

\$~3

IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 22nd January, 2018

+ C.R.P. 247/2017 and CM APPL.42242/2017, 44475/2017

VIRENDER KUMAR AWASTHI Petitioner

Through: Mr. Ravi P. Shukla, Ms. Upasana
Shukla and Mr. Prashant Saini,
Advocates

versus

MAHENDER KUMAR Respondent

Through: Mr. Syed Hasan Isfahani, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. The civil suit (CS No.345/2016) in which the impugned order dated 06.10.2017 was passed by the Additional District Judge (ADJ) was instituted by the respondent (plaintiff) against the petitioner (defendant) seeking recovery of Rs.6,00,000/-, the suit having been presented as a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) founded on the agreement to sale and purchase dated 26.08.2016. The subject matter of the suit is immovable property described as residential plot bearing No.RZF-757/28, area measuring 100 sq. yds., which is part of *Khasra* No.47/20, situated in Rajnagar-II, Palam Colony, New Delhi-110 077.

2. The defendant had claimed to be the lawful owner and in physical possession of the said property and had agreed to sell it for a total consideration of Rs.60,11,000/- by the agreement dated 26.08.2016 to the plaintiff, acknowledging having received as an advance (earnest money) a sum of Rs.6,00,000/-, the balance being payable on or before 26.10.2016 when the possession of the property was to be handed over and the documents transferring right, title and interest were to be executed and registered.

3. It appears that the plaintiff had reasons to doubt the claim of the defendant about he being the exclusive owner of subject property and called upon the defendant to share the chain of documents conferring the title on him. The suit was filed, *inter alia*, on the grounds that the defendant failed to respond and since information had surfaced about certain other persons also laying a claim to the property on the basis of inheritance under the original owner Late Smt. Indra. The defendant was called upon to either provide a No-objection certificate from such other claimants or refund the earnest money and there being no response, the suit was filed for recovery of the said amount of money as debt.

4. The defendant filed an application for leave to contest asserting that the property in question belongs to him and that the plaintiff had violated the terms of the agreement and, therefore, the earnest money had been forfeited.

5. The aforesaid application for leave to defend was considered by the ADJ. By the impugned order, leave was granted but it being conditional upon the amount of Rs.6,00,000/- in the form of fixed

deposit receipt (FDR) taken out from a nationalized bank, to be submitted in the court within a period of thirty days.

6. The petition at hand was filed questioning the aforementioned condition added to the leave to defend granted by the trial court. It is the case of the petitioner/defendant that he is entitled in law under the agreement to sell to forfeit the amount which was paid as earnest money.

7. When the petition was entertained, at the first hearing on 21.11.2017, it was submitted by the counsel for the defendant that copy of the registered sale deed had already been shared and that no proceedings had been taken out challenging the title of the defendant to the suit property. It may be that there are no legal proceedings taken out in the court to challenge the title deed of the defendant *qua* the suit property. But, as is shown by the documents (Annexure R6 and R9), at least two other legal heirs claiming under the erstwhile owner Smt. Indra, they being Kiran Kumari and Ravinder Pratap Singh, have made requests to the sub-registrar concerned on 24.10.2016 and 19.09.2017 raising issues about the documents registered in the name of the defendant.

8. In the face of these circumstances, the plaintiff seems to be disinclined to go ahead with the transaction of sale. He had demanded the copies of the chain of documents conferring the title on the defendant. It appears from the pleadings that there was no response by the defendant to the legal notice.

9. In the above facts and circumstances, though triable issues do seem to arise, the condition imposed by the ADJ on the grant of leave

to contest cannot be said to be unfair or unreasonable. After all, money in question was taken by the defendant from the plaintiff as earnest money towards the sale of the property. Since the sale of the property is not likely to come through, given the doubts entertained by the plaintiff about the title of the defendant, the trial Judge has imposed appropriate condition.

10. The petition is, thus, dismissed.

11. Interim order is vacated.

12. The written statement of the petitioner shall be considered only after ensuring that the petitioner complies with the condition added to the leave granted to him for contest. For such purposes, the petitioner shall have time till the date of hearing next fixed before the trial court.

13. Pending applications also stand disposed of.

R.K.GAUBA, J.

JANUARY 22, 2018

vk