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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1101/2017, CM No.42853/2016 (for stay), CM No.42854/2016 (for condonation of 41 days delay in re-filing the appeal), CM No.13623/2017 (u/S 151 CPC) & CM No.36522/2017 (u/S 151 CPC for directions)

HARISH KATYAL

..... Petitioner

Through: Mr. Vinny Shangloo, Adv.

Versus

MANJEET SINGH & ORS

..... Respondents

Through: Mr. H.D. Talwani, Adv. for D-2.

Counsel for the respondent no.4
(appearance not given)

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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11.10.2017

CM No.13624/2017 (for exemption)

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

CM(M) 1101/2017

3. This petition under Article 227 of the Constitution of India, originally filed as FAO No.563/2016, impugns the order [dated 12th August, 2016 in Suit No.611521/2016 of the Court of Additional District Judge (ADJ)-07, West District, Tis Hazari Courts, Delhi] impleading the respondent No.4 Pawan Kumar Dhawan as a defendant in a suit filed by the petitioner / plaintiff for specific performance of an agreement of sale of immovable property against the respondent no.1 / defendant. The respondent / defendant no.2 Nainital Bank is stated to have impleaded in the suit for the reason of claiming the title documents of the property subject matter of the

suit to be deposited with it. The respondent no.3 Ashok Kumar Oberoi is stated to have got impleaded as a defendant no.3 by claiming to be a subsequent purchaser of the property.

4. The counsel for the petitioner / plaintiff has been heard.

5. The respondent no.4 Pawan Kumar Dhawan applied for impleadment stating that in a suit filed by him against the respondent no.1 / defendant, there was an interim order restraining the respondent no.1 / defendant from selling the property and the petitioner / plaintiff was the advocate for the respondent no.1 / defendant in that suit. On the said plea, the learned ADJ has allowed the respondent no.4 Pawan Kumar Dhawan to be impleaded in the suit.

6. The counsel for the petitioner / plaintiff on enquiry states that the suit filed by the respondent no.4 Pawan Kumar Dhawan in which there was an interim order restraining the respondent no.1/defendant from alienating, encumbering or parting with possession of the property was for recovery of money and has since been decreed and the respondent no.4 Pawan Kumar Dhawan has not applied for execution of that decree till now. On further enquiry, it is stated that there is no order in the suit filed by the respondent no.4 Pawan Kumar Dhawan of attachment of the subject property.

7. From the aforesaid, it appears that the respondent no.4 Pawan Kumar Dhawan has been wrongly impleaded as party in the suit for specific performance. Even if the respondent no.4 Pawan Kumar Dhawan had obtained an order of attachment of the property subject matter of the suit from which this petition arises, even then, the respondent no.4 Pawan Kumar Dhawan would only be entitled to exercise rights in execution of the decree

in his suit and will not be a necessary or proper party to the suit for specific performance from which this petition arises.

8. The arguing counsel for the respondent no.4 Pawan Kumar Dhawan is not available and adjournment is sought. At this stage, the counsel who is appearing for respondent no.4 Pawan Kumar Dhawan states that he can argue. The counsel for the respondent no.4 Pawan Kumar Dhawan argues that the Agreement to Sell by the respondent no.1 / defendant in favour of the petitioner / plaintiff and of which specific performance is sought, was registered after the restraint order in the suit filed by the respondent no.4 Pawan Kumar Dhawan.

9. The same would still not make the respondent no.4 Pawan Kumar Dhawan a necessary or proper party in the suit from which this petition arises. The remedy, if any of the respondent no.4 Pawan Kumar Dhawan is to take action for violation of the order against the respondent no.1 / defendant and if entitled to, also against the petitioner / plaintiff. However, he cannot on the said ground, have any say in the suit for specific performance.

10. The counsel for the respondent no.4 Pawan Kumar Dhawan at this stage also argues that the petitioner / plaintiff in the plaint in the suit from which this petition arises, did not disclose all the facts about the restraint order correctly and the respondent no.4 Pawan Kumar Dhawan has also filed an application under Section 340 Cr.P.C in the suit from which this petition arises and which is pending consideration.

11. For determining whether the respondent no.4 Pawan Kumar Dhawan is a necessary and proper party, it has to be seen whether he has any right to

assert in the lis in which impleadment was sought. The right, if any to property and which is already a subject matter of another suit, has to be asserted in the respondent no.4 Pawan Kumar Dhawan's own suit and not by becoming a party in the suit for specific performance.

12. Similarly, merely because the respondent no.4 Pawan Kumar Dhawan filed an application under Section 340 Cr.P.C. despite being not a party in the suit and the said application was entertained would not make him a necessary party in the suit.

13. The counsel for the respondent no.2 Nainital Bank states that the property subject matter of suit from which this petition arises has been mortgaged with the respondent no.2 Bank and which has the first right to the property.

14. Needless to state the said aspect is not for adjudication in this petition.

15. The petition is thus allowed.

16. The order dated 12th August, 2016 impleading the respondent no.4 Pawan Kumar Dhawan as defendant in the suit for specific performance filed by the petitioner / plaintiff, is set aside. The application of respondent No.4 for impleadment is dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 11, 2017

‘gsr’..