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IN THE HIGH COURT OF DELHI AT NEW DELHI

NEUTRAL CITATION NO: 2022/DHC/002068

Date of decision: 20.05.2022

FAO(OS) 248/2019 & CM APPL. 52832/2019

GAGAN DASS

..... Appellant

Through: Mr Vipin K. Saini, Advocate

versus

PRABHAT VERMA & ORS

..... Respondents

Through: Mr Sushant Kumar, Advocate for R-1
and R-2

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

RAJIV SHAKDHER, J.: (ORAL)

1. This appeal, in effect, is directed against the observations made in paragraph 6 of the order dated 08.04.2019 passed by the learned single judge and its consequences as provided in paragraphs 9 to 12 of the very same order as well as the order dated 05.08.2019, to the extent the appellant had failed to persuade the learned single judge to recall the order dated 08.04.2019 insofar as it concerned him.

1.1. Paragraph 6 of the order dated 08.04.2019 reads as :

“6. The counsel for defendant no.1 states that he denies the signatures of defendant no.1 on the Memorandum of Understanding aforesaid and admits receipt only of Rs.30,00,000/- from the plaintiffs and the defendant no.1 is ready to refund the said amount to the plaintiffs.”

2. Mr Vipin K. Saini, who appears for the appellant/defendant no.1, says that the appellant/defendant no.1 is aggrieved by the observations made by the learned single judge in paragraph 6 of the aforesaid order as it suggests, albeit contrary to the record, that he received Rs. 30,00,000/- against the Memorandum of Understanding [MOU] dated 06.01.2013 whereas the aforementioned amount was received pursuant to an agreement to sell of even



date i.e., 06.01.2013.

NEUTRAL CITATION NO: 2022/DHC/002068



2.1. In other words, Mr Saini says that while the appellant/defendant no.1 admits receipt of Rs. 30,00,000/- what is not admitted, is that, it was received pursuant to the purported execution of the MOU dated 06.01.2013.

3. At this stage, Mr Sushant Kumar, who appears for respondent nos. 1 and 2/plaintiffs, says the said respondents can have no objection, if this Court were to modify the order to the limited extent i.e., that Rs. 30,00,000, according to the appellant/defendant no.1, was received by him against the above-mentioned agreement to sell.

4. The record shows that respondent nos. 1 and 2/plaintiffs have sought reliefs in the suit based on the MOU dated 06.01.2013.

4.1. The written statement of appellant/defendant no.1, which is on record, shows that it is accepted by him that he received Rs. 30,00,000/- from respondent nos. 1 and 2/plaintiffs, *albeit* against the agreement to sell dated 06.01.2013. This is evident upon perusal of paragraph 38 of written statement filed by the appellant/defendant no. 1 in the suit [i.e., CS (OS.) 54/2016].

5. Therefore, paragraph 6 of the order dated 08.04.2019 is modified, to the extent that the admission of the appellant/defendant no.1 of having received Rs. 30,00,000/- from respondent nos. 1 and 2/plaintiffs would be taken to be one which is relatable to the agreement to sell dated 06.01.2013.

5.1. As to whether the appellant/defendants no. 1 is right in his contention, would be the subject matter of the trial. Once parties have led evidence in the matter the concerned court would draw its conclusion in the matter.

5.2. The logical sequitur of this would be that directions contained in paragraphs 9 to 12 of the impugned order cannot be sustained, at this juncture.

“9. A decree is accordingly passed, in favour of the plaintiffs and against the defendant no.1, of recovery of Rs.30,00,000/- admitted by defendant no.1 to have been received from the plaintiffs and agreed by the defendant no. 1 to be repayable to the plaintiffs.

10. The counsel for the defendant no.1, under instructions from the

defendant no.1 present in Court, states that the said payment will be within three months from today.

NEUTRAL CITATION NO: 2022/DHC/002068



11. If the amount is not paid within three months from today, the said amount of Rs.3 0,00,000/- will also incur interest at 10% per annum from expiry of three months from today and till date of realization. The aspect of entitlement of the plaintiffs to interest on the said amount till three months from today is kept open for decision in the suit.

12. Decree sheet be drawn up.”

5.3. It is ordered accordingly. The directions contained in paragraphs 9 to 12 of order dated 08.04.2019 are set aside. The other directions contained in the order dated 08.04.2019 shall, however, remain unaltered.

5.4. Consequentially, the decision taken by the learned single judge via order dated 05.08.2019 insofar as IA No. 10259/2019 is concerned, shall stand reversed.

6. The appeal is allowed, in the aforesaid terms.

7. Needless to add, respondent nos. 1 and 2 /plaintiffs would have to prove their case, as set out in the plaint, in order to obtain the reliefs claimed therein.

8. Consequently, pending application shall stand closed.

(RAJIV SHAKDHER)
JUDGE

(TARA VITASTA GANJU)
JUDGE

MAY 20, 2022/rhc

Click here to check corrigendum, if any