

\$~23

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

+ RFA(OS) 64/2016

PANKAJ SHARMA

..... Appellant

Represented by: Mr.G.S.Bhatt, Advocate with
Mr.Sushil Kumar Dubey,
Advocate

versus

PRABHA SHARMA & ANR.

..... Respondents

Represented by: None

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **24.08.2016**

CM No.30989/2016

Allowed subject to just exceptions.

RFA(OS) 64/2016

1. The appellant is aggrieved by the order dated July 22, 2016.
2. The order disposed of an application styled as a review petition by the first respondent, but meaningfully read it is an application seeking exercise of inherent powers by the Court.
3. As per the impugned order the appellant has been directed to vacate the flat which he is currently occupying. Its details have not been set out in the impugned order nor have been set out in the appeal. The only clue we have is that the flat is on a building constructed on plot No.GH-1/1,

Vaibhav Khand, Indira Puram, Ghaziabad, U.P.

4. The first respondent is the mother of the appellant. The second respondent is the builder.

5. In a suit filed by the appellant in which he impleaded his mother and the builder as defendants he sought a declaration that he be declared co-owner having 50% share in the flat which the builder would allottee. He sought a mandatory injunction restraining the builder from cancelling the booking of the flat.

6. The suit was disposed of on consent terms on October 01, 2015 noting that the builder had agreed to execute the sale-deed of the flat in the name of the appellant and his mother. The consent further recorded that the appellant and the mother would jointly dispose of the flat and divide the sale proceeds equally. The order notes that there was lien of IDBI Bank on the flat because while contributing his share the appellant had taken a loan from the bank. The order records that as per the appellant he had to pay ₹2.5 lacs to the bank. The direction issued was that the sale-deed in the name of the appellant and his mother which would be executed by respondent No.2 would be deposited with the Manager of IDBI Bank, Jhandewalan who shall retain the title deeds till the loan was liquidated by the appellant. Once the flat was free from the encumbrance, the appellant and his mother would be at liberty to sell the same and share the sale proceeds equally and if they are unable to do so any one would be entitled to execute the decree.

7. In the application which has been disposed of by the learned Single Judge the first respondent brought to the notice of the Court that the appellant has taken over the possession of the flat on his own. When the said respondent accompanied by her daughter went to the flat the appellant

abused her and did not let her enter the flat. As per the appellant since had had paid the maintenance charges to the Resident Welfare Association he was entitled to take physical possession of the flat.

8. Now the appellant could not take physical possession of the flat. The builder had to give joint possession to the appellant and his mother. Merely because the appellant paid the dues of the Resident Welfare Association does not mean that he could occupy the flat. We simply highlight that the consent decree mandated the appellant and his mother to jointly sell the flat and if for some reason they could not do so, either one was entitled to seek execution of the decree.

9. No buyer would purchase a flat which is occupied.

10. The learned Single Judge has therefore correctly directed that within four weeks the appellant would vacate the flat and deposit the keys in the Court.

11. Learned counsel states that yesterday i.e. August 23, 2016, the learned Single Judge has directed keys to be handed over immediately failing which the flat would be sealed. Said order has not been challenged nor filed in the appeal. We have checked the website and we find that order has not been uploaded but that would hardly matters.

12. The order in question would be a consequential to the impugned order dated July 22, 2016. We find no infirmity in the said order. The appellant is bound by the consent decree dated October 01, 2015 which enjoins upon the appellant to join his mother to sell the flat and if the two cannot sell it together the mother would be entitled to execute the decree which would warrant sale of the flat in question. The flat has to remain vacant. As a co-owner with his mother the appellant cannot occupy and appropriate the flat

himself.

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

CM No.30988/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

AUGUST 24, 2016

skb