

\$~24.

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

+ **FAO(OS) 116/2019**

M/S BDR BUILDERS & DEVELOPERS PVT LTD

..... Appellant

Through: Mr. K. Bhimraj, Adv.

versus

LALIT MODI & ANR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE VIPIN SANGHI

HON'BLE MR. JUSTICE RAJNISH BHATNAGAR

ORDER

05.07.2019

%

C.M. No. 29444/2019

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

FAO(OS) 116/2019 & C.M. No. 29443/2019

The present appeal has been preferred by the appellant to assail the order dated 16.05.2019 passed by learned Single Judge in O.A. No. 42/2019 in CS (OS) No. 109/2017. The said Chamber Appeal had been preferred against the order passed by learned Joint Registrar dismissing the appellant's application to seek impleadment under Order 1 Rule 10 CPC. The suit has been preferred by the plaintiff to seek specific performance of agreement to sell claimed to have been entered with the defendant in the year 2012. The

appellant claims to have entered into a subsequent agreement with the defendant in respect of the same property in the year 2014. Consequently, he moved an application i.e. I.A. No. 14533/2018 to seek impleadment as a party defendant in the suit. The learned Joint Registrar rejected that application vide order dated 26.03.2019 and the Chamber Appeal preferred by the appellant has also been rejected by the impugned order.

Learned counsel for the appellant seeks an adjournment to brief a senior counsel and argue the matter. We are not inclined to grant any adjournment considering the fact that the matter is listed, for the first time today before us. If the appellant was so minded, he should have moved an application for adjournment in advance to prevent this Court from spending considerable time in reading the file.

We have, therefore, called upon counsel for the appellant to advance his submissions which, he has failed to do so. We are left with no option but to proceed with the matter in this background.

We have perused the impugned order. The learned Single Judge, while dismissing the Chamber Appeal has distinguished the decisions relied upon by the appellant in support of his submissions. The learned Single Judge has also taken note of the decisions of this Court in ***Mehar Chand Sharma v. Manjeet Singh Kohli and Ors***, 2015(223) DLT 449 as also the decision in ***Bharat Karsondas Thakkar v. Kirsan Construction Company & Ors.***, (2008) 13 SCC 658, wherein the courts have held that in such a situation, it is not open to a third party to jump into the suit proceedings and raise issues which do not arise in the suit. The scope and nature of the suit presently is in relation to the agreement to sell set up by the plaintiff of which the plaintiff is seeking the specific performance. The appellant/

applicant wishes to dispute the said agreement on the ground that the same is collusive. In these circumstances, the Courts have held that it is not open to the applicant to seek impleadment as a party defendant and he may bring his own suit if it is so advised. In ***Mehar Chand Sharma*** (supra), the Division Bench has observed as follows:

“9. In a suit for specific performance of an Agreement, the Court has to adjudicate upon and settle all the questions involved between the parties to the agreement or parties claiming any right or interest through or under the parties to the Agreement. The lis in a suit for the specific performance is a lis arising out of a contract i.e. the subject Agreement. The questions to be settled by the Court are questions revolving around the Agreement. The presence of a stranger to the Agreement would not, in any manner, facilitate or enable the Court in adjudicating upon and settling the questions pertaining to the Agreement.

10. The parties that are neither signatory nor claiming any title through or under parties that are signatory to the Agreement would not assist the Court in effectually and completely adjudicating upon or settling all the questions involved in the suit. On the other hand, impleadment of parties that are not connected with the Agreement would lead to enlarging the scope of enquiry required to be conducted by the Court for the purposes of adjudicating upon and settling the questions involved in the suit.

11. In this view of the matter, since the appellant is neither a signatory to the Agreement nor claiming any right, title or interest under/through any person, who is signatory to the Agreement, the appellant is neither a necessary nor a proper party to enable with Court to effectually and completely adjudicate upon and settle all questions in the suit.

12. The plaintiff is the dominus litis. It is for the plaintiff to choose against whom the plaintiff wishes to litigate. The plaintiff cannot be forced to litigate against a party against whom he seeks no relief. If the plaintiff omits to sue or litigate against the party whose presence is necessary or in absence of

whom the decree cannot be executed, the plaintiff does so at its own risk and peril.”

In ***Bharat Karsondas Thakkar*** (supra), the Supreme Court has held as follows:

“28. Along with that is the other question, which very often raises its head in suits for specific performance, that is, whether a stranger to an agreement for sale can be added as a party in a suit for specific performance of an agreement for sale in view of Section 15 of the Specific Relief Act, 1963. The relevant provision of Section 15 with which we are concerned is contained in clause (a) thereof and entitles any party to the contract to seek specific performance of such contract. Admittedly, the appellant herein is a third party to the agreement and does not, therefore, fall within the category of “parties to the agreement”. The appellant also does not come within the ambit of Section 19 of the said Act, which provides for relief against parties and persons claiming under them by subsequent title. This aspect of the matter has been dealt with in detail in Kasturi case. While holding that the scope of a suit for specific performance could not be enlarged to convert the same into a suit for title and possession, Their Lordships observed that a third party or a stranger to the contract could not be added so as to convert a suit of one character into a suit of a different character.”

In view of the aforesaid, we find no merit in this appeal.

Dismissed.

VIPIN SANGHI, J

RAJNISH BHATNAGAR, J

JULY 05, 2019

N.Khanna