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

**+ FAO(OS) 28/2018 & CM No. 5462/2018**

**%** *Date of decision : 12<sup>th</sup> February, 2018*

**RAM KISHAN & ANR**

**..... Appellants**

Through : *Mr. Mukesh Anand, Mr. S.P. Nangia and Mr. Sahil Dhawan, Advs.*

**versus**

**NARINDER PAL SINGH (SINCE DECEASED) THR HIS LRS & ANR**

**..... Respondents**

Through : *Mr.B.L.Chawla, Adv. for R-1(a) to 1(c)  
Mr. Dhanesh Relan, SC for R-2  
DDA with Ms. Kajri Gupta and  
Ms. Gauri Chaturvedi, Advs.*

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

**GITA MITTAL, ACTING CHIEF JUSTICE**

**CM No. 5462/2018**

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

**FAO(OS) 28/2018**

3. With regard to an Agreement to Sell dated 8<sup>th</sup> February, 2012 in favour of the appellants and now deceased defendant Sh. Narinder Pal Singh [*predecessor-in-interest of respondent/defendant nos. 1(a) to*

(d)] in respect of the Property No. 8599, Deshbandhu Road, Paharganj, New Delhi for a total sale consideration of Rs. 3,00,00,000/-, the appellant herein had instituted CS(OS) 1966/2012 against him praying *inter alia* for a decree for specific performance and in the alternative for recovery of damages of Rs. 1,00,00,000/- and refund of the part consideration of Rs. 30,00,000/- with interest of 24% from the date of payment till its payment to the appellant.

The appellants had claimed that an amount of Rs. 30,00,000/- stood paid to the late defendant as part consideration of the Agreement.

4. On the 10<sup>th</sup> of July, 2012, when the suit came up for hearing, on IA No. 12167/2012 (*filed by the appellants/plaintiffs under Order XXXIX Rules 1 & 2 of the CPC*), the learned Single Judge had ordered the appellants to deposit the balance sale consideration of Rs.2,70,00,000/- in the form of a Fixed Deposit Receipt (FDR) with the Registrar General of this Court and subject to such deposit, restrained the defendant from transferring or creating third party rights in the subject property.

5. It appears that the appellant herein, as directed, duly deposited the amount of Rs.2,70,00,000/- by way of an FDR in this court.

6. The late defendant is stated to have filed a written statement, copy whereof has been placed on record, contending that the defendant had no title to the subject land for which reason the appellant could not have been granted a decree for specific performance of the Agreement dated 8<sup>th</sup> February, 2012.

7. In view thereof, the appellant herein filed IA No. 1325/2018 (*page 36*) for return of the amount deposited by way of the said FDR. On this application, by the impugned order dated 29<sup>th</sup> January, 2018, the learned Single Judge simply issued notice, returnable for the 4<sup>th</sup> of May, 2018. The appellant has also impugned before us the order dated 5<sup>th</sup> February, 2018 passed on IA No. 1651/2018 whereby the request of the appellants for preponement of the date was rejected.

8. It is submitted by Mr. Mukesh Anand, learned counsel for the appellant/plaintiff that in his written statement, the late defendant has stated that he had no title on the subject land, however there was no dispute so far as his ownership of the super-structure based thereon was concerned.

9. The Delhi Development Authority (*respondent no. 2 herein – defendant no. 2 in the suit*) has filed its written statement contending that the defendant was an unauthorised occupant of this land and that damages were being paid by him to the DDA for such unauthorized occupation.

10. It is further submitted that in view of the dispute regarding ownership of the land, the appellant/plaintiff had decided to confine the relief in the suit to refund of the amount paid with interest as well as for damages.

11. Mr. B.L. Chawla, learned counsel appears for respondent nos. 1(a) to (c), having seen this appeal in the cause list. He submits that he represents three legal heirs of Late Sh. Narinder Pal Singh who have been arrayed as respondent nos. 1(a) to 1(c) herein and stand impleaded as defendant nos. 1(a) to 1(c) in CS(OS) 1966/2012.

12. Mr. Chawla submits that he shall file his *vakalatnama* in court by tomorrow. Let the same be so done. Memo of Appearance has been filed and is taken on record.

13. It is submitted by Mr. Chawla, learned counsel for the respondents that these respondents have no objection to the return of the amount of Rs.2,70,00,000/- deposited by the appellant in this court in terms of the order of the Id. Single Judge dated 10<sup>th</sup> July, 2012.

14. Mr. Chawla further submits that these respondents/defendants have expressed their willingness to refund the amount to the earnest money of Rs.30,00,000/- which is claimed to have been paid by the appellant/plaintiff to Sh. Narinder Pal Singh (*the late defendant*) without prejudice to their rights and contentions.

15. Mr. Mukesh Anand, learned counsel for the appellants submits that the appellants have made a prayer, *inter alia*, for refund of the amount of Rs. 30,00,000/- with interest as well as for damages in the sum of Rs. 1,00,00,00/- in the plaint. Be that as it may, in view of the willingness expressed by the respondents to refund the principal amount claimed by the plaintiff, which was paid towards the Agreement to Sell, no prejudice would result to the appellants if they accept such amount.

16. In view of the above, it is directed as follows :

- (i) *The impugned order dated 29<sup>th</sup> January, 2018 and 5<sup>th</sup> February, 2018 are hereby set aside and quashed.*
- (ii) *The statement made on behalf of respondent nos. 1(a) to (c) is accepted and it is directed that they shall make payment of the amount of Rs.30,00,000/- to the appellant within four weeks*

*from today as prayed by learned counsel for the private respondent nos. 1(a) to (c).*

- (iii) The prayer in the suit shall stand confined to the prayer made for compensation and for damages of Rs. 1,00,00,000/- or such amount over and above as prayed for in prayer (b) of the prayer clause in the plaint.*
- (iv) The interest which the appellant/plaintiff may be entitled to, on the amount of Rs. 30,00,000/-, from the date that it was paid to the deceased defendant till the date of its payment to the appellant by the respondents 1(a) to (c) as well as costs in the suit, if any, shall also be determined in the suit and the parties shall be bound by the judgment and decree which may be passed thereto.*
- (v) The Registry shall take steps for release of the FDR which was submitted by the appellant pursuant to the order dated 10<sup>th</sup> July, 2021 passed in CS(OS) 1966/2012 and shall forthwith pay the full amount thereof, including all accruals thereon, to the appellant through his counsel.*

*This appeal is allowed in the above terms.*

**ACTING CHIEF JUSTICE**

**C.HARI SHANKAR, J**

**FEBRUARY 12, 2018/kr**