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

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Judgment delivered on: 06.10.2021

+ **FAO 89/2021**

SANJAY MAAN

..... Appellant

versus

TILAK RAJ ARYA AND ANR.

..... Respondents

Advocates who appeared in this case:

For the Appellant:

Ms. Stuti Gupta, Advocate.

For the Respondent:

Mr. Alok Kumar, Senior Advocate with Ms. Manisha A. Narain, Mr. Amit Kumar Singh and Mr. Varun Maheshwari, Advocates for R-2

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. The hearing was conducted through video conferencing.
2. Appellant impugns order dated 06.11.2020 whereby the application of the applicant under Order XXXIX Rules 1 and 2 cpc has been dismissed.
3. Appellant alleges to have entered into an agreement to sell dated 13.03.2020 with respondent No.1 for purchase of third floor (right side) with complete roof rights of property bearing number C-68, Freedom Fighters Enclave, Neb Sarai, New Delhi for a total sale consideration of Rs.45 lakhs. As per the appellant, appellant had paid the entire sale

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consideration of Rs.45 lakhs to respondent No.1 and possession was delivered to the appellant and presently is occupied by a tenant of the Appellant.

4. It is contended by learned counsel for appellant that there was a collaboration agreement dated 03.03.2014 between the recorded owner of the of the property and respondents No.1 and 2, whereunder respondents No.1 and 2 were to construct *inter alia* the subject building, which was to come to their share.

5. As per the appellant, a 'No Objection Certificate' dated on 13.03.2020 was provided by respondent No. 1 as having been issued by respondent No.2, giving no objection to respondent No.1 to sell his share of the third floor, which has been sold to the appellant.

6. Learned counsel for the appellant submits that after the impugned order was passed, respondent No.1, in the trial court, has filed an MOU dated 22.11.2016 whereunder also the respondent No.1 had exclusive right to the said third floor.

7. Learned counsel for the appellant submits that respondent No.1 has not disputed any of the documents and has rather supported the case of the appellant.

8. Learned senior counsel for the respondent No.2 disputes the 'No Objection Certificate' dated 13.03.2020 and the MOU dated 22.11.216. He submits that appropriate Written Statement has already been filed to the suit Plaintiff and the Suit raises several disputed questions of fact.

9. He, however, without prejudice, undertakes on behalf of the Respondent No. 2 that during the pendency of the suit, respondent No.2 shall not create any third party rights in the subject property or dispossess the appellant or his tenants from the subject property, except in accordance with law.

10. The undertaking is accepted.

11. In view of the above statement, impugned order dated 06.11.2020 is set aside. The appeal is disposed of, restraining the respondent No.2 from creating any third party rights in the subject property or dispossessing the appellant or his tenants from the subject property, except in accordance with law.

12. It is clarified that nothing stated herein shall amount to an expression of opinion on merits on the case of either party and would be without prejudice to the respective rights and contentions raised in the Suit.

13. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsels through email.

SANJEEV SACHDEVA, J.

OCTOBER 06, 2021
NA