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

+ **FAO (OS) 34/2020 and C.M. Nos.14032/2020, 14033/2020 & 14034/2020**

LALIT MODI & ANR Appellants
Through **Mr.Niraj Kishan Kaul, Sr. Advocate**
with Mr. Sachin Chopra, Advocate
along with appellant No.2 in person.
versus

BDR BUILDERS AND DEVELOPERS PVT. LTD &ORS Respondents
Through **Mr. Harish Malhotra, Sr. Advocate**
with Mr. Sanjay Goswami, Advocate
for R-1.
Mr.Abhijit Sinha and Ms. Nandini
Sahni, Advocates for R-2 and R-3.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

ORDER
% **06.07.2020**

HEARD THROUGH VIDEO CONFERENCING.

1 The present appeal is directed against the order dated 26.06.2020, passed by the learned Single Judge in CS(OS) No.150/2020 filed by respondent No.1/plaintiff praying *inter alia* for a decree of declaration to the effect that the judgment and decree dated 14.05.2020, passed in CS (OS) No.109/2017, modified on 17.06.2020, be declared as null and void.

2 A factual background leading the present appeal is considered necessary. CS (OS) No.109/2017 was filed by the respondent No.2 against

the appellants praying *inter alia* for a decree of specific performance of an Agreement to Sell dated 14.07.2016, in continuation of the Agreement to Sell dated 09.07.2012 and for directions that a sale deed be executed in his favour, in respect of property No.32, Paschimi Marg, Vasant Vihar, New Delhi. In the alternative, the respondent No.2/plaintiff therein had prayed for a decree of refund of Rs.12.81 crores, along with interest. The aforesaid suit was decided vide judgment dated 14.05.2020 whereby, a decree of specific performance was passed as follows:

“23.1. In view of the discussion aforesaid the suit is decreed in favour of the plaintiff and against the defendant directing a decree of specific performance of the agreement to sell dated 14th July, 2016 executed between the plaintiff and the defendant. The plaintiff would deposit a sum of ₹5,69,00,000/- alongwith interest @ 8% per annum from 27th February, 2017 till the date of deposit which will be made in this Court within eight weeks, whereafter the defendant would execute a sale deed in respect of the suit property in favour of the plaintiff within four weeks thereafter and in case the defendant fails to execute the sale deed in favour of the plaintiff within four weeks of the deposit of the amount, an officer of this court would execute the sale deed in favour of the plaintiff. The defendant is also directed to hand over vacant and peaceful possession of the suit property to the plaintiff within four weeks of the execution of the sale deed in favour of the plaintiff.”

3 Subsequently, on a joint application moved by the parties to the suit, the aforesaid order was modified by the learned Single Judge on 17.06.2020, which reads as under:-

“Application is accordingly disposed of modifying the operative portion of the judgment dated 14th May, 2020 permitting the plaintiff to hand-over a sum of ₹5,69,00,000/-

with interest @ 8% per annum minus TDS, instead of Mr. Lalit Modi in the name of Ms. Sonia Modi for which four cheques have been handed-over and sale deed in terms of agreement to sell be executed in the name of nominee of the plaintiff i.e. Ganesh Info Services Pvt. Ltd., when the physical and vacant possession of the suit property will also be handed-over to the plaintiff or his nominee by the defendant.”

4 It is the version of the respondent No.1/BDR Builders and Developers Pvt. Ltd. that the aforesaid order was not to their knowledge and immediately on gaining knowledge of the judgment and decree dated 14.05.2020 and the modification order passed on 17.06.2020, it has instituted a suit on the Original Side of this Court, for declaration against the respondents wherein, the impugned order has been passed directing the appellants to vacate the subject premises within two weeks and deposit the keys thereof with the Registrar General of this Court.

5 Mr. Kaul, learned Senior Advocate appearing for the appellants submits that the impugned order is very harsh inasmuch as the understanding between the appellants and the respondent No.2 was that the latter will not insist on the appellants vacating the subject premises for a period of six months, by when the pandemic caused due to COVID-19 infection would abate. Mr. Kaul assures this Court, on instructions, that the appellants will not execute a sale deed in respect of the subject premises in favour of the respondent No.2 and nor will they create any third party interest therein till the next date of hearing fixed in the suit, i.e., till 27.08.2020.

6 At this stage, Mr. Harish Malhotra, learned Senior Advocate appearing for the respondent No. 1/plaintiff states that the statement of the

appellants will not suffice in the present circumstances and the respondents No.2 & 3 be also directed to state that he will not insist on execution of a sale deed in his favour till the next date of hearing in the suit.

7. Mr. Abhijit Sinha, Advocate states on instructions from Ms. Nandini Sahni, Advocate appearing for the respondents No.2 and 3, that till the next date of hearing in the suit, the respondents No. 2 and 3 will not insist that the appellants vacate the suit premises and nor will they insist on execution of a sale deed in respect of the subject premises in their favour.

8. Affidavit shall be filed by both, the appellants and the respondents No.2 and 3 giving an undertaking on the aforesaid lines within one week with advance copies to the counsel for the respondent No. 1.

9. With the consent of the parties, the present appeal is disposed of, along with pending applications, while binding the parties to the statements recorded hereinabove till the next date of hearing fixed before the learned Single Judge in the suit, i.e., on 27.08.2020. As a result, the operative para of the impugned order is modified to the aforesaid extent. However, we leave it to the learned Single Judge to decide as to whether the undertakings recorded above require to be extended, modified/alterd or recalled, as may be deemed appropriate.

HIMA KOHLI, J

SUBRAMONIUM PRASAD, J

JULY 06, 2020/A