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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS (OS) 1139/2013 & IA Nos. 9572/2013, 10004/2013

VINOD KUMAR GARG

..... Plaintiff

Through: Ms. Supreet Bindra with Mr. Sunil Goel,
Advocates.

versus

RAMESH KUMAR & ANR

..... Defendants

Through: Mr. Sandeep Dagar, Advocate.

CORAM: JUSTICE S.MURALIDHAR

ORDER

08.09.2016

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1. The short question that has been posed by the learned counsel for the Plaintiff is whether the present suit can be considered to be a commercial suit within the meaning of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015 ('Commercial Courts Act').

2. The Plaintiff, Vinod Kumar Garg, has filed the present suit initially against Defendant No. 1, Ramesh Kumar and Defendant No. 2, Smt. Krishna, for specific performance of agreement to sell dated 15th October 2012 whereby Defendant Nos. 1 and 2 are agreed to sell to the Plaintiff the property measuring about 9 bighas 3 biswas in the revenue Estate of Village Kanjhawala, Delhi – 110 081 ('the suit property in question') for a total consideration of Rs. 1,71,56,250.

3. In the written statement filed by the Defendants, it was denied that there was no obligation of the Plaintiff to obtain the 'No Objection Certificate' ('NOC') from the concerned department for the purpose of executing the sale deed and that it was the Plaintiff who kept on delaying the balance payment after paying nominal amount of Rs. 17 lakhs as earnest money. It is further stated that the Defendants terminated the agreement and sold the land to Pinnacle Tieup Private Limited ('PTPL'). It is contended by the Defendants that despite this fact being known to the Plaintiff, he filed the present suit concealing the said facts.

4. Subsequently, PTPL was impleaded as Defendant No. 3 in the suit.

5. Ms. Supreet Bindra, learned counsel for the Plaintiff urges that in terms of the definition of 'commercial dispute' under Section 2 (1) (c) (vii) of the Commercial Courts Act, the subject matter of the present suit should be considered to be a commercial dispute since the dispute arises out of the "agreements relating to immovable property used exclusively in trade or commerce." She submits that produce of the land can be used for commerce and the land itself be sold as a part of trade. Therefore the dispute in relation to the agreement to sell such land answers the definition of 'commercial dispute'.

6. The Court is unable to agree with the above submission. The agreement to sell entered into between the Plaintiff and Defendant Nos. 1 and 2 makes no mention of the land being intended to be "used exclusively in trade or

commerce”. Learned counsel for the Plaintiff then stated that she should be permitted to amend the plaint by including the pleadings to that effect. The Court is not inclined to permit the Plaintiff to do so only to justify the suit being brought within the ambit of the Commercial Courts Act. The agreement to sell has to be read as it is. It nowhere states that the land which was agreed to be sold by Defendant Nos. 1 and 2 to the Plaintiff was meant for used exclusively for trade and commerce. There is no averment to that effect in the plaint either.

7. Consequently, the Court rejects the plea of the Plaintiff that the subject matter of the present suit is a commercial dispute within the meaning of that expression in the Commercial Courts Act.

8. The valuation of present suit being less than Rs. 2 crores, it is directed to be transferred to the Court of the District Judge (North-West), Rohini.

9. The suit and the pending applications will be listed before the District Judge (North-West), Rohini on 7th November 2016 for directions.

S.MURALIDHAR, J

SEPTEMBER 08, 2016

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