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

+ **CM(M) 325/2022**

VANDANA OBEROI AND ANR Petitioners

Through: Mr. Sanjeev Sehgal, Mr. Raghavendra Pratap Singh, Mr. Chetan Swrup, Mr. Mohit Yadav and Ms. Suchita Kaintura, Advs.

versus

SHAMA PARVEEN AND ORS Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER (ORAL)

07.04.2022

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CMs 17271-72/2022 (exemption)

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

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3. This petition under Article 227 of the Constitution of India, challenges an order dated 15th March, 2022, passed by the learned Additional District Judge (01) ("the learned ADJ"), in CS 117/2022 (*Vandana Oberoi v. Shama Parveen*).

4. The petitioners are the plaintiffs in the said suit and the respondents are the defendants.

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5. The petitioners are joint owners of the properties situated at 34/1, 2nd Floor, East Patel Nagar, New Delhi (“the suit property”). According to the assertions in the plaint filed by the petitioners, the respondents purchased the suit property from the petitioners and, without paying full sale consideration to the petitioners, as payable under the Sale Deed, mortgaged the suit property to the Respondent 3-bank (“the bank”), against a loan availed by the respondents.

6. Owing to non-liquidation of the loan, the plaint alleges that the bank has initiated recovery proceedings against the respondents, which has placed the suit property in jeopardy.

7. The Sale Deed between the petitioners and Respondent 1 is stated to have been executed on 3rd July, 2019. Under the said Sale Deed, Respondent 1 undertook to pay ₹ 2.3 crores to the petitioners by cheque and ₹ 95 lacs by RTGS. The petitