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

Date of decision: 29th August, 2019

+ **CM(M) 296/2017**

DEEPAK MEHTA Petitioner

Through: Mr. Parvinder Chauhan, Advocate.
(M:9868102274)

versus

DESH BANDHU GARG & ANR Respondents

Through: Mr. Deshbandu, R-1 in person.
(M:9136388183)

Mr. Tushar Thareja, Advocate for R-
2. (M:9899324444)

AND

+ **CM(M) 755/2018 & CM APPL. 26964/2018**

DEEPAK MEHTA Petitioner

Through: Mr. Parvinder Chauhan, Advocate.
(M:9868102274)

versus

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Through: Mr. Deshbandu, R-1 in
person.(M:9136388183)

Mr. Tushar Thareja, Advocate for R-
2. (M:9899324444)

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

CM(M) 296/2017

1. The present petition arises out of order dated 23rd January, 2017. The genesis of the disputes between the parties is a collaboration agreement entered into by the Petitioner - Shri. Deepak Mehta who is also the Plaintiff in the suit (*hereinafter 'Plaintiff'*) on 15th March, 2013 with Shri Desh Bandhu Garg who is Defendant No.1 in the suit (*hereinafter 'builder'*). As per the said collaboration agreement, the builder had agreed to construct the

stilt parking on the ground floor, upper ground floor, first floor, second floor and third floor with automatic lift in property bearing no.1/11647, and New No. A-30, Built on Plot No.A-59, admeasuring 200 sq. yds. i.e. 167.22 sq. mtrs., out of Khasra no .27, 28, 63, 92 to 97, 101, 481/102, 521/298-299, 448/26, 455/31, situated in the area of Village Uldhan Pur in the Abadi of Panchsheel Garden, Naveen Shahdara Delhi-110032 (*hereinafter 'suit property'*).

2. As per clause 1 of the agreement, the builder had to demolish the entire structure and construct the said floors at his own costs and expense after obtaining the sanctioned plans. The construction was to be completed within a period of 15 months. As a consideration for the construction, under the collaboration agreement, the rights in the third floor along with the roof rights were to vest with the builder and all the remaining floors were to be owned by the Plaintiff. The builder was to also pay a rent of Rs. 45,000/- per month to the Plaintiff during the period when the construction was ongoing. It was also agreed that the Plaintiff would execute a sale deed for the third floor in favour of any intending buyers, whom the builder may identify. It was, however, made clear that the possession of the third floor of the suit property was to be given only when the proposed building would be completed as agreed between the Plaintiff and the builder. The builder was permitted to dispose of his share in the suit property i.e. third floor with roof rights by way of a sale deed. Clause 20 of the agreement reads as under:

“20. That in case if the builder discontinue the works on the building and the work will not pertain to the annexure then the first party free to claim any damage and compensation from the second party.”

3. It is the case of the Plaintiff that the builder abandoned the work despite the fact that the third floor was permitted to be sold by the Plaintiff to a third party. The builder has executed a sale deed in favour of the third party who is Defendant No.2– Shri Hitendra Kumar Jain, vide sale deed dated 19th May, 2014. In order to enable the builder to execute the said sale deed, according to ld. counsel for the Plaintiff, the Plaintiff had executed a conditional sale deed on 4th April, 2014. It was, however, made clear that the possession would be handed over only after the entire building was completed. Since the builder had abandoned the premises and had also stopped paying the rent amount of Rs.45,000/- per month, the Plaintiff filed the suit seeking various reliefs including cancellation of the sale deed executed in favour of Defendant no.2, permanent injunction etc., The Plaintiff also moved an application seeking permission to complete the remaining construction in the suit property. The said application was disposed of vide the first impugned order dated 23rd January, 2017. The application was rejected by the ld. Trial Court on the ground that the only right of the Plaintiff is to seek compensation. The findings of the Trial Court read as under:

“Hence, it is clear from the perusal of the collaboration agreement that in case of discontinuance of construction work by the builder plaintiff can only claim damages and compensation. Plaintiff has not reserved any right to complete the construction work on his own on failure of builder to complete the building within stipulated time.

11. Perusal of the record further shows that plaintiff has stated in his plaint that defendant no. 1 failed to complete construction of the building within 15 months from the date of the sanction building plan by EDMC.

On the other hand, defendant no. 1 stated in his WS as well as in his reply to the aforesaid application that plaintiff as well as his family members are creating interference and interruption in the construction of the said building.

12. It is not possible for the Court to decide which party is at fault at this stage and same can be determined only after the conclusion of the trial. At present, suit is at the stage of admission denial of documents and framing of issues.

13. Keeping in view the above said discussion as well as facts and circumstances of the present suit, this court is of the opinion that this is not a fit case to exercise inherent power u/s 151 CPC. Hence, abovesaid application of plaintiff is accordingly dismissed.”

