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

% ***Date of Judgment: 01.04.2019***

+ **FAO(OS) 98/2018**

OM PRAKASH DARAL Appellant
Through: Mr. Rajesh Yadav & Mr. Dhananjay
Mehlawat, Advocates
versus

YUNUS ALI & ANR Respondents
Through: Advocate (*appearance not given*).

CORAM:
HON'BLE MR. JUSTICE G.S. SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

CM APPL. 14728/2019

1. For the reasons stated in the application, the same is allowed and the delay in filing the reply by respondent No. 1 is condoned.

2. The application stands disposed of.

FAO(OS) 98/2018 & CM APPL. 44942/2018

3. A suit for specific performance was filed by FIITJEE Limited, in respect of property no. 59A/1, Plot No. 10, Village Kalu Sarai, New Delhi-110016. A decree for perpetual injunction to restrain the respondents/defendants from forcefully dispossessing the appellant/plaintiff/FIITJEE Limited from the suit property was also sought, along with a prayer for restraint against the respondents/defendants from

selling or creating third party interest in the suit property and preventing the entry of the plaintiff and his staff, etc. in the suit property.

4. The plaintiff (respondent no. 2 herein) had taken the suit property on lease from seven persons, including the appellant and respondent no.1 herein by lease agreement dated 1.5.1999. The agreement was valid till 30.4.2005. The case of the plaintiff was that five out of the seven lessors had relinquished their rights in the suit property in favour of defendant no. 1 Om Prakash Dalal and defendant no. 2 Unus Ali and sometimes in February, 2005, the two defendants offered to sell the suit property to him and accordingly on 18.3.2005 an oral agreement was arrived at between the plaintiffs and the two defendants for sale of the suit property to the plaintiff for a total sale consideration of Rs.40,00,000/-. As per the plaintiff, on 18.3.2005 itself the plaintiff had paid Rs.8,00,00/- to the defendants in part performance of the agreement, by two cheques.

5. The defendants had filed their separate written statements. Both had admitted that an oral agreement to sell had been entered into but there was a difference on the stand as regards the amount of sale consideration. The stand of defendant no. 1 who is the appellant herein was that subsequent to the oral agreement to sell, a lease agreement dated 22.10.2005 was entered into and therefore the oral agreement had no value. He also averred that the suit had been filed by the plaintiff as a counter blast to the notice sent by the defendant terminating the tenancy and seeking vacation of the premises.

6. During the pendency of the suit, defendant no. 2 executed a sale deed in favour of the plaintiff in respect of his 20% share in the suit property vide a sale deed dated 9.7.2012.

7. After hearing the parties at length, the learned Single Judge came to a conclusion that the plaintiff was not entitled to obtain a decree of specific performance inasmuch as the oral agreement could not survive after the execution of the lease deed dated 22.10.2005 and was barred under Section 91 of the Indian Evidence Act. The learned Single Judge also found that it was not the plaintiff's case that the lease agreement was a sham document or never meant to be acted upon and nor could the plaintiff bring his case under the proviso to Section 92 of the Indian Evidence Act. The learned Single Judge accordingly dismissed the suit as not maintainable and the plaint was rejected under Order VII Rule 11 CPC as not disclosing any cause of action.

8. In so far as defendant no. 2 was concerned, the Single Judge although dismissed the suit qua him, but noticed with great pains that the defendant no. 2 had entered into a sale deed with respect to his 20% share with the plaintiff and the sale deed was a self-serving certificate obtained by the plaintiff from defendant no. 2 as both had settled their disputes by exchanging the sale consideration. The learned Single Judge also noted that defendant no. 2 had taken a stand in the written statement which was contradictory to the recitals in the sale deed and his stand was completely discredited, as also the fact that soon after entering into the sale deed he had conveniently stopped appearing in the suit proceedings. For the detailed reasons stated in the order dated 19.11.2013, the learned Single Judge issued show cause notice to him as to why he should not be punished under Section 340 Cr.P.C.

9. Thereafter, the matter was listed before the Single Judge on 05.04.2018 and 10.04.2018. On 10.04.2018, an unconditional apology of defendant no. 2 was accepted by the Court. The offer of respondent No. 1 to pay Rs. 5 Lacs to the Delhi High Court Bar Association Library Fund was

also accepted. We are informed that the amount stands paid. The appellant (defendant No. 1 in the suit) has filed the present appeal primarily on the ground that the learned Single Judge could not have accepted the monetary compensation in lieu of an action under Section 340 Cr.P.C. Once, the learned Single Judge had formed an opinion, though *prima facie*, the procedure under Section 195(1) Cr.P.C. ought to have been followed and therefore after an inquiry, a finding should have been recorded and a complaint should have been sent to a Magistrate for further proceedings.

10. Reliance is placed on a decision rendered in the case of ***M.S. Ahlawat vs. State of Haryana & Ors.*** 2000 (1) SCC 278 (paragraphs 12, 13 & 15).

11. Counsel for the respondent submits that only a show cause notice was issued; no final order was passed, and in fact, the Single Judge resorted to a practical solution to the matter. The respondent tendered his unqualified apology and offered to pay Rs. 5 Lacs to the Delhi High Court Bar Association Library Fund and thus further proceedings were rightly dropped.

12. Mr. Yadav, learned counsel for the appellant submits that the matter should have been sent to the concerned Magistrate for prosecution under Section 340 Cr.P.C. His contention is that a reading of paras 6 and 7 of the order dated 10.4.2018 clearly points to the fact that the learned Single Judge had concluded that perjury had been committed and it was no longer a *prima facie* finding. Thus the path adopted by the learned Single Judge was incorrect in law.

13. We have heard learned counsel for the parties. We find no infirmity in the procedure adopted by the learned Single Judge for the reasons that while dismissing the suit, only a *prima facie* opinion had been formed by the learned Single Judge and a show cause notice was issued to the respondent

requiring him to show cause as to why he should not be punished under Section 340 Cr.P.C.

14. The judgment sought to be relied upon would not apply to the facts of the present case as in that matter, the petitioner therein had already been held guilty by the Supreme court whereas in this case only a show cause notice had been issued. No doubt, as rightly pointed out by learned counsel, Mr. Yadav in para 6, the Single Judge subsequently noted that the respondent is indeed found liable to be prosecuted but added that considering the time taken in the prosecution and the already huge pendency of cases, the monetary offer should be accepted.

15. A complete reading of the order would show that although the Court has expressed that the respondent was found to be liable to be prosecuted but there is no finding that he was, in fact, guilty and the observations are to be read in the light of the subsequent observations in the subsequent paragraphs of the judgment regarding pendency of cases and also it seems the aim, objective and purpose of such observations was that the same act as a deterrent for the respondent and such persons who interfere in the course of justice.

16. In the absence of any final order on conviction, we find no infirmity in the view and in the manner, the Single Judge has decided the matter.

17. No ground is made out by the appellant for interference of this Court in the order of the learned Single Judge.

18. The appeal, along with the pending application, is dismissed.

G.S.SISTANI, J

APRIL 01, 2019/rd

JYOTI SINGH, J

