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

+ CM(M) 430/2016

LATE SHRI INDER JEET SINGH LAMBA Petitioner
Through Mr.Chittaranjan, Advocate

versus

AMARJEET SINGH LAMBA AND ORS Respondents
Through Mr.Sameer Dewan, Advocate for R-3
Ms.Usha Sharma & Mr.Prashant
Jadav, Advocate for R-8(c)

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **23.09.2016**

1. By the present petition, the petitioner seeks to impugn the order of the appellate court in MCA 3/2016 dated 22.04.2016.
2. The learned counsel for the petitioner has pointed out that the petitioner and the other respondents except respondent No.1 had executed a joint application whereby it was agreed that the property in question shall be converted to freehold and that the petitioner and respondent No.2 would vacate and handover peaceful and vacant possession of the areas under their possession without any objection and hindrance within one month from the date of registration of the conveyance Deed. Receiver was to be appointed who was given various powers under the joint application. The parties also agreed to put the property to auction once it is vacated after conversion. The present application was accepted by the court vide its order dated 04.06.2014.

3. Subsequently, on 30.01.2016 in compliance of the order dated 04.06.2014 certain directions were given to the court receiver. All the parties in possession of the property were directed to handover peaceful and vacant physical possession of the suit property to the court receiver within one month of receipt of notice.

4. Challenging the said order dated 30.01.2016, an appeal was filed before the appellate court. The appellate court vide impugned order dated 22.04.2016 dismissed the appeal filed by respondent No.2 on the ground of the petition being barred by limitation and he was a signatory to the joint application. The appeal filed by respondent No.1 was partially allowed on the ground that he was not a signatory to the joint application. He was directed to give undertaking before the trial court that he would hand over peaceful and vacant possession of the property to the court receiver immediately on receipt of his respective 1/9th share of earnest money from the successive bidder in the proposed auction. In case, respondent No.1 failed to handover the possession to the court receiver, the court receiver was entitled to take possession from respondent No.1 with the assistance of local police.

5. The learned counsel for the petitioner submits that though he did not file any appeal against the order dated 30.01.2016, his contention is same as that of respondent No.1.

6. The learned counsels appearing for the respondents have denied the contention of the petitioner. They point out that respondent No.1 was not a signatory to the joint application and that is why, the appellate court has granted relief to respondent No.1. They also point out that the case of respondent No.2 is akin to that of the petitioner and no relief was granted to

respondent No.2 by the appellate court.

7. After some argument, the parties have agreed that the conditions stated in para 38 of the impugned order dated 22.04.2016 can also be made applicable to the petitioner as well as respondent No.2 provided both of them to file an affidavit giving undertaking to comply with the direction as stated by the appellate court order dated 22.04.2016. The affidavits be filed within one week before the trial court. On filing of the affidavits, the petitioner and respondent No.2 will be entitled to the relief as stated above.

8. The petition accordingly stands disposed of.

9. Liberty is granted to the parties to approach the trial court with a request to have the auction process expedited. All interim orders stand vacated.

10. A copy of this order be given *dasti* under the signature of the court master to the parties.

JAYANT NATH, J.

SEPTEMBER 23, 2016/v