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

% Judgment delivered on: 15.01.2021

\+ FAO 159/2020

PIYUSH KANTI ROY & ANR. ..... Appellants

versus

S.N. BHARGHAVA & ANR. ..... Respondents

Advocates who appeared in this case:

For the Petitioners: Ms. Sushila Ram, Advocate.

For the Respondents: Mr. Rajesh Kumar, Advocate.

CORAM:-
HON'BLE MR JUSTICESANJEEV SACHDEVA

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

CM APPL.1534/2021(early hearing)

1. The hearing was conducted through video conferencing.

2. This is an application for early hearing. For the reasons stated in the application, the application is allowed.

3. The appeal is taken up for hearing today.

FAO 159/2020

1. Appellant impugns order dated 15.07.2020 whereby the application filed by respondents under Order XXXIX Rule 10 CPC

has been allowed and appellants have been directed to deposit a sum of Rs.58 lacs by way of a Fixed Deposit Receipt with the Trial Court.

2. Learned counsel for the appellants contends that the Trial Court has erred in directing deposit of the amount as the respondents themselves were in breach of the Agreement and the appellants have suffered a loss. It is contended that the flat of the appellants which was agreed to be purchased by the respondents was ready for delivery and since the prices had gone down, respondents were not interested in purchasing the same and defaulted in making further payments on account of which the appellants were constrained to sell the flat at a loss.

3. Learned counsel for the appellants submits that the respondents are liable to compensate the appellants for the loss and as such there is no question of appellants refunding any money.

4. On the other hand, learned counsel for the respondents contends that admittedly appellants had received advance from the respondents towards sale of their flat. Learned counsel submits that repeated acknowledgements were made by the appellants in various correspondences that appellants were liable to refund the amount and did not have the requisite finances for the same.

5. Learned counsel for respondents further contends that the flat was agreed to be sold to the respondents for Rs.2,47,00,000/- and subsequently is alleged to have been sold for only Rs.60 lakhs which

is unbelievable.

6. The admitted position is that an Agreement to Sell in the form of a *bayana* receipt was executed between the parties on 13.06.2012. Respondents paid an amount of Rs.49,50,000/- and subsequently paid further amounts of Rs.9,75,000/- and Rs. 30 lakhs. Total amount paid by the respondents was Rs.1,05,50,000/-.

7. Respondents cancelled the Agreement and sought refund of their money. Appellants disputed that entire amount of Rs.1,05,50,000/- was received towards the sale consideration. It was contended that some of the money had been paid to the Interior Designer by the respondents themselves and some payments were on other heads. It was only admitted that Rs.88 lakhs was received under the Agreement towards sale consideration, out of which Rs.30 lakhs have been refunded and admittedly Rs.58 lakhs was in the hands of the appellants.

8. Respondents along with the plaint had filed copy of the legal notice dated 16.06.2014 whereby, respondents had sought refund of Rs.1,05,50,000/-. In response to the said notice, appellants sent a letter dated 25.06.2014, wherein they did not dispute any of the contentions in the legal notice but stated that they would like to meet personally and amicably resolve the issue and they reiterated their intention of settling the transaction at the earliest.

9. Along with the plaint further correspondence was also annexed,

particularly, the response given by the Appellants through their Advocate, to a letter received from the respondents dated 23.10.2015, wherein also they stated that they had to make the balance payment of Rs.67 lakhs. This was again reiterated through their Advocate's letters dated 06.09.2016 and 09.09.2016.

10. Even in the Written Statement, the stand of the appellants is that they have received a sum of Rs.88 lakhs, out of which Rs. 30 lakhs has been refunded leaving a balance of Rs.58 lakhs. Though it is contended in the Written Statement that earnest money deposited of Rs.49,50,000/- is liable to be adjusted, however appellants have not shown any document whereby any amount was given as an earnest money. Be that as it may, this is a question which will arise before the concerned Trial Court.

11. Insofar as the present application and appeal are concerned, appellants have admitted that they had received a sum of Rs.88 lakhs towards sale consideration. Though the stand of the respondents is that larger amount that Rs.88 lakhs was paid, however the admitted case of the appellants itself is that Rs.88 lakhs was received and Rs.30 lakhs was refunded leaving a balance of Rs.58 lakhs.

12. In the above circumstances and particularly in view of the letters issued by the appellants annexed with the plaint, it is clear that appellants have not disputed that a sum of Rs.58 lakhs received from the respondents is with them. The question as to whether the same is liable to be adjusted or not is a question which arises for consideration

before the Trial Court and not before this Court and is not germane for the purposes of deciding the application under Order XXXIX Rule 10 CPC.

13. Since the appellants admit that the appellants hold a sum of Rs. 58 lakhs which was received from the respondents and further the admitted case of the appellants is that the flat which was subject matter of the Agreement is no longer available and has since been sold to a third party, I find no infirmity in the view taken by the Trial Court and in directing the appellants to deposit the said amount of Rs.58 lakhs with the Trial Court pending adjudication of the suit.

14. In view of the above, I find no merit in the appeal.

15. The appeal is accordingly dismissed.

16. Copy of the order be uploaded on the High Court website and be also forwarded to learned counsels through email by the Court Master.

SANJEEV SACHDEVA, J

JANUARY 15, 2021
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