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

+ **FAO(OS) 59/2019**

NEERU AGARWAL

..... Appellant

Through: Mr. D.D. Singh with Ms. Seerat Deep
Singh, Advs.

versus

RAMA KANT GUPTA & ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MS. JUSTICE REKHA PALLI

ORDER

01.04.2019

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C.M. No. 15051/2019

Exemption allowed, subject to all just exceptions. The application stands disposed of.

FAO(OS) 59/2019 & C.M. No. 15050/2019

The present appeal has been preferred by the appellant to assail the orders dated 15.02.2019 and 19.03.2019 passed by the learned Single Judge in CS (OS) No. 2551/2015 and I.A. No. 4007/2019. By the first order, the learned Single Judge framed the issues in the suit. The following issues were framed:

“(1) Whether the Agreement dated 26th December, 2003 was unconscionable and had been executed by defendant no.2 under coercion, undue influence, misrepresentation and the effect, if any, thereof. OPD-2

(2) Relief.”

The aforesaid issue No.1 was framed in the background that the appellant before us Neeru Aggarwal, who is the sister of the two respondents sought to ward off the agreement relied upon by the respondents dated 26.12.2003 by claiming that the same was hit by coercion, undue influence, misrepresentation, was illegal, an act of fraud and was unconscionable.

Consequently, the learned Single Judge framed the aforesaid issue No. 1 while placing the onus upon the appellant, who is impleaded as defendant No.2 in the Suit. The appellant then moved an application to seek amendment of the issue being I.A. No. 4007/2019. By the impugned order dated 19.03.2019, that application has been disposed of. The learned Single Judge has inserted the words “illegal” and “fraud” in Issue No.1 and the amended Issue No.1 reads as follows:

“(1) Whether the Agreement dated 26th December, 2003 was illegal unconscionable and had been executed by defendant no.2 under coercion, fraud, undue influence, misrepresentation and the effect, if any, thereof. OPD-2
(2) Relief.”

The appellant had argued before the learned Single Judge that the onus to prove issue No.1 should be placed upon the plaintiff. That argument has been rejected by the learned Single Judge by observing that the appellant/ defendant No.2 had not disputed the execution of the agreement dated 26.12.2003 and the only plea advanced by the appellant was that it is vitiated by coercion, undue influence, misrepresentation, fraud or that the same is illegal and unconscionable. Consequently, the learned Single Judge has declined the submission of the appellant that the onus be shifted from the appellant/ defendant No.2 to the plaintiff.

At the outset, we may observe that the present appeal is not maintainable under Order XXXVIII Rule 1 CPC. The impugned order also does not determine the inter se rights of the parties and is not in the nature of a final order. It is not an order of moment as discussed in *Shah Babulal Khimji vs Jayaben D. Kania And Anr*, AIR 1981 SC 1786

The present appeal is, therefore, in our view, not maintainable. Even otherwise, having perused the order dated 19.03.2019, we do not find merit in the submission of the appellant.

The appeal is, accordingly, dismissed.

VIPIN SANGHI, J

REKHA PALLI, J

APRIL 01, 2019

N.Khanna