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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 749/2017 & CM No.25669/2017 (for stay)**
VIJAY BANSAL & ORS Petitioners
Through: Mr. Gaurav Kakkar, Mr. Nishant
Anand & Mr. Pradeep Gahalot, Advs.
Versus
ANAND KUMAR & ORS Respondents
Through: None.
CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW
ORDER
% **24.07.2017**

CM No.25670/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 749/2017 & CM No.25669/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order (dated 19th September, 2016 in SCJ No.612301/2016 of the Court of Civil Judge-01, West District, Tis Hazari Courts, Delhi) of dismissal of two applications filed by the petitioners /defendants, one under Order VII Rule 11 of the CPC and the other under Order I Rule 10 CPC for deletion of the petitioners / defendants no.1 to 3 from the array of defendants.
4. On a reading of the memorandum of the petition, it is found that the petitioner is not challenging the order of dismissal of the application under Order VII Rule 11 of the CPC.
5. To avoid any ambiguity, it has been expressly asked so from the counsel for the petitioners / defendants no.1 to 3.

6. The counsel for the petitioners / defendants no.1 to 3 states that the petitioners / defendants no.1 to 3 do not want to challenge the dismissal of their application under Order VII Rule 11 of the CPC.

7. The suit filed by the respondents no.1 to 13 / plaintiffs against the three petitioners and against the respondents no.14 to 16 seeks the reliefs of i) permanent injunction restraining the defendants from raising illegal construction in common parking space in the property; ii) mandatory injunction directing the defendants to demolish the illegal constructions already made; iii) declaration that the transaction between the petitioners / defendants no.1 to 3 and the respondents no.14 to 16 as illegal and in gross violation of the terms and conditions of the registered sale deed executed by the petitioners / defendants no.1 to 3 in favour of the respondents no.1 to 13 / plaintiffs.

8. I have straightaway enquired from the counsel for the petitioners / defendants as to whether not in the face of the third relief aforesaid, the petitioners / defendants would be necessary parties.

9. The counsel for the petitioners / defendants no.1 to 3 though admitting that for the third relief aforesaid, the petitioners / defendants no.1 to 3 are necessary parties but states that since the petitioners / defendants no.1 to 3 are not left with any rights in the property and have transferred their rights to the respondents / defendants no.14 to 16, the petitioners / defendants no. 1 to 3 cannot be made liable.

10. There is no merit in the aforesaid contention.

11. The petitioners / defendants, once are necessary party for the relief claimed in the suit, if owing to having sold their properties are not interested in contesting the suit, are free to not contest the suit but cannot be deleted from

the array of defendants and the result of which deletion would disentitle the respondents no.1 to 13 / plaintiffs from the third relief claimed of declaration.

12. The petition is misconceived and is dismissed with costs of Rs.20,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi as a condition to the petitioners / defendants no.1 to 3 for defending the suit.

13. The counsel for the petitioners /defendants no.1 to 3 to on the next date of hearing before the Trial Court submit the proof of deposit of costs.

14. A copy of this order be forwarded to the concerned District Judge.

15. At this stage, the counsel for the petitioners / defendants no.1 to 3 states that he withdraws this petition.

16. The petition is dismissed as withdrawn.

17. The costs of Rs.20,000/- is waived.

RAJIV SAHAI ENDLAW, J

JULY 24, 2017

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