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

+ **FAO(OS) No. 113/2016**

Date of decision: 15th May, 2017

MANJIT DAYAL & ANR. Appellants
Through Mr. Siddhant Asthana & Mr. Peeyush
Ranjan, Advocates.

versus

GAUTAM VERMA Respondent
Through Mr. Nikhlesh R., Mr. Dinesh Kumar &
Ms. Archana Gupta, Advocates.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MS. JUSTICE PRATHIBA M. SINGH

SANJIV KHANNA, J. (ORAL):

This intra-Court appeal impugns the order dated 23rd February, 2016 whereby application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 filed by Gautam Verma, the plaintiff, who is the respondent before us, has been allowed and the application filed by the appellants, who are the defendants in the suit, for vacation of ex parte interim stay, has been dismissed.

2. The respondent has filed the suit for specific performance of agreement to sell dated 5th October, 2013 in respect of property No. 430, Forest Lane, Neb Sarai, Sainik Farm, New Delhi. The total sale consideration mentioned in the agreement is Rs.6.75 crores, out of which, sum of Rs.1.03 crores was paid by the respondent to the appellant at the

time of execution of the agreement. To this extent, the position is undisputed.

3. The dispute pertains to interpretation of clause 5 of the agreement under which the respondent was to pay Rs.1 crore on or before 5th January, 2014. As per the respondent, the said clause stipulates that payment would be made on execution of revocation deed by Bridget Dayal on or before 5th January, 2014. The appellant states that Bridget Dayal, who is the wife of the appellant No. 1, has executed a power of attorney in favour of the appellant No. 2, Monisha Kalra and who was always ready and willing to execute the documents in favour of the respondent. The appellant states that due to technical reasons, Bridget Dayal could not have executed a revocation deed.

4. We have only recorded the respective contentions of the parties and not commented on merits, as counsel for the parties have agreed to partial modification of the impugned order, which is indicated below.

5. Learned counsel for the appellant has stated that if the appellant want to sell, transfer or in any way encumber the property, they will approach the single Judge with an appropriate application. Learned counsel for the respondent states that in case the appellant approach the single Judge, the application could be considered on merits in accordance with law.

6. The aforesaid statements are taken on record.

7. We clarify that in case an application to the aforesaid effect is filed

by the appellant, the same will be considered in accordance with law, without being influenced by any findings or observations in the impugned order/this order. We also clarify that till the application is filed and modification is made, the appellant would not in any way encumber, transfer or sell the subject matter property.

8. The appeal is disposed of, without any order as to costs. This order and observations would not be considered and construed as binding findings on merits on the case of either side.

MAY 15, 2017
VKR



SANJIV KHANNA, J.

PRATHIBA M. SINGH, J.