregoing, we see no reason to interfere with the impugned order. The appeal is dismissed.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

APRIL 29, 2015
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