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

Date of decision: 9th November, 2020

+ **EX.F.A. 10/2020 & CM APPLs. 28425/2020, 28426/2020**

SH. ZAFFAR AHMED Appellant

Through: Mr. Vivek Srivastava, Advocate. (M:
9210107303)

versus

MST. SARTAJ PARVEEN Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done by video conferencing.
2. This is a first appeal against the order dated 10th February, 2020 by which the Id. ADJ/ Executing Court has held that the alternate relief of monetary payment is granted in favour of the Decree Holder/Plaintiff i.e. the Appellant herein (*hereinafter`decree holder`*), as more than two years have been passed since the decree for specific performance was passed and the same has not reached any conclusion.
3. The brief background of this case is that a suit for specific performance of an agreement to sell and purchase dated 18th January, 2012 was filed by the Appellant herein against the Respondent. The said suit was decreed in favour of the decree holder, by the Id. ADJ, vide judgement/decreed dated 16th May, 2017. The operative portion of the said decree reads as under: -

“20. In the light of my findings on the foregoing

*issues, I hereby decree the suit of the plaintiff and pass a decree of Specific Performance in favour of the plaintiff and against the defendant in respect of the suit property i.e. roof of ground floor(upto sky rights) area measuring 65.24 sq. meters part of free hold built up property bearing Municipal No. 1152 situated at Tokri Walan, Churl Walan, Jama Masjid, Delhi- 110 006 alongwith common facilities of entrance/passage and staircase subject to balance payment of Rs. 30 lacs by the plaintiff to the defendant **or in, alternate** defendant is directed to pay double of the amount of earnest money i.e. Rs.20,00,000/- alongwith interest @ 8 % from the date of filing of the suit till its realization. Defendant is also further directed to refund the amount of Rs. 10,00,000/- to the plaintiff which was also paid by the plaintiff later on alongwith interest @ 8 % from the date of filing of the suit till its realization. I also pass a decree of Permanent Injunction restraining the defendant, her agents etc. from selling, parting with possession or creating any third party interest in respect of the property in question Costs of the suit is also awarded in favour of the plaintiff.”*

4. After passing of the said judgment/decree, both parties did not challenge the same. The parties exchanged notices dated 11th August 2017, 17th August, 2017 and 31st October, 2018 and replies thereto were also given. The Judgment Debtor/Respondent (*hereinafter 'Judgement Debtor'*) was willing to execute the sale deed, however, there was insistence by the decree holder, of some language in the sale deed relating to a particular staircase. The said issue continued to be disputed between the parties through the legal notices and finally, the execution application came to be filed by the decree holder.

5. In the execution application, vide order dated 10th February, 2020, the

Executing Court came to the conclusion that the decree has two parts i.e. a decree for specific performance and in the alternative, a monetary decree. Since the decree for specific performance had not been concluded between the parties despite more than two years having passed, the Court executed the decree in the alternative by way of order dated 10th February, 2020. It is this order which is under challenge in the present appeal.

6. Mr. Srivastava, Id. counsel for the Appellant/Decree Holder submits that the Judgment Debtor was always willing to execute the sale deed and so leaving the staircase issue aside, they may be directed to execute the sale deed. He further submits that the words '*in alternate*' should only mean 'if the original relief is not available'. Since the original relief is available in the present case, the alternate relief ought not to be resorted to. He further submits the Judgment Debtor did not offer the money for the last two years and was always willing to execute the decree for specific performance.

7. This Court has perused the judgment/decreed dated 16th May, 2017. A perusal of the same clearly shows that the decree which has been passed uses the words '*or in alternate*' very clearly. Post this decree having been passed, parties have exchanged correspondence in respect of the sale deed. The Decree Holder sent draft sale deeds to the Respondent, to which some dispute was raised by the Judgment Debtor. The Decree Holder wanted some language to be added which was not agreed to by the Judgement Debtor. This correspondence continued from August, 2017 to 19th November, 2018, to no avail. It is clear from the perusal of the correspondence that the Judgment Debtor was willing to execute the sale deed. However, it is due to the insistence by the Appellant on the language that the sale deed could not be executed.

8. Even in the execution application, the Decree Holder primarily sought warrants of detention to civil prison and execution of decree for specific performance. However, the Judgment Debtor had filed an application stating that the Judgment Debtor is willing to deposit the sum in terms of the alternate relief between the parties. That application was considered by the Court and allowed.

9. A perusal of the correspondence between the parties shows that there is no consensus *ad idem* on the language of the sale deed between the parties. There appears to be a dispute in respect of the use of the staircase, which according to the Judgment Debtor ought to be a commonly used staircase. However, the Decree Holder states that the staircase should be a part of the sale deed. Since there is no consensus between the parties on this issue, the Executing Court has rightly allowed the alternate relief in favour of the Decree Holder.

10. Under these circumstances, this Court does not find any perversity or illegality in the impugned order. The original decree being one for specific performance or in the alternative for payment of monetary sums, and the decree having attained finality, the impugned order is in accordance with law.

11. This Court has not examined the question as to whether the amounts deposited by the Judgment Debtor are in terms of the decree. On this issue, the Decree Holder is permitted to move an application before the Executing Court to compute the amounts in terms of the decree and the entire amount so computed in terms of the alternate relief granted to the Decree Holder would have to be paid by the Judgment Debtor. If such an application is moved, the same shall be decided within a period of four months, so as to ensure that the Decree Holder/Appellant is not deprived of the monetary payment for a long

period.

12. The appeal is dismissed, in the above terms. All pending applications are also disposed of.

**PRATHIBA M. SINGH
JUDGE**

NOVEMBER 9, 2020

Rahul / A

