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

Decided on: 24th January, 2018

+ CM(M) 104/2018 and CM 3062-3063/2018

LACHMAN SINGH

..... Petitioner

Through: Mr. J.P.S. Sirohi and Mr. Sunil
Sirohi, Advocates

versus

BIRENDER PRASAD

..... Respondent

Through: None

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The civil suit (CS 578952/16) in which the impugned order dated 01.12.2017 was passed by the Additional District Judge has been instituted by the respondent (plaintiff) against the petitioner (defendant). By the impugned order, the Additional District Judge dismissed the application of the defendant seeking rejection of the plaint under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) with which the defendant is aggrieved and has come up to this Court by the petition at hand.

2. Though the copy of the plaint has not been filed with the petition, a copy was shown during the hearing, it revealing that the suit was presented on 02.12.2010 seeking a decree of specific performance of agreement to sell dated 02.10.2004 and receipt dated 26.09.2010 in

respect of sale of property described as bearing plot no.4, Block-C, Sector-28, Rohini or, in the alternative, decree of damages in the sum of Rs.21,00,000/- with interest besides a decree of permanent injunction to restrain the defendant from creating third party interest, alienating, selling or mortgaging the said property.

3. From the averments in the plaint and from the submissions made before the learned trial Court at the time of hearing on the application under Order VII Rule 11 CPC, as noted in the order dated 01.12.2017, and also an earlier order dated 15.10.2016, it emerges that the execution of an agreement of sale of the said plot of land by the petitioner in favour of the respondent is beyond dispute. It appears the petitioner as the defendant is resisting the case primarily on the grounds that he was only a lessee under Delhi Development Authority (DDA) and had not even been given the possession of the said plot of land and, therefore, the agreement to sell could not be specifically enforced. It is also one of the grounds in defence taken that the suit is time barred.

4. Such pleas as noted above were raised in the previous application under Order VII rule 11 CPC which was considered and dismissed by the trial Court by order dated 15.10.2016 (Annexure P-IV). It is noted that by the impugned order, the defendant was also permitted to amend the written statement to raise certain additional defences. It was noted at that stage that the issue of limitation had already been framed alongside the other issues which arise out of the pleadings of the parties, the trial consequently having commenced. The trial judge also observed that the issue of limitation was one

which was a mixed question of fact and law and so could not be decided without evidence being adduced.

5. The petitioner moved another application under Order VII Rule 11 CPC raising the same very contentions even though the said contentions had already been considered and rejected by the previous order dated 15.10.2016. Reliance is placed on the ruling of a division bench of this Court in *Rajia Begum Vs. DDA & Ors.*, 215(2014) DLT 290 (DB) and *T. Arivanandam Vs. T.V. Satyapal and Anr.*, SLP(C) 4483/1977, decided on 14.10.1977.

6. Having heard the learned counsel for the petitioner and having gone through the record, this court finds the petition wholly misconceived, frivolous and in the nature of abuse of the process of the court. The previous application on more or less the same very averments and grounds having been rejected by the trial Court on 15.10.2016, the said order not having been challenged and thus having attained finality, it was improper for the petitioner to move yet another similar application. It appears the intent is to stall the proceedings to the extent possible.

7. Having regard to the fact that the averments in the plaint reveal that there was another transaction dated 26.09.2010 represented by a receipt in the wake of the agreement to sell dated 02.10.2004 it cannot *prima facie* be accepted that the suit is time barred. At any rate, the trial judge has framed the issue on the objections taken by the defendant which would be decided on the basis of evidence led. The contention that the petitioner being a mere lessee cannot be compelled to execute sale deed under the agreement to sell and, therefore, the

case is to be rejected, ignores the fact that the plaintiff has come with the alternative prayer for damages. The documents *prima facie* seem to confirm that the petitioner had taken advance money from the plaintiff of the suit and, therefore, the petition cannot be said to be devoid of cause of action or not maintainable.

8. The rulings referred to above do not assist the petitioner in any manner.

9. The petition and the applications filed therewith are dismissed in *limine* with costs of Rs.20,000/- to be deposited with Delhi High Court Legal Services Committee within a week. The deposit of the costs will be a pre-condition to the right of the petitioner to defend the suit.

JANUARY 24, 2018

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R.K.GAUBA, J.

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