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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM (M) 1717/2019

K G KRISHNAMURTHY

..... Petitioner

Through: Mr. A. K. Padhy, Advocate (M:
9968299978).

versus

VIJYETA GUPTA

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

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13.02.2020

1. The service reports states that the Respondent is not available at the premises at the given address. Ld. counsel for the Petitioner submits that advance copy has been given to the Respondent and intimation to the counsel appearing for the Respondent before the Trial Court has also been given. However, none appears for the Respondent.
2. The present petition is in respect of a suit for recovery filed in respect of an Agreement to Sell between the parties. The prayer in the present petition is under:

“Under these facts and circumstances of the case and in the interest of justice, it is most respectfully prayed to;

- a) Quash the proceedings of Suit No.207/17, titled as Vijyeta Gupta Vs. K.G. Krishnamurthy pending trial in the court of Sh. Devender Nain, ADJ-03 (Shahdara), Karkardooma, Delhi with heavy cost by summoning the trial court record and / or*
- b) Any other order / direction (s) as this Hon'ble court may deem fit in the facts and circumstances of the case.*

3. As can be seen from the above prayer, the Petitioner prays for quashing of the proceedings which is pending before the Trial Court. The Agreement to Sell was entered into between the parties in respect of property bearing No. C - 490, Yojana Vihar, Delhi. The Agreement to Sell is dated 15th February, 2016 and the total consideration agreed was Rs.12.80 crores. For whatever reasons, the transaction did not fructify and a suit was filed by the Respondent against the Petitioner and a counter-claim is stated to have been filed by the Petitioner against the Respondent.

4. The grievance of the Petitioner on the last date was that the issues were not framed in the suit and the suit was proceeding illegally inasmuch as Clause 6 of the Agreement to Sell does not permit the Respondent to pray for recovery of the amount paid. Thus, he prays for quashing.

5. The Court has perused the Trial Court record. The issues have been framed on 20th August, 2018 and the same are as under:-

- “1. Whether Plaintiff is entitled for decree of recovery as prayed for alongwith pendente lite and future interest @ 18% per annum from the date of filing of suit till realization? (OPP)*
- 2. Whether plaintiff is entitled for relief to restore the defendant from creating any third party interest in the subject property? (OPP)*
- 3. Whether the plaintiff has not paid requisite court fee?(OPD)*
- 4. Relief.”*

6. From the order dated 5th July, 2017, it is clear that the Petitioner has also filed a counter claim in the suit. The issues in this matter have been framed on 20th August, 2018. The matter is now ripe for trial. However, the same was adjourned on 14th February 2019 and 23rd May, 2019, on which date *status quo* order was passed. Thereafter, the matter has not proceeded to

trial as yet, as the Court also appears to have been abolished.

7. The Petitioner who is a senior citizen over 87 years of age, who's wife passed away recently, wants to see the conclusion of this litigation. Recently, it is also submitted that the Plaintiff has not appeared regularly before the Court. It is also submitted that the Counter Claim has been de-tagged from the suit and is proceeding before another court, though the same is not borne out from the trial court record which is summoned.

8. Considering the overall circumstances, the following directions are passed:

- a) The new Court before whom the matter has been fixed shall now proceed with the trial expeditiously.
- b) No adjournments shall be granted to the Plaintiff or to the Defendant.
- c) It is clarified that the counter-claim filed by the Petitioner-Defendant shall also be adjudicated with the suit itself.

9. For this purpose, the present order be communicated to the District Judge (Karkardooma Courts) who can, if needed, allocate the counter-claim to the same Court where the suit is also pending. Both the suit and the counter-claim shall be adjudicated together and comprehensive orders shall be passed. The trial of the suit and adjudication thereof shall be concluded on or before 31st December, 2020.

10. The petition with all pending applications is disposed of.

PRATHIBA M. SINGH, J.

FEBRUARY 13, 2020
MR/A.S.