

\$~4

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

+ **FAO(OS) 272/2015**

NARENDER MALHOTRA Appellant

Represented by: **Mr.Abhishek Mishra, Advocate**

versus

SURVECHA MALHOTRA & ORS Respondents

Represented by: **Mr.Dinesh C.Pandey, Advocate with
Mr.Tushar Sharma, Mr.Harsh Yadava
and Mr.Palash Singhoi, Advocates**

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **10.02.2016**

1. The challenge is to the order dated May 05, 2015. Appellant is defendant No.1 in the suit. The order has disposed of IA No.4870/2015 filed by the plaintiff – respondent No.1 in the appeal. Prayer made was to appoint a Local Commissioner to execute the consent order dated July 23, 2013, by which order the Court opined that pending hearing of the suit, inter-alia, seeking partition of the suit property being factory building at plot No.C-93, Okhla Industrial Area, Phase-I, New Delhi, the same had to be preserved by permitting the parties to jointly take steps to lease out the property and deposit the rent in Court. The order recorded the consent of all parties that the old, worn out machinery lying at the factory premises could be sold and the money realized, deposited in Court.

2. The plaintiff brought to the notice of the Court that no steps were

taken by the appellant to comply with the order dated July 23, 2013 and therefore a receiver should be appointed to take possession of the factory premises, appoint a security guard and after finding out a tenant - to let out the subject property.

3. The learned Single Judge has accordingly appointed a Receiver to do the needful. The fee of the Receiver has been directed to be shared equally by the parties.

4. The appeal is liable to be dismissed for the simple reason the impugned order had to be passed to give effect to an earlier consent order dated July 23, 2013. Indeed, pending partition of the suit property it would be beneficial for all parties to put the property on rent because it is lying vacant for a long period of time.

5. We must observe that learned counsel for the appellant is misleading the appellant because on the one hand, on November 16, 2015 he has filed an undertaking by the appellant in the suit to contribute money for the property to be repaired and renovated as also electricity and water connection restored so that the property could be let out. The counsel has also made the appellant pay, albeit a part, of the share of the fee payable by the appellant to the Receiver.

6. We are surprised at the conduct of the learned counsel who has made the appellant acquiesce in the impugned order and take steps for it to be implemented and on the other hand has filed the appeal.

7. Even otherwise there is no merit in the appeal for the reason the impugned order is just, fair and equitable. The suit property which is lying vacant must be put to beneficial use till it is partitioned and the consent order to which impugned order gives effect to has recorded that the rent

realized would be deposited in the Court - to be distributed as per the share of the parties when the suit seeking partition is finally decided.

8. The appeal is dismissed. We refrain from imposing cost because the appellant has been totally misled by his counsel and the cost if any imposed would be an additional burden on the appellant.

CM No.9259/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 10, 2016

mamta