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

Date of Decision: 28th September, 2018

+ **FAO(OS) 139/2018**

SACHIN JAIN & ANR Appellants

Through: **Ms.Anu Gupta, Adv.**

Versus

SUNIL KUMAR AGGARWAL Respondent

Through: **Ms.Rashmi Singla, Adv.**

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

Rajendra Menon, Chief Justice (Oral)

Caveat No.848/2018.

1. Since the learned counsel for the respondent has entered appearance, the caveat stands discharged.

C.M.No.37562/2018 (exemptions)

2. Allowed, subject to all just exceptions.

C.M.No.34561/2018 (delay)

3. For the reasons stated in the application, the delay in filing the application is condoned and the application is disposed of.

FAO(OS) 139/2018

4. In this appeal filed by the plaintiffs/appellants under Order XLIII Rule 1 of the Code of Civil Procedure read with Section 10 of the Delhi High Court Act, 1966 challenge is made to an order dated 23rd July, 2018 in C.S.(OS) No.261/2018 allowing the application being I.A.No.9530/2018 and modifying/vacating the injunction/stay granted on 29th May, 2018. The Appellants herein are the plaintiffs in the suit in question and is said to have entered into an agreement to sale dated 2nd November, 2017 with the respondent for purchase of suit property bearing No.A-114/5, Wazirpur Industrial Area, Delhi. The agreement was to expire on 10th April, 2018. It was extended by one month upto 10th May, 2018 and when the sale deed and conveyance deed was not being executed in spite of the Appellants paying the substantial amount, the suit in question was filed by the Appellants seeking specific performance of the agreement.

5. In the said suit an application for injunction being I.A.No.7440/2018 under Order XXXIX Rule 1 and 2 read with Section 151 of the Code of Civil Procedure was filed vide Annexure A-2 and the same was allowed vide Annexure A-3 passing an *ex parte* injunction restraining the respondent/defendant his agents etc. from selling, alienating or parting with the possession or creating a third party interest in respect of the suit property till the next date. Subsequently, an application was filed by the defendant/respondent for vacation/modification of the said injunction and the learned Single Bench finding that the defendant was seeking permission to induct a bonafide tenant due to his financial difficulty permitted the defendant-responent to induct a bonafide tenant subject to the following

two conditions:-

- “i) The property shall be let out as a rent above Rs.3,500/- per month vide registered lease deed.
- ii) Prior to giving possession to the proposed tenant an undertaking of the tenant shall be placed on record undertaking to vacate the suit premises on any direction to this effect by this Court.”

6. It is the grievance of the Appellants that in modifying the injunction granted, the learned Single Bench has exceeded its jurisdiction available under Order XXXIX Rule 4. It was argued that such an order could not be passed in a proceedings under Order XXXIX Rule 4 of the CPC and in varying or modifying the injunction, the Court has committed an illegality. It is further argued that the respondent-defendant does not have any financial constraint or difficulty and in permitting to do so, the Court has committed material irregularity.

7. We have considered the submissions made and we find that under Rule 4 of Order XXXIX, an order for injunction may be discharged, varied or set aside by the Court on application made thereto by any party dissatisfied with such an order and the second proviso to the said rule empowers the Court to do so if it is satisfied that the order of injunction may cause undue hardship to a party. As this is the legal position with regard to power available, in this case also to avoid hardship to the defendant – respondent, if a tenant has been permitted to be inducted on the conditions as stipulated hereinabove protecting the interest and right of the plaintiff-appellant herein, we see no reason to make any indulgence into the matter. Finding the learned Single Bench to have exercised its jurisdiction in

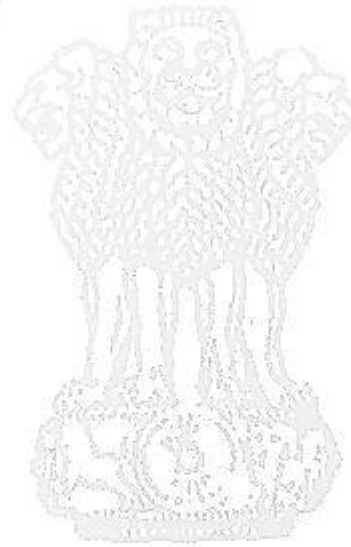
accordance with the requirement of law and as the same does not cause any prejudice or adversely affect the right of plaintiff, we see no reason to make any indulgence.

8. The appeal is, therefore, dismissed.

CHIEF JUSTICE

V. KAMESWAR RAO, J

SEPTEMBER 28, 2018
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