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

+ **FAO(OS) 185/2015**

G S BATRA

..... Appellant

Represented by: **Mr.P.S.Bindra, Advocate**

versus

NIRMALA JAIN & ORS

..... Respondents

Represented by: **Mr.Sandeep Jain, R-2(c) in person
and Advocate for R-1, R-2(a) and R-
2(b)**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR. SANJEEV SACHDEVA

ORDER

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04.04.2016

1. If for no other reason, the impugned order has to be sustained for one glaring reason, which would be that admittedly property bearing Municipal No.48/22, Punjabi Bagh, New Delhi was owned by Nirmal Devi and Ram Lal Jain (respondents No.1 and 2, and we note that on death of respondent No.2 his legal heirs have been brought on record). The two had mortgaged the property to UCO Bank and pursuant to an action taken under Section 13 SARFAESI Act the property has been put to auction and dispute concerning sale, in which the auction purchaser is a party, currently awaits adjudication in a writ petition filed in this Court. It is not in dispute that Nirmal Devi and Ram Lal Jain entered into an agreement to sell on March 28, 2004 in favour of G.S.Batra : the appellant and Manjinder Singh : respondent No.3; and

there is a serious dispute whether possession of the property was handed over by Nirmal Devi and R.L.Jain to the appellant and respondent No.3. As per Nirmal Devi and R.L.Jain the appellant and respondent No.3 trespassed into their property. The two claim possession voluntarily delivered to them by Nirmal Devi and R.L.Jain. Sale consideration is ₹3.41 crores. The appellant claims to have paid ₹1.34 crores. Nirmal Devi and R.L.Jain claim that the cheques were dishonoured.

2. Inter-se the appellant and respondent No.3 forming one party and Nirmal Devi and R.L.Jain, the other, since agreement to sell has an arbitration clause the dispute is pending adjudication before an Arbitrator. Pleadings have been completed and evidence is being recorded by the learned Arbitrator.

3. Inter-se rights between Nirmal Devi and R.L.Jain as one group and the appellant and respondent No.3 as the other with respect to the agreement to sell shall be resolved in arbitration. Right of third party purchaser of the property when UCO Bank sold it under SARFAESI Act would be decided in a pending writ petition.

4. Therefore, status quo has to be maintained.

5. For record we note that the extensive renovation work admittedly being carried on when it was stopped by this Court is claimed by the appellant to be refurbishing i.e. without structural alterations and as per the contesting respondents the same would amount to major repairs. We need not deal with said aspect of the matter for the reason there is a serious issue whether appellant and respondent No.3 are in legal possession of the property. Their right under the agreement to sell is under a serious threat because cheques towards part payment were returned dishonoured. Further,

right of third party has crept in.

6. The appeal is dismissed but without any order as to costs.

CM No.7007/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

SANJEEV SACHDEVA, J.

APRIL 04, 2016

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