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

+ **FAO(OS) 299/2017 & CM Nos.42674-75/2017**

% **Date of Decision: 31st January, 2018**

EVOLVE INFO TRAIN INDIA PVT LTD Appellant
Through: Mr. K. Datta with
Mr. Aditya Gupta, Advs.
versus

VERSATILE COMMOTRADE PVT
LTD & ANR Respondent
Through: Mr. Nikhilesh Krishanan,
Adv. for R-1.
Mr. Ankit Kakkar, Adv. for
R-2.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.42674/2017 (*for condonation of delay*)

Heard.

For the reasons stated in the application, delay in filing the appeal is condoned.

The application stands disposed of.

CM No.42675/2017

By this application the appellant seeks leave to appeal under Section 151 of the Code of Civil Procedure, 1908 (hereafter 'CPC') to challenge the impugned order dated 8th August, 2017

passed in I.A. No.8896/2017 in CS (OS) No.802/2014. The appellant has stated that it is the owner of the property bearing 14 *bighas* 12 *biswa* out of *Khasra* nos.4/12, 7, 8/2, 22 & 23 situated in the revenue estate of village Ujjwa, Tehsil Nazafgarh, Delhi by virtue of the registered Sale Deed dated 21st November, 2013. The appellant was not impleaded a party in CS(OS) No.802/2014, yet the impugned order dated 8th August, 2017 has been passed which affects the rights of the appellant to deal with the subject property.

It is trite that a person prejudicially affected by an order of the Court, where he was not a party, would be entitled to bring in an appeal, with the leave of the appellate court, in respect of such order [*Ref.: Smt. Jatan Kumar Golcha vs. Golcha Properties (P) Ltd. (1970) 3 SCC 573*].

In view thereof, this application is allowed.

The applicant is granted leave to maintain the present appeal arising out of the impugned order dated 8th August, 2017.

FAO (OS) No.299/2017

1. On the last date of hearing, we had called for the records of CS(OS) No.802/2014, which have been examined by us.
2. This appeal has been filed by Evolve Info Train India Pvt. Ltd. assailing the order dated 8th August, 2017 passed by the Id. Single Judge in I.A. No.8896/2017 in CS (OS) No.802/2014.
3. The facts of the case necessary for consideration of the present appeal are in a narrow compass. To the extent necessary, the same are noted hereafter.
4. It appears that M/s Versatile Commotrade Pvt. Ltd.

(*respondent no.1 herein*) had filed CS(OS) No.802/2014 against M/s Angad Developers Pvt. Ltd. (*the respondent no.2 herein*). The suit was filed under Order XXXVII of the CPC invoking summary procedure for the fund/recovery of Rs.2 crores with interest @ 16.25 % per annum from 15th November, 2013 till the date of actual payment.

5. A perusal of the plaint would show that the claim of the plaintiff rested on the averments that the respondent no.2/defendant had offered to sell its 14 *bighas* 12 *biswa* out of *Khasra* nos.4/12, 7, 8/2, 22 & 23 situated in the revenue estate of Village – Ujjwa, Tehsil Nazafgarh, Delhi to the respondent no.1/plaintiff for a sale consideration of Rs.3,41,000,00/- per acre, amounting to a total of Rs.10,37,20,833/-.

6. In paras 4 and 5 of the plaint, it is stated that the respondent no.1/plaintiff claimed to have paid an amount of Rs.1,25,000,00/- vide cheque no.885608 towards advance/part sale consideration at the time of execution of the Agreement to Sale dated 21st April, 2013. An other amount of Rs.75,00,000/- was claimed to have been paid by the respondent no.1/plaintiff to the respondent no.2/defendant in two trenches, i.e., an amount of Rs.50,00,000/- paid on 11th May, 2013 and a further sum of Rs.25,00,000/- was also paid both of which stood received under duly signed receipts. Respondent no.1/plaintiff as such claimed that a total amount of Rs.2,00,00,000/- had been paid to the respondent no.2/defendant towards the sale consideration.

7. Given the nature of the controversy, it is important to note

that in the plaint only a prayer for a decree of recovery of money against the respondent no.2 is made by the respondent no.1, in the following terms:

“i. Decree the instant suit in favour of the plaintiff and against the defendant thereby directing the defendant to refund/pay an amount of Rs.2,00,00,000/- (Rupees Two Crores Only) alongwith interest @ 16.5% p.a. with effect from 15th November 2013 till the date of actual payment.

ii. Award cost of the suit in favour of the plaintiff and against the defendant; and

iii. Pass any other order as may be deemed fit by this Hon’ble Court in the facts of the present case.”

8. We also note that the suit was filed on or about the 13th March, 2014 by the respondent no.1 herein. Consequently, by the order dated 29th May, 2014, summons were directed to be issued under Order XXXVII Rule 3(4) of the CPC to the respondent no.2. The respondent no.2 entered appearance in the suit on 14th July, 2014. The respondent no.2 filed I.A. No.14384/2014 under Order XXXVII Rule 3(5) of the CPC, seeking leave to defend.

9. We have scrutinized the record of the case which would show that ever since (*from 2014 till date in 2018*) the matter has been adjourned for various reasons including on the request of the parties to enable them to explore the possibility of settlement as well as circulation of the adjournment slips with the consent of both the parties.

10. Ld. counsel for the parties submit that this application seeking leave to defend is pending till date and the same has not been decided.

