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

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Date of Decision: 28.09.2021

+ **FAO (COMM) 137/2021 & CM No.31707/2021**

VIKESH MAJITHIA & ANR.

..... Appellants

Through: Mr. S.K. Sharma with Mr. Tejas Singh, Advs.

versus

SMT. ASHA RANI

..... Respondent

Through: Mr. Shivansh Kumar, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE TALWANT SINGH

[Court hearing convened via video-conferencing on account of COVID-19]

RAJIV SHAKDHER, J. (ORAL):

1. On the previous date i.e., 15.09.2021, when the appeal was listed for the first time before us, we recorded the following:

“2. Mr. S.K. Sharma, who appears on behalf of the appellants/plaintiffs, says that, there is a possibility of the parties arriving at a settlement, and therefore, limited notice may be issued, for this purpose, in the matter.

3. To be noted, this appeal is directed against the order dated 3.9.2021, passed by the Learned District Judge in an application filed under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908.

3.1. A perusal of the record shows that, the appellants, who are the original plaintiffs, have filed a suit for specific performance of the collaboration agreement dated 7.1.2014, executed by them with the respondent/defendant.

3.2. Mr. Sharma does not dispute the fact that, the subject superstructure had to be built in 16 months. It is, however, his contention that, the date for commencement of that period would get triggered only, after the building plan was sanctioned by the concerned municipal authorities.

3.3. It appears from the record that, the respondent/defendant

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has taken the position that, since the appellants/plaintiffs were at fault, and delayed performance obligations undertaken by them, the collaboration agreement

was terminated by her, via a legal notice dated 24.2.2018.

3.4. It appears that, thereafter, the respondent/defendant entered into a fresh collaboration agreement with another person/entity, in August 2020. On being queried, Mr. Sharma does concede that, after the execution of the fresh collaboration agreement, the new collaborator has constructed, at subject site, two storeys.

3.5. It is on account of these broad facts that, the Learned District Judge did not deem it fit to grant any injunction to the appellants/plaintiffs.

4. However, since Mr. Sharma says that, there is a possibility of a settlement being arrived at between the parties, albeit through mediation, notice shall issue on this limited aspect to the respondent/defendant, via all permissible modes including e-mail.

5. List the matter on 28.9.2021.”

2. Today, Mr. Shivanshu Kumar, Advocate has entered appearance on behalf of the respondent [i.e., the original defendant].

2.1. Mr. Kumar says that, he will file his *vakalatnama* with the Registry of this Court, within the next two days.

2.2. Mr. Kumar says that, while the respondent would have no objection, if the parties are referred to a mediator, however, since the respondent is approximately 86 years old, the trial in the matter should be expedited.

3. Mr. A.K. Sharma, who appears on behalf of the appellants [i.e., the original plaintiffs], says that, the appeal can be disposed of with an appropriate direction, for expediting the completion of pleadings, and hastening the trial, even while the parties attempt to settle the matter with intercession of the court appointed mediator.

4. We may also record that, Mr. Sharma says that, the appellants wish to amend their plaint.

4.1. Mr. Kumar says that, he would have no objection, if an application is moved for amendment of the plaint before the trial court.

5. Accordingly, the appeal is disposed of with the following directions:

(i) The appellant will have leave to move the trial court for amending the plaint, by filing an appropriate application, in that behalf. The application will be moved within the next 10 days.

(ii) If such an application is moved, the respondent will file a reply, whereupon the trial court will pass an appropriate order on the amendment application.

(iii) If amendment is allowed, the trial court will also grant leave to the respondent, to file a written statement in the matter.

(iv) The appellants, if they so desire, will be granted leave to file a replication in the matter.

(v) The exercise of completing pleadings in the matter will be carried out, at the earliest, though not later than four weeks from the date, when order is passed qua the amendment application.

(vi) Since, at this juncture, the respondent's written statement to the unamended plaint stands filed, in case, the amendment application [if so, moved by the appellants] is not allowed, the appellants will file their replication, within two weeks of such a decision being taken on the amendment application.

(vii) The appellants will file their affidavit concerning admission and denial to the respondent's documents, within two weeks from today.

(viii) To be noted, we are told that the respondent has already filed its affidavit concerning admission/denial of documents filed by the appellants.

(ix) The trial court will frame the issue in the matter, within the next six weeks.

(x) The trial court will endeavour to dispose of the suit at the earliest, though not later than six months of the evidence being recorded.

(xi) *De hors* the aforesaid directions, the parties and/or their counsel will present themselves before the Delhi High Court Mediation and Conciliation Centre on 11.10.2021, at 3.00 p.m.

6. Consequently, pending application shall also stand closed. The case papers shall stand consigned to the record.

RAJIV SHAKDHER, J.

TALWANT SINGH, J.

SEPTEMBER 28, 2021/pmc

Click here to check corrigendum, if any