Ld. counsel appearing for Defendant No. 2 submits that so long as his floor along with the roof rights are not interfered with in any manner, he has no objection if the Plaintiff is given permission to complete the construction. The builder has appeared in person and seeks an adjournment.

4. The parties have been heard. The impugned order is of 23rd January, 2017 and it is more than two and a half years since the permission has been rejected to the Plaintiff. This Court is not, therefore, inclined to grant an adjournment. Substantive arguments have in fact been made on behalf of Defendant No.2 who is the purchaser of the third floor along with the roof rights.

5. It is submitted by Mr. Parvinder Chauhan, Id. Counsel appearing for the Plaintiff that the non-payment of the monthly rent and the non-completion of the building by the builder has caused irreparable prejudice to the Plaintiff who has been ousted from his own property and is incurring

substantial rent in the alternative property. It is further submitted that the Id. Trial Court has completely erred in mis-interpreting Clause 20 of the collaboration agreement.

6. After hearing Id. counsel for the parties and perusing the impugned order it is clear that the Id. Trial Court has completely mis-interpreted the collaboration agreement. By executing the collaboration agreement with the builder, the Plaintiff does not abandon or give-up or waive his ownership rights in the suit property. As per the collaboration agreement, except the third floor and the roof rights, all the remaining floors vest with the Plaintiff who is the owner of the same. The structure apparently has been completed by the builder but the finishing etc, has not been done, thus, the Plaintiff stands to lose immensely as the building is not in a condition that it can be occupied by the Plaintiff. While the Plaintiff would have rights to seek compensation from the builder, it cannot be held that the ownership has in manner been given-up by the Plaintiff. Clause 20 merely vests a right in the Plaintiff to seek compensation. The Id. Trial Court has completely erred by holding that the Plaintiff has not reserved the right to complete the construction work.

7. A perusal of the impugned findings by the Id. Trial Court clearly shows that the Id. Trial Court has failed to appreciate the true purport and intent of the collaboration agreement.

8. From the pleadings and the documents on record there is no doubt that the Plaintiff and the builder cannot now, work together or go-ahead with the collaboration agreement. There is a complete stalemate between the parties. The property is a valuable property where there are various floors to be completed and made ready for occupation. During the pendency of the suit

the builder is not keen on completing the construction and in any case cannot be permitted to carry out further construction or finishing. Accordingly, permission is granted to the Plaintiff to complete the construction/finishing of the ground, upper ground, first and second floors of the property. The Plaintiff is also permitted to complete the finishing of the front and rear elevations of the building.

9. The Defendant No.2 does not wish to seek the services of the Plaintiff for completion of the third floor of the building. The Plaintiff may, however, complete the building in so far as the other floors are concerned and also occupy the same. In so far as the Defendant No.2 is concerned, if the Defendant No.2 wishes to complete his floor of the property he is permitted to do so, however, subject to the decision in the suit inasmuch as the sale deed between the Plaintiff and the Defendant No.2 has already been challenged by the Plaintiff.

10. Such completion of construction of the third floor shall not create any special equities in favour of Defendant No.2 who shall not occupy the third floor until final decision in the suit. The Plaintiff would, however, be entitled to complete the finishing in the building from the front and rear elevation as also to install water tanks and other finishing on the roof, the same shall not be interfered with by the Defendant No. 2. No rights shall however, be claimed by the Plaintiff for the roof, subject to final decision in the suit. In so far as the water tank(s) installation is concerned, the Defendant No.2 and Plaintiff shall have the same carried out with mutual consent.

11. The CM(M) is disposed of.

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12. The Present petition has been filed by the Plaintiff seeking setting aside of the order dated 22nd March, 2018 by which the amendment of issue no. (ii) was sought and the same was rejected by the Id. Trial Court. A perusal of issue no. 2 reads as under:

“ii. Whether plaintiff is entitled for recovery of Rs. 12,87,413/- along with 15% interest as prayed for? OPP”

13. The recovery of money is being sought by the Plaintiff on the ground that Defendant No.1 - builder (*hereinafter 'builder'*) did not pay the monthly rent of Rs. 45,000/- as also for further amounts which according to the Plaintiff were paid in excess to the builder. At the time of the filing of the suit, the Plaintiff had merely quantified the said amount as on the date of the filing of the suit and not thereafter. The builder's obligation to pay the amount of Rs. 45,000/- is to be adjudicated by the Id. Trial Court and the amount (if any) recoverable is also to be adjudicated by the Id. Trial Court. Accordingly, issue no. (ii) shall read as under:

(ii) (a) Whether Defendant No.1 is liable to pay a sum of Rs. 45,000/- per month till the completion of the building as per collaboration agreement dated 15th March, 2013? If so, what is the amount recoverable by the Plaintiff? OPP

(ii) (b) Whether the Plaintiff is entitled to recover any other sums from Defendant No.1? OPP

14. The CM(M) is disposed of. Evidence shall continue before the Trial Court.

PRATHIBA M. SINGH, J.

AUGUST 29, 2019/dj