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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 23rd August, 2019
+ **CM (M) 1225/2019**

SATYA PRAKASH Petitioner
Through: Mr. M. B. Harikant, Advocate.
(M:9818908789)
versus

MUKESH RAJORA Respondent
Through: Mr. Neeraj Dahiya, Advocate.
(M:9971767788)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CAV 844/2019

1. Caveat is discharged as the caveator has appeared.

CM (M) 1225/2019 & CM APPL.37608/2019 (stay)

2. The present review petition challenges the order dated 29th May, 2019 passed by the Ld. ADJ in the suit for recovery filed by the Respondent/Plaintiff.

3. The present petition arises out of a suit under Order XXXVII CPC filed by Mr. Mukesh Rajora, Plaintiff/Respondent (*hereinafter 'Plaintiff'*) seeking recovery of a sum of Rs.30 lakhs along with *pendente lite* and future interest. The suit is based upon the agreement dated 22nd October, 2014 wherein the Petitioner/Defendant (*hereinafter 'Defendant'*) is stated to have received Rs.30 lakhs for sale and purchase of three properties as detailed therein. The relevant portion of the agreement is set out below:

"1. That both the parties has entered into Sale Agreement for purchasing of (1) A-2/9, (HIG Flat),

Jeevan Jyoti Apartment, Pitam Pura, Delhi-34, (2) D-20, MIG Flat, Jeevan Jyoti Apartment, Pitam Pura, Delhi-34, (3) 212, 2nd Floor, Vardhman Plaza, K.P. Block, Pitam Pura, Delhi-88.

2. That the amount for all the three properties has been settled for Rs.1,50,00,000/-(Rupees One Crore Fifty Lac Only).

*3. That **Sh. Satva Prakash** Son of Late Shri Raghbir Singh paid bayana amount of all the three properties to Sh. Devender Kumar S/o Late Sh. Munshi Ram R/o A-2/9, Jeevan Jyoti Apartments, Pitam Pura, Delhi-34*

4. That now both the parties shall be equal partner in above said properties.

5. That Court cases are pending against all the three properties.

*6. That **Sh. Satva Prakash** Son of Late Shri Raghbir Singh shall be liable to get the Court Cases cleared within three months from Sh. Devender S/o Late Sh. Munshi Ram.*

7. That after selling the properties both the parties shall get equal amount.

*8. That **Sh. Mukesh Rajora** Son of Shri B. S. Rajora is paying Rs.30,00,000/- (Rupees Thirty Lac Only) from his half share.*

*9. That in case the deal is not finalised then Sh. Satya Prakash S/o Late Sh. Raghbir Singh shall be responsible for refunding Rs. 30,00,000/- (Rupees Thirty Lac Only) and any other amount if he takes from **Sh. Mukesh Rajora** Son of Shri B. S. Rajora within three months.*

10. That both the parties has signed this deed without any pressure, coercion and undue influence fraud and cheating, concealing the true facts. ”

4. The agreement is signed by Shri Mukesh Rajora as also by Mr. Satya Prakash. There are four witnesses, two of whom are Mr. Ajay Narain & Mr. Manohar Lal.

5. The original agreement is stated to be on the record of the Trial Court.
6. Summons were issued in the suit and thereafter, the Defendant filed a leave to defend application. The contention in the leave to defend application is that the agreement is forged and fabricated and that no money has been received. On the other hand, it is the case of the Plaintiff that the amount of Rs.30 lakhs was paid in cash in front of four witnesses.
7. Ld. Trial Court after hearing the parties on the leave to defend application has directed that the Defendant ought to deposit the sum of Rs.30 lakhs in the form of FDR in a nationalised bank as a condition for granting the leave to defend. The reasoning given by the Ld. Trial Court is that the agreement records the acknowledgment of receipt and also in order to ensure that the suit is disposed of speedily. Ld. Counsel for the Petitioner submits that the direction to deposit is in effect a final decree.
8. The Court has perused the plaint and agreement. The leave to defend application is not placed on record. However, from the perusal of the impugned order it is clear that the stand of the Plaintiff is that the Defendant was liable to get the court cases pending in respect of the property cleared in a period of 3 months and towards the said obligation which was imposed upon the Defendant, the Plaintiff had paid a sum of Rs.30 lakhs. A legal notice was also issued by the Plaintiff on 3rd October, 2017. The Defendant, however, argues that the agreement is forged and is a bogus agreement and no amount was paid.
9. In a summary suit, the settled position has clearly been laid down by the Hon'ble Supreme Court in the judgment in ***IDBI Trusteeship v. Hubtown Ltd, (2017) 1 SCC 568*** wherein the Supreme Court has held that the Court has an option to either give an unconditional leave to defend but if

the Court is of the opinion that conditions ought to be imposed for granting a leave to defend, such conditions as the Court deems appropriate, may be imposed. A perusal of the present suit and the agreement relied upon, shows that trial would definitely be required. However, there are allegations by the Plaintiff that the Defendant is unnecessarily delaying the trial.

10. Under these circumstances, the sum of Rs.30 lakhs has to be secured in order to ensure that the Defendant does not delay the trial and the allegations by the Defendant that the agreement is forged and fabricated is not merely a bare and baseless allegation. The onus would be on the Defendant to prove that the agreement is forged and fabricated. Under these circumstances, this Court modifies the direction to the effect that instead of a deposit of FDR for Rs.30 lakhs, the Defendant shall furnish a bank guarantee to the satisfaction of the Ld. Trial Court for a sum of Rs.30 lakhs. This condition is acceptable to the Ld. Counsel for the Petitioner. Accordingly, the impugned order to the extent that it would require deposit of the sum of Rs.30 lakhs in the form of FDR of a Nationalised bank is modified. A bank guarantee for Rs. 30 lakhs shall be furnished before the Trial Court. The same shall be unconditional and irrevocable and the same shall be kept alive during the pendency of the suit.

11. Review petition is disposed of.

PRATHIBA M. SINGH
JUDGE

AUGUST 23, 2019/dk