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

Date of decision: 8th October, 2021.

\+ **C.R.P. 84/2020 & CM APPL. 35416/2021**

SMT. NANDI DEVI MARASINI & ANR. ..... Petitioners

Through: Mr. Jasmeet Singh & Mr. Pushpendra Singh Bhadoriya, Advocates.

versus

SH. CHIRANJIV MARASINI ..... Respondent

Through: Mr. Mohd. Anas, Advocate (M: 9818729629)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>Prathiba M. Singh, J.</u> (Oral)

1. This hearing has been done through hybrid mode.

<u>CM APPL. 35416/2021 (for delay)</u>

2. This is an application for condonation of delay of 64 days in filing the rejoinder. The delay is condoned. Application is disposed of.

<u>C.R.P. 84/2020</u>

3. This is a revision petition challenging the impugned order dated 7th August, 2020 passed by the Ld. ADJ, Saket Courts, South East District (*hereinafter "Trial Court"*) in ***CS No. 174/2019*** titled ***Sh. Chiranjiv Marasini v. Smt. Nandi Devi Marasini & Anr.*** By the impugned order, the application under Order VII Rule 11 CPC filed by the Petitioners/Defendants (*hereinafter "Defendants"*) has been rejected by the Trial Court. The case of the Defendants is that the suit filed by the Respondent/Plaintiff (*hereinafter "Plaintiff"*) for declaration, mandatory and permanent injunction and damages was barred by limitation. Hence, the rejection of plaint was sought before the Trial Court.

4. The Plaintiff- Mr. Chiranjiv Marasini who is Respondent herein and the Defendant No.2- Mr. Narayan Prasad Marasini who is Petitioner No.2 herein are real brothers. Defendant No.1 is the wife of Defendant No.2. The suit arises out of an alleged transaction which is stated to have taken place between the parties in 2012 by which the Plaintiff had allegedly agreed to sell the second floor of the Property bearing No. D-66 admeasuring 200 sq. ft. situated at Vishwakarma Colony, M.B. Road, New Delhi (*hereinafter "suit property"*) and executed several documents such as the General Power of Attorney (*hereinafter "GPA"*), Agreement to Sell and purchase dated 9th March, 2012 etc. in favour of the Defendant No.1. None of these documents are registered. The sale consideration of Rs.6,39,989/- which was supposed to be paid in 2012 was not paid by the Defendants. As per the Plaintiff, the transaction was cancelled by him. As per the Defendants the amounts were finally paid in 2017/18, when demanded by the Plaintiff. The Plaintiff however, termed the said payment as a unilateral deposit by the Defendants, and filed a suit for declaration and injunction. The reliefs sought in the suit are as under:

> *"a) Pass a decree in favour of the plaintiff and against the defendants thereby ordering the cancellation of the purported transfer documents i.e. agreement to sell, GPA, etc., all dated 09.03.2012 and the GPA dated 17.10.2017 in respect of the suit property executed illegally by the defendant No.1 in favour of defendant No.2, after declaring the same as null and void, in the interest of justice;*
> *b) Pass a decree of mandatory injunction in favour of the plaintiff and against the defendants thereby directing the defendants to vacate the suit property and hand over to the plaintiff the possession of the*

suit property i.e. second floor of the built up property bearing No.D-66, Vishwakarma Colony, M.B. Rod, Delhi-110044, admeasuring 200 sq. yards and more particularly shown in the red colour in the attached site plan, in the interest of justice

c) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants, their assignees, servants, executors, etc., from misusing the aforesaid documents i.e. agreement to sell, GPA, etc., all dated 09.03.2012 and the GPA dated 17.10.2017, in any manner whatsoever for entering in any further transaction or for creating third party interest in the suit property or any part thereof or for any other purpose whatsoever, in the interest of justice

d) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the defendants from selling, transferring, letting out, disposing off, mortgaging, encumbering or from creating any third party interest in the suit property i.e. second floor of the property bearing No.D-66, Vishwakarma Colony, M.B. Road, New Delhi-110044, admeasuring 200 sq. yards or any part thereof in any manner whatsoever, as shown in the red colour in the site plan attached, in the interest of justice;

e) Pass a decree of damages in favour of the plaintiff and against the defendants thereby directing the defendants to pay damages to the plaintiff @ Rs.20,000/- per month from the date of termination of their licence i.e. from 27.08.2018 till actual vacation of the suit property, in the interest of justice;

f) Pass any other or further order as this Hon'ble Court may deem fit and proper in the facts and *circumstances of the case in favour of the plaintiff in the interest of justice;"*

5. The Defendants sought rejection of the Plaint on the ground that it was barred by limitation as the initial transaction was of 2012 and the suit was filed only in 2019.

6. Mr. Bhadoriya, ld. Counsel for the Defendants, submits that there was a mutual agreement between the parties because of which the consideration of Rs. 6,39.989/- was not paid immediately upon the execution of the Agreement to Sell dated 9th March, 2012, and the said consideration was duly paid by to the Plaintiff in 2017/2018. On the other hand, the case of the Plaintiff is that he had cancelled the transaction itself upon non-payment of the consideration and the documents were demanded back. The further case of the Plaintiff is that the deposited amount which was allegedly paid in 2017/2018 was unilateral. However, the Defendant argues the contrary. Admittedly, none of the documents in favour of the Defendants are registered under The Registration Act, 1908.

7. Mr. Mohd. Anas, ld. Counsel for the Plaintiff, submits that, on the strength of the GPA executed by the Plaintiff, the Defendant No.1 has gone ahead and issued another GPA in favour of Defendant No.2 on 15th October, 2017 and it was registered on 16th October, 2017.

8. This Court is of the opinion that the question as to whether the suit is barred by limitation or not would have to be considered in the light of the mutual understanding and oral agreements, if any, between the parties which is captured hereinabove, as also contained in the pleadings of the parties. Whether such mutual understanding for postponement or oral cancellation of the transaction was, in fact, there or not, would require evidence to be

adduced. Since the deposit of the consideration amount, by the Defendants, in 2017/2018 has not been disputed, the filing of the suit on 22nd February, 2019 cannot straight away be held to be barred by limitation. The same would have to be adjudicated by the Trial Court after evidence is led in the matter.

9. Accordingly, the present revision petition is disposed of with the direction that the issue as to whether the suit is barred by limitation would be framed as one of the issues for being determined in the suit. The same would be adjudicated by the Trial Court after conclusion and completion of evidence, at the final stage. Needless to add, any observations made in the impugned order dated 7th August, 2020 would not be binding at the time of final adjudication in the suit.

10. With these observations, the present petition, along with all pending applications, is disposed of.

PRATHIBA M. SINGH
JUDGE

OCTOBER 8, 2021
dj/ad