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

Date of Decision: 06th April, 2018

\+ **RFA 76/2017 & CM APPL. 2452/2017 (Stay)**

JEWELS INDIA HOTELS PRIVATE LIMITED AND ANR. ..... Appellants

Through: Mr. Varun Goswami, Mr. Sahil Agarwal & Ms. Barkha Khattal, Advocate (M-9810117465).

versus

SURENDER BAJAJ AND ORS. ..... Respondents

Through: Mr. Dinesh Agnani, Senior Advocate with Ms. Leena Tuteja & Mr. Ishaan Chawla, Advocates for R-1 to 2 (M-9810049061).
Mr. Arjun Mitra, Standing Counsel Mr. Abhishek Mishra, Asst. Standing Counsel along with Ms. Jaskaran & Mr. Madhusudhan, Inspectro NDMC.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM APPL. 2453/2017 (Delay for 201 days)

1. For the reasons stated in the application, delay is condoned. Application is disposed of.

RFA 76/2017

2. This is an appeal arising out of a suit where the Respondents/Plaintiffs (*hereinafter, 'Plaintiffs'*) seeking the following reliefs:

"(a) Pass a decree of declaration declaring that the

dues claimed by the Defendant No.3 vide their letter / order dated 07-13/09/2010 with respect to the suit property prior to the date of execution of the agreement to sell dated 26.03.2009 is the obligation of the Defendant no l & 2 in terms of clause 11 of the Agreement to Sell dated. 26.03.2009.
(b) Pass a Decree of Mandatory Injunction, directing the Defendant No.l & 2 to clear the said arrears of the property tax and make payment to the Defendant No.3 i.e. as stated by the Defendant No.3 in its letter / order dated 07-13/09/2010; AND/Or
(c) In the alternative direct the Defendant no: 1 & 2 to pay an amount of Rs. 11,43,393/- to the plaintiffs so that they can pay the same to the Defendant no. 3.
(d) Pass an order directing the defendant no. 3 to produce the statement of account of property tax of the Suit Property.
(e) Award cost of the present suit in favour of the Plaintiffs and against the Defendant No.l and 2; and / or
(f) Pass any other or further order or orders as this Hon'ble Court may deem fit and proper in the facts and circumstances of the present case."

3. The parties entered into a sale transaction qua property bearing No.301, 302A, 303, 304 and 305, Onkar Deep Building, Connaught Place, New Delhi *(hereinafter `suit property').* The Appellants/Defendants (*hereinafter 'Defendants'*) sold this property to the Plaintiffs and cleared all the dues of NDMC on 26th March, 2009 and no due certificate was also issued to the Defendants dated 27th March, 2009 clearly confirming that there were no arrears pending qua the suit property. Subsequently, some confusion appears to have been created in view of the notice dated 7th September, 2010 issued by the NDMC to the Plaintiffs. In the said notice paragraph 7 reads as under:

> *"7. This change is subject to decision of notice dated 30-03-2005 issued under section-72 with a proposal to revised rateable value from 129600- to 29900 from 01-04-2004."*

4. This led to the filing of the suit by the Plaintiffs against the Defendants, seeking recovery of the amounts, being demanded by the NDMC as it related to a period prior to the transaction between the parties. It is the admitted position, as submitted by Counsels, that as per the agreement and transaction entered between the parties, all dues prior to 26th March, 2009 were the responsibility of the Defendants and subsequent payments were to be the responsibility of the Plaintiffs. On this, there is no dispute between the parties. In fact, clause 11 of the Agreement to Sell dated 26th March, 2009 reads as under:

> *"11. That the house tax, lease money, ground rent, mis-use charges, penalties, water and electricity charges, maintenance charges and other dues and demands of whatsoever nature in respect of the said portion of the said property has already been cleared by the FIRST PARTY and the SECOND PARTY has also verified the same and from the date hereof the SECOND PARTY will be responsible for the payment of the same"*

5. Thus, the only question is whether the NDMC had any dues as on 26th March, 2009 when the Defendants made the entire payment of Rs.15,60,145/- and obtained No-Due Certificate. Obviously, if the NDMC issued a certificate on 27th March, 2009 and collected the entire payment, an alleged notice dated 31st March, 2005, cannot be resurrected in this manner after the property is sold, resulting in a dispute between the parties. Defendants submit that this alleged notice dated 30th March, 2005 was never

served upon the Defendants and till date has not been issued to the Defendants.

6. Under these circumstances, it is clear that any liabilities prior to 26th March, 2009 would be that of the Defendants. If there is any alleged notice which has been served by NDMC in accordance with law or adjudicated upon, the same shall be open to challenge by the Defendants whose remedies are left open qua the said notice. Insofar as the Plaintiffs are concerned, the dues that are liable to be paid are only those that relate to the period subsequent to 26th March, 2009. NDMC shall not take steps for recovery against the Plaintiffs for any alleged dues prior to 26th March, 2009. However, Defendants and NDMC may avail their respective remedies in accordance with law, if there is any outstanding notice.

7. Impugned judgment/decree is modified in the above terms.

8. Any amount deposited by the Defendants in this Court shall be refunded to them along with the interest, if any, accrued thereon.

9. With these observations, the appeal is disposed of. Miscellaneous application is also disposed of.

PRATHIBA M. SINGH
Judge

APRIL 06, 2018
Rahul