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

FAO(OS) 302/2017 & CM No.43479/2017

Date of decision: 05th December, 2018

+ **FAO(OS) 302/2017 & CM APP No. 43479/2017**

NAVEEN GUPTA Appellant

Through: **Mr.Gagan Gupta, Adv.**

versus

DEEPA MITTAL & ORS Respondents

Through: **Mr.Prashant Mehta with Ms.
Vasundhara Bhardwaj, Advs.**

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

SANJIV KHANNA, J. (ORAL)

This intra court appeal by Naveen Gupta (appellant for short), who is the plaintiff in suit CS(OS)No.386/2017, impugns the order dated 22.11.2017 passed by the learned Single Judge holding that the appellant in the peculiar facts of the case would not be entitled to benefit of Section 52 of the Transfer of the Property Act,1882 (Act, for short) in relation to certain properties.

The operative portion of the impugned order reads :-

“8. In view of the aforesaid discussion, though the suit and the interim applications are adjourned, however, on account of rank dishonesty shown on behalf of the plaintiff by its Advocates, and which tantamounts to in fact contempt of Court, adjournment is granted subject to payment of costs of Rs.50,000/- to counsel for the defendants. Costs shall be paid within a period of six weeks from today.

9. In the peculiar facts of this case this Court makes an order that except with respect to rights of the plaintiff in the properties as per paragraph 27 of the preliminary objections of the written statement, the plaintiff will not have benefit of Section 52 of the Transfer of Property Act with respect to any other properties. Also, counsels for the plaintiff are cautioned that though no action for contempt is initiated against them for mis-leading this Court and telling complete lies, that too by ex-parte mentioning the matter, but in case in future any unbecoming or undesirable conduct of the Advocates is noticed, then this Court would be included to take the issue very seriously.

10. List on 21st March, 2018.”

2. Aforecaptioned suit has been filed by the appellant against his brothers, sisters and Delhi Development Authority with prayer for partition, injunction in respect of several properties and for declaration that the conveyance deed dated 14.10.2014 of the industrial property No.E-2, Block-1, Mohan Co-operative Industrial Estate (Industrial Property, for short) in favour of Deepa Mittal, the first respondent before us, is null and void.

3. The appellant along with the plaintiff had filed an application under Order XXXIX, Rules 1 and 2 of Code of Civil Procedure, 1908 ('Code' for short). As no interim order was passed while issuing notice in the application and the plaintiff, the appellant had filed FAO (OS) No.238/2017. By the order dated 28.08.2017, this appeal was dismissed as withdrawn giving liberty to the appellant to file another application before the learned single judge under Order XXXIX Rules 1 and 2 of the Code in view of the assertion made that the first respondent was trying to dispose of the industrial property.

4. The appellant had then filed IA No.10113/2017 before the learned Single Judge, which was listed on 08.09.2017. The respondents having entered appearance on the same day had accepted notice. After noting the contentions raised and with some observations, learned Single Judge had adjourned the application of injunction giving time to the respondents to file written statement and reply to the applications for interim relief. No interim order was passed.

5. The appellant once again approached the Division Bench vide FAO (OS) No.254/2017 assailing the order dated 08.09.2017. The Division Bench in its order dated 18.09.2017 *prima facie* found substance in the appellant's grievance that he was not given an opportunity to contest the contentions of the respondents as recorded in the order dated 18.09.2017. Division Bench directed that the observations made by the learned Single Judge in the order dated 08.09.2017 would be treated as *prima facie* observations and not the final view. The respondents had agreed before the Division Bench that they would file written statement and the reply to the applications in the civil suit

within a week from 18.09.2017. Liberty was granted to the appellant to file replication and rejoinder before the next date of hearing before the learned Single Judge. It was directed that the civil suit would be listed before the learned Single Judge on 20.09.2017 for fixing and expediting the date of hearing in the interim applications and further proceedings.

6. Written statement and reply to the applications in terms of the above directions given in the order dated 18.09.2017 passed in FAO (OS) No.254/2017 were not filed. By order dated 20.09.2017, the applications were directed to be listed on 11.10.2017.

7. Order dated 11.10.2017 passed by the learned Single Judge records that the reply to the interim application had been filed. Rejoinder to the same had also been preferred by the appellant but the same was not on record. At the joint request, the matter was re-notified for 25.10.2017 at 2.30 pm for disposal of the applications. The order also records that the appellant had filed some documents which were not on record and had been served on the respondents a day or two before. The appellant was directed to ensure that the documents were placed on record.

8. Order dated 25.10.2017 notes that the written statement was filed by the respondents a day earlier on 24.10.2017 had not come on record. Learned counsel for the respondents were directed to ensure that the written statement comes on record and a copy of the same was directed to be furnished to counsel for the appellant. The appellant was given time to file replication within next two weeks.

9. This order also records that the arguments had been heard on the two applications for interim relief. Learned Single Judge had issued interim direction that any transfer or disposal in the suit property shall be subject to the outcome of the order in the interim applications.

10. However, order was not pronounced, albeit interim applications were re-listed by the learned Single Judge on 02.11.2017 for directions. Learned Single Judge observed that the Division Bench had directed the respondents to file the written statement and reply which had not come on record. Further, copy of written statement filed by the respondents had not been served on the counsel for the appellant. It was directed that a copy of the Written Statement would be served on the counsel for the appellant within one day. Replication was directed to be filed on or before the next date which was fixed on 22.11.2017 at 2.15 pm. The interim direction passed on 25.10.2017 was extended till the next date.

11. On 08.11.2017, the suit was listed before Joint Registrar (Judicial), when application filed by the respondents for condonation of delay in filing the written statement was allowed. The appellant was granted time to file rejoinder in terms of the order dated 02.11.2017 passed by the learned Single Judge. Parties were directed to file affidavit for admission/denial of the documents within two weeks after exchanging copies and the matter was directed to be listed before the Court on the date already fixed i.e. on 22.11.2017.

12. We have already quoted the operative portion of the impugned order i.e. order dated 22.11.2017 passed by the learned Single Judge. One portion of the order states that the suit and the interim applications were being

adjourned to be listed on 21.03.2018. The other part of the said order holds that the appellant would not avail the benefit of Section 52 of the Transfer of Property Act with respect to the “other properties” i.e. properties in which the respondents did not accept or admit interest. Cost of Rs.50,000/- was also imposed on the appellant with the direction that the same be paid within six weeks.

13. Earlier portion of the impugned order refers to the conduct of counsel for the appellant who had stated that the arguments had been addressed in the interim applications and the matter was reserved for orders by the earlier Bench. The statement made by learned counsel for the appellant it was observed was incorrect as in terms of the order dated 22.11.2017 the interim applications had been set out for further hearing after taking on record the written statement and the replication.

14. We entirely agree with the learned Single Judge that a wrong statement was made by the counsel for the appellant. Counsel should take care and caution. The appellant had an interim order passed by the learned Single Judge on 25.10.2017 in his favour i.e., any transfer or disposal of the suit property was subject to the outcome of the interim applications. Learned Single Judge felt that the matter had been deliberately delayed by the appellant. Learned Single Judge has also made certain observations on merits with reference to a civil suit filed by the appellant in 2004 and was withdrawn on 16.11.2005 with the statement that there was an oral settlement. The order records that learned counsel for the respondents had stated that they had never accepted or admitted any oral settlement. Further in 2014 the appellant had filed an application under Order XXIII Rule 3 of

the Code in the first suit, which was not entertained and was dismissed. Counsel for the appellant had submitted that dismissal of the application was of no consequence. With regard to the withdrawal of the suit on 16.11.2005, the case and stand of the appellant is that respondents had agreed that there was a settlement.

15. We have noticed the aforesaid facts in some detail in view of the controversy raised before us and the directions under challenge given in the impugned order. Having read the order and gamut of proceedings, we would observe the respondents too have been responsible for the delay. Further, the interim applications under order XXIX Rules 1 and 2 of the Code as per the recording in paragraph 8 of the impugned order have not been disposed of and the suit and the applications were adjourned for further consideration on 21.03.2018. The interim applications for injunction are therefore pending.

16. This appeal has remained pending in this Court since 29.11.2017. There has been a direction that there would be stay of operation of the order dated 22.11.2017 till the next date of hearing. The interim direction has continued. It is pointed out to us that thereafter proceedings have not been fixed before the learned Single Judge and the applications for interim relief have not been disposed of. In view of the factual position, we direct the parties to appear before the learned Single Judge on 10th January, 2019, when a further date for consideration and hearing of the interim applications would be fixed.

17. The appellant would pay costs of Rs.25,000/- to the respondents for the delay caused and failure to address arguments on the interim application before the learned Single Judge on 22.11.2017. We have reduced the costs

as it is pointed out that the counsel for the appellant was suffering from Dengue on the date when the costs was imposed by the Single Judge. It is also stated there was change in the roster after 2.11.2017 and the counsel for the appellant was of the opinion that the matter would be listed before the earlier Judge, who had heard the arguments on 25.10.2017. Interim order passed by the Division Bench would be continued till 10.01.2019. It will be open to the learned Single Judge thereafter to continue or vacate the stay order. We also observe that in case the appellant takes any adjournment which is not justified and appropriate or prolongs the proceedings, it will be open to the learned Single Judge to direct that benefit of Section 52 of the Transfer of the Property Act would not be available to him.

18. We also clarify that this order is only a *prima facie* view and not conclusive observations. The applications would be decided on merits by the learned Single Judge.

19. The appeal is disposed of.

SANJIV KHANNA, J.

ANUP JAIRAM BHAMBHANI, J.

DECEMBER 05, 2018/*neelam*