

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

+ **RFA No. 962/2017**

% **15th November, 2017**

KHEM CHAND BHAMBHANI & ANR. Appellants
Through: Ms. Latika Chaudhary,
Advocate

versus

GEETA KHURANA & ORS. Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J. MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

CM Appl. No. 41293/2017 (Exemption)

1. Exemption allowed, subject to all just exceptions.
Application stands disposed of.

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2. By this first appeal under Section 96 of the Code of Civil Procedure, 1908 ('CPC'), the appellants/plaintiffs impugn the order dated 14.10.2017 by which the Trial Court at the time of issuance of summons in the suit refused to issue summons so far as the prayer (b) of the suit is concerned. In prayer (b) it was prayed that until the

respondents/defendants pay Rs.40,00,000/- to the appellants/plaintiffs till then appellants/plaintiffs be not evicted from the suit property being the third floor with roof rights of property bearing No.150, Block-H, Vikas Puri, New Delhi. The amount of Rs. 40 Lacs paid by the appellants/plaintiffs to the respondent nos. 1 and 2/defendant nos. 1 and 2 is pleaded to be utilized in purchase of this Vikaspuri property.

3. Learned counsel for the appellants/plaintiffs argues that by the impugned order the suit stands dismissed for prayer (b) on the first date of hearing though disputed questions of fact requiring trial arise, inasmuch as, the appellants/plaintiffs had filed the Undertaking-cum-Receipt dated 02.04.2016 issued by defendant no.3 in the suit acknowledging the factum of payment of Rs.40,00,000/- by the appellants/plaintiffs to the respondent nos.1 and 2/defendant nos.1 and 2 and also disentitling the respondent nos.1 and 2/defendant nos.1 and 2 from evicting the appellants/plaintiffs from the suit property till a sum of Rs.40,00,000/- is paid to the appellants/plaintiffs. It was also argued that respondent nos. 1 and 2/defendant nos.1 and 2 had also executed Power of Attorney in favour of the respondent no.3/defendant no.3 (daughter of respondent nos.1 and 2/defendant

nos.1 and 2 and daughter-in-law of appellants/plaintiffs). It is argued that accordingly existence of an Agreement has been pleaded by appellants/plaintiffs from being dispossessed from the suit property till the payment of Rs.40,00,000/- and it cannot be held on the very first date while issuing summons in the suit that there is no such agreement because such an aspect will be an issue in the suit and can only be decided after evidence is led by the parties.

4. I agree with the arguments urged by learned counsel for the appellants/plaintiffs that it is a disputed question of fact as to whether prayer (b) of the suit can or cannot be granted and which prayer would be granted in case appellants/plaintiffs succeed in proving an agreement of their not being evicted from the suit property till Rs.40,00,000/- is paid to them by the respondent nos. 1 and 2/defendant nos.1 and 2. Such an aspect therefore could not be decided against the appellants/plaintiffs on the first date when the suit comes up for hearing for the issuance of summons.

5. In view of the aforesaid discussion, the impugned order is set aside to the extent of the same dismissing the suit as regards prayer

(b) is concerned, and now summons in the suit will be also issued to the defendants with respect to prayer (b) in the suit.

6. Appeal is accordingly allowed in terms of the aforesaid observations.

NOVEMBER 15, 2017
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VALMIKI J. MEHTA, J

