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

+ **FAO(OS) 184/2018**

RAVI SINGHAL

..... Appellant

Through Mr. Abhimanyu Bhandari, Mr. Tanmaya Mehta, Mr. Krishan Tewary, Ms. Rinkel Singh, Ms. Kanika & Ms. Nimisha, Advocates.

versus

MANALI SINGHAL & ORS.

..... Respondents

Through Mr. Saurabh Kirpal, Mr. Prosanjeet Banerjee & Ms. Vinita Sasidhar, Advocates.

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

ORDER

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12.12.2018

Caveat No. 1133/2018

As the respondents have entered appearance and would be heard, caveat is disposed of.

CM No. 51133/2018

Application for condonation of delay in filing the appeal is not opposed without prejudice to rights and contentions of the respondents. Application is allowed and the delay is condoned.

FAO(OS) No. 184/2018

Learned counsel for the appellant states that he would not press the plea relating to interpretation of the memorandum of settlement dated 4th

November, 1994. This plea, if required and necessary, would be raised during the course of the trial.

2. Learned counsel for the appellant submits that the suit without prayer for declaration is not maintainable in view of the defence and plea taken by the appellant in the written statement that the agreement/memorandum of settlement dated 4th November, 1994 is *void*. Learned counsel relies on decision of the Supreme Court in ***I.S. Sikandar (Dead) by Lrs. versus K. Subramani and Others***, (2013) 15 SCC 27.

3. In ***I.S. Sikandar (Dead) by Lrs. (supra)***, the defendant in response to the legal notice had informed the plaintiff that he had terminated the agreement to sell since the plaintiff had failed to perform his part of the contract. In the given facts, in absence of the prayer for declaratory relief to declare the termination of the agreement to sell as bad, it was held that grant of decree of specific performance to plaintiff was unsustainable in law.

4. Learned counsel for the respondents in addition to the reasons given in the impugned order submits that the plea in the written statement is that the agreement/memorandum of settlement is *void* and unenforceable; and not that the agreement/memorandum of settlement was terminated. Defence of the appellant cannot be a ground for rejection of the plaint. Respondents have also highlighted that this was a second application under Order VII Rule 11 of the CPC. Earlier IA No. 2635/1998 under Order VII Rule 11 of the CPC was filed and was dismissed. Learned counsel for the appellant does not dispute the fact but submits that the application filed earlier was on a different ground.

5. We are entirely in agreement with the findings of the learned single Judge that for deciding an application under Order VII Rule 11 read with

Order XII Rule 6 of the Code of Civil Procedure, 1908, we have to look at the averments in the plaint. Plea of annulment or the memorandum being *void* taken in the written statement would not mean that the plaint does not disclose a cause of action. It is a defence to suit. The argument of the appellant is rejected.

6. Repeated applications under Order VII Rule 11 CPC, even on different grounds, does give an impression of an attempt and desire to stall and delay the proceedings. However, this is only an observation and not finding.

7. Recording the aforesaid, the appeal is dismissed.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 12, 2018
VKR