

\$~7

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

+ **FAO(OS) 682/2015**

DINESH DHIMAN

..... Appellant

Represented by: Mr.J.P.Sengh, Sr.Advocate instructed
by Mr.Kuldeep Kumar, Ms.Parveen
Rawal, Ms.Sana Ansari and Mr.Rohit
Sharma, Advocates

versus

M/S SAIGON INFRATECH PVT LTD

..... Respondent

Represented by: Mr.Sanjeev Singh, Advocate with
Mr.Sudhir Balyan, Advocate

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **22.01.2016**

1. Having heard learned counsel for the parties and having perused the record of the suit we are constrained to observe that the manner in which the learned Single Judge is dealing with IA No.23504/2015 filed by the respondent in the appeal, who is the plaintiff in the suit, leaves much to be desired. We are constrained to so observe because we find great injustice being caused to the appellant, a physically challenged person, who is a defendant in the suit.

2. In the suit the respondent has prayed for specific performance of an agreement to sell dated March 15, 2015 on the plea that the respondent agreed to sell his undivided share in property bearing No.381, Block E, Greater Kailash, Part II, New Delhi for a sum of ₹2,51,00,000/- (Rupees

Two Crores and Fifty One Lacs only) and received ₹21,00,000/- (Rupees Twenty One Lacs only) as earnest money. Along with the suit application for interim injunction was filed to restrain the appellant from selling, transferring, alienating or parting with the suit property; and while issuing notice an ad-interim injunction was granted.

3. Being a physically handicapped person, for his medical needs, the appellant needs money and prayed to the learned Single Judge that the ex-parte injunction be vacated.

4. Concerning the plea in the plaint that the appellant had signed the agreement to sell, appellant denied his signatures thereon. Concerning ₹21,00,000/- (Rupees Twenty One Lacs only) stated to have been received as earnest money the appellant denied having received a penny. The appellant pointed out to the learned Single Judge that the agreement to sell records payment of ₹21,00,000/- (Rupees Twenty One Lacs only) in the following manner : (i) ₹1,90,000/- (Rupees One Lac and Ninety Thousand only) vide cheque No.033466 dated March 07, 2015. The remainder in cash. The cash statedly paid is only recorded in the agreement to sell, which had forged signatures of the appellant. Concerning the cheque the appellant pointed out that one Raj Kumar, was approached by him for a loan of ₹2,00,000/- (Rupees Two Lacs only) as he needed money for treatment and the cheque in question was given to him by Raj Kumar. The cheque has no doubt been issued from an account of the company. The appellant drew attention of the learned Single Judge to a receipt-cum-loan agreement between him and Raj Kumar which shows that the cheque in question was given to him by Raj Kumar by way of a loan. The appellant also pointed out to the learned Single Judge that one Hemant Kumar, an employee of the

company had witnessed the loan agreement and he was also a witness to the alleged agreement to sell.

5. Rather than to consider the pleas of the appellant the learned Single Judge recorded in the order dated November 24, 2015 that there were good grounds to extend the injunction order till February 18, 2016 and the reason recorded is that ₹1,90,000/- (Rupees One Lac and Ninety Thousand only) claimed to be paid by the company to the appellant is from its account. The defence of the appellant has been nibbled into, without any determinative findings.

6. This is not the way to deal with an application concerning confirmation of an ex-parte injunction. All contentions urged have to be noted and dealt with.

7. We agree with learned counsel for the appellant that for the same cheque in question whereas Raj Kumar claims a loan advanced, the company claims that the cheque form part of the sale consideration. We find that the cheque in question was deposited in the account of appellant by Raj Kumar who has filled up the deposit slip. We also find that at this stage the appellant has an opinion from a credible forensic expert giving good reasons in the opinion that the alleged signatures of the appellant on the agreement to sell are forged. We have also perused the signatures of the appellant on the pleadings and on the agreement to sell and prima-facie we find the same to be forged.

8. In our opinion taking into account the fact that the appellant is a physically handicapped person and needs money for medical treatment, keeping in view the facts noted above case is made out to vacate the ex-parte ad-interim injunction granted by the learned Single Judge on November 06,

2015 and extended further by the order dated November 24, 2015. If the appellant has a person ready and willing to purchase his share in the suit property, disclosing to the purchaser the pendency of the suit filed by the respondent he would be free to encumber his share in the property. The respondent would have the benefit of *lis pendens*.

9. The appeal is disposed of vacating the ex-parte order dated November 06, 2015 as also the order dated November 24, 2015 passed by the learned Single Judge in CS (OS) No.3338/2015.

10. No costs.

CM No.31540/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

JANUARY 22, 2016

mamta