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

+ CS(OS) 3143/2015

SUMANJEET KAUR

..... Plaintiff

Through: Mr. Peeyoosh Kalra, Advocate

versus

MOLLY KAPOOR & ANR

..... Defendant

Through: None

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

ORDER

03.02.2016

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I.A. No.1579/2016

Issue notice to the defendants returnable on 28.04.2016.

Though the suit is liable to be transferred to District Judge (South East), Saket Courts as the suit is situated in Greater Kailash – Part I, New Delhi and the jurisdictional value is less than Rs.2 crores, the plaintiff prays for urgent relief in the present application in view of the disclosed urgency in the case.

The submission of learned counsel for the plaintiff is that the plaintiff has filed the suit to seek recovery of the amount of Rs.1,12,87,880/- along with interest and costs. The said amount has been claimed from the defendants on the premise that the parties had entered into an agreement

whereunder the plaintiff had agreed to purchase the second floor of property bearing No.E-406, Greater Kailash – Part I, New Delhi from the defendants. Under the agreement, the plaintiff had made a payment of Rs.89.20 lacs, out of which Rs.61 lacs was paid through cheques – of 30 lacs and 31 lacs respectively. The case of the plaintiff is that the defendant refused to complete the transaction and, consequently, the plaintiff is entitled to refund of the amount along with damages. On that premise, the suit has been filed.

When the suit was listed before this Court on 15.10.2015 on the plaintiffs application under Order 39 Rule 1 and 2 CPC being I.A. No.21961/2015, this court had restrained the defendants from creating any third party interest in respect of the second floor of property bearing No.E-406, Greater Kailash – Part I, New Delhi.

The case of the plaintiff is that the attempt to serve the defendants even under Order 39 Rule 3 CPC was evaded as the said notices were returned unserved. In the meantime, the plaintiff learnt that the defendants had entered into a compromise in respect of the same property in C.S. (OS) No.275/2015. The plaintiff states that two other suits filed in respect of the same property i.e. C.S. (OS) Nos.1967/2015 and 588/2013 had also been compromised by the defendants. Under the compromise recorded in C.S. (OS) No.275/2015 in I.A. No.23272/2015, the defendants agreed to transfer the second floor and terrace alongwith one servant quarter of property no.E-406, Greater Kailash – Part I, New Delhi to the plaintiff in that suit. The plaintiff has placed on record a copy of the order dated 04.11.2015 recording the said compromise between the parties in the suit. The plaintiff states that on learning of the said compromise, the plaintiff moved I.A. No.24367/2015 in C.S. (OS) No.275/2015.

It was brought to the notice of the court that this court had already passed an order of injunction in respect of the second floor of the said property in the present suit. The court vide order dated 27.11.2015 observed that it was for the plaintiff to approach this court for appropriate directions against the defendant. The same was held not to be a ground to upset the settlement arrived at between the parties in C.S. (OS) No.275/2015. Consequently, the present application has been moved by the plaintiff.

The submission of Mr. Kalra, learned counsel for the plaintiff is that the plaintiff has been able to obtain a copy of the bank statement of the defendant, wherein the amount of Rs.61 lacs was deposited, maintained with ICICI Bank, Greater Kailash Branch bearing Account No.002901542828 in the name of Molly Kapoor. The two entries which show deposit of Rs.31 lacs and Rs.30 lacs respectively are recorded on 10.09.2014 and 09.09.2014 showing transfer from Narender Singh, the husband of the plaintiff and the plaintiff. The plaintiff, therefore, seeks attachment of the said account to the extent of Rs.61 lacs to safeguard the interest of the plaintiff, as the property in respect whereof injunction was granted is no longer available to realise the dues of the plaintiff from the defendant.

In my view, the plaintiff has made out a strong *prima facie* case to secure the amount in dispute atleast to the extent of Rs.61 lacs, which appears to have been made by the plaintiff to the defendant through cheques. I may observe that Mr. Kalra has also stated that the defendants have filed their written statement, wherein they had admitted receipt of the amount of Rs.61 lacs. However, the said written statement has still not come on record.

In these circumstances, I direct that the Account No.002901542828 maintained with ICICI Bank, Greater Kailash Branch being in the name of Molly Kapoor shall remain attached for an amount of Rs.61 lacs till further orders.

Dasti under the signatures of the Court Master.

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In view of the notification No.2718/DHC/Orgl. dated 25.11.2015, issued under Section 4 of the Delhi High Court (Amendment) Act, 2015 (Act 23 of 2015), at the request of the counsels for the parties, the present suit is transferred to the Court of the District Judge (South-East), Saket Courts for further proceedings before the competent court on 28.04.2016.

VIPIN SANGHI, J

FEBRUARY 03, 2016

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