11. During such pendency of application for leave to defend since November, 2014, the respondent no.1 filed I.A. No.8896/2017 being an application under Order XXXVIII Rule 5 of CPC read with Order XXXIX Rules 1 & 2 seeking an order for attachment of judgment. In this application, the respondent no.1/plaintiff has made the following averments:

“2. That by filing the instant application, plaintiff is praying this Hon’ble Court to invoke its powers under Order 38 Rule 5 CPC as defendant with intent to obstruct and delay the execution of the decree that may be passed against it in the captioned suit, is in furtherance of sham transaction of sale of property being agricultural land, area measuring 14 Bighas, 12 out of Khasra No.4/12, 7, 8/2, 22 and 23, situated in revenue estate of Village Ujjwa, Tehsil Nazafgarh, Delhi (hereinafter referred to as the “said property”) to its sister concern, M/s Evolve Info India Pvt. Ltd., is further engaged through M/s Evolve Info India Pvt. Ltd. to sell above property to a third party.

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5. That as the plaintiff was apprehending that defendant would try to sell the above land through its sister concern, M/s Evolve Info India Pvt. Ltd. so as to avoid Section 53 of Transfer of Property Act and to defeat or delay execution of the decree which is likely to be passed in favour of the plaintiff in the captioned suit, plaintiff had filed objection/application on 29.05.2017 before the Office of the Additional District Magistrate/LAC (South-West), Kapashera that NOC be

not issued in respect of the above property and true copy of the said application is filed as Annexure A. Pursuant to the same, plaintiff had received Notice dated 13.06.2017 sent by the Officer of Additional District Magistrate (South-West) intimating that M/s Evolve Info India Pvt. Ltd has filed application for issuance of NOC and plaintiff had been asked to produce court stay order/restrain order on the date of hearing i.e. 22.06.2017 on 3.00 P.M. True copy of the above Notice dated 13.06.2017 is filed herewith as Annexure B. Additional District Magistrate (South-West) has granted further time to the plaintiff to bring Court order of restraint/stay. Said proceeding is pending before the Additional District Magistrate (South-West).

6. In view of the above notice received from the Office of Additional District Magistrate (South-West), it is evident that the defendant has through its sister concern, M/s Evolve Info Train India Pvt. Ltd. applied for issuance of NOC obviously with the intention to sell the above land to a third party and if said act is not restrained from doing the same, same will cause irreparable loss to the plaintiff as above land will be sold and in the event of passing of decree in favour of the plaintiff, plaintiff will not be able to realize the same by selling the above land of the defendants which was valued around Rs.10.37 Crores in the above agreement to sell. As stated above, even alleged sell by the defendant to its sister concern M/s Evolve Info Train India Pvt. Ltd. on 25.04.2014, after receipt of summons of the instant suit, is hit by Section 53 of Transfer of Property Act requiring interference by this Hon'ble Court to safeguard interest of the plaintiff by attaching the above property. Hence the present application for passing order under Order 38 Rule 5 CPC for directing the defendant to furnish security failing which the above property be attached and in the meantime creation of any

third party interest in respect of the above land either by sale or otherwise by restrained till decision in the present case or till furnishing of security by the defendant. ”

12. I.A. No.8896/2017 in CS(OS) No.802/2014 came up for consideration for the first time before the ld. Single Judge on 8th August, 2017 when the ld. Single Judge passed the impugned order restraining the Additional District Magistrate, South-West District, New Delhi from issuing NOC in favour of the defendant (*respondent no.2 herein*) or its sister concern, M/s Evolve Info Train India Pvt. Ltd. for the sale of the said land to any third party. Inasmuch as the appellant company was not a party in the suit and has been affected by the passing of the impugned order, the present appeal has been filed assailing this order.

13. It has been averred in the appeal that the appellant is the owner of the subject land and the appellant has purchased the property in question by a registered sale deed dated 21st November, 2013 after compliance of the statutory requirements.

A copy of the Sale Deed has been produced in the Court and the same is taken on record.

14. The respondent no.1/plaintiff does not lay any claim to the property which is the subject matter of the Sale Deed dated 21st November, 2013. The suit simply seeks a money decree, which was not even accompanied by any application seeking any interim relief even in the nature of an interim injunction.

15. It is contended by the ld. counsel for the respondent no.1 that it had inspected the revenue records which reflected that the

respondent no.2 is the owner of the subject property. In our view, this was a hopeless exercise, inasmuch as the record of the Sub-Registrar was open for inspection.

16. No rights are claimed by the respondent no.1/plaintiff so far as the immovable property is concerned. The respondent no.1/plaintiff does not seek cancellation of the sale deed which is a registered deed in favour of the appellant. Merely because the respondent no.1/plaintiff alleges a sham transaction that too in an application, it cannot in any manner whatsoever impact the rights and claims of the appellant which is also a company incorporated under the provisions of the Companies Act, 1956.

17. Ld. counsel for the respondent no.1/plaintiff would submit that the respondent no.1/plaintiff had made a prayer in the application under Order XXXVIII Rule 5 of CPC. The prayer would certainly be of no consequence inasmuch as no claim in the immovable property has been made in the civil suit.

18. Minimal due diligence would have enabled any person to ascertain the ownership of the property which stands registered with the office of Sub-Registrar. I.A. No.8896/2017 filed by the respondent no.1/plaintiff hopelessly conceals the fact that the appellant before us was the owner of the subject property under registered documents of title.

19. We, therefore, find substance in the grievance of the appellant that its rights in the immovable property would be impacted by the impugned order dated 8th August, 2017 without making it a party or hearing it. No interim order against the

appellant in respect of the subject property could have been passed in a money suit instituted by the respondent no.1/plaintiff.

For all these reasons, the order dated 8th August, 2017 passed by the 1d. Single Judge in I.A. No.8896/2017 in CS (OS) No.802/2014 is hereby set aside and quashed.

No order as to costs.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

JANUARY 31, 2018/pmc