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

+ FAO(OS) 109/2018, CAV.No.606/2018 & CM No.26584/2018

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Date of decision : 9th July, 2018

M K SUBBA

..... Appellant

Through : Mr.Balbir Singh, Sr. Adv. with
Mr. Kunal Sabharwal, Adv.

versus

KARAN LUTHRA

..... Respondent

Through : Mr. Sudhanshu Batra, Sr. Adv.
with Mr. Rajiv Dewan, Ms.
Sahiba Pantel and Mr. Aditya
Mishra, Advs.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CAV.No.606/2018

The caveator has been represented and heard.

The caveat stands discharged.

CM No.26584/2018

Allowed, subject to just exceptions.

The application is disposed of.

FAO(OS) 109/2018

1. The appellant assails the order dated 24th May, 2018 passed by the Id. Single Judge on I.A.No.1689/2018 confirming an interim order of injunction dated 5th February, 2018 restraining the defendant from selling, alienating or transferring the suit property measuring 13 bighas 5 biswas bearing Khasra Nos.179/2/1 (1-05), 179/2/2 (0-11), 180/2 (2-10), 181/2/1 (1-05), 180/2/2 (2-02), 181/1 (2-11), 183/1 (2-11) with farm house, tube well, boundary wall, trees and other fitting and fixtures situated in village Sultanpur, Tehsil Hauz Khas, Mehrauli, New Delhi and rejecting I.A.No.3991/2018 filed by the appellant/defendant therein under Order XXXIX Rule 4 of the CPC in CS(OS)No.45/2018.

2. Ld. Single Judge has found that the respondents have established a *prima facie* case in the suit wherein a prayer was made for specific performance of an agreement to sell dated 7th June, 2018. The Id. Single Judge has observed that the transaction of loan set-up by the appellant/defendant in the suit of Rs.12 crores was its defence which had to be proved.

3. Inasmuch as the plaintiff has asserted that the loan transaction was a contract independent of the agreement to sell; that the plea of the defendant that he had returned the loan amount of Rs.11.6 crores between 17th December, 2012 to 28th February, 2014; that the repayments having been made without supporting documentation recording the same, these pleas had to be proved and required evidence during trial.

4. In this background, the finding of the Id. Single Judge that the

plaintiff/respondent herein had made out a *prima facie* case entitling him to confirmation of the ad interim ex parte injunction cannot be faulted with.

5. At this stage, Mr. Balbir Singh, Id. Senior Counsel for the appellant submits that grave prejudice will result to the respondent if there was delay in adjudication of the suit. Mr. Sudhanshu Batra, Id. Senior Counsel for the respondent submits that he joins the request for expeditious adjudication of the matter.

6. We are informed that the suit is listed on 17th August 2018 for framing of issues and hearing on the application filed by the appellant/defendant under Order VII Rule 11 of the CPC.

7. We are sure that the Id. Single Judge would proceed in the matter expeditiously in accordance with law.

8. The appeal is dismissed in the above terms.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JULY 09, 2018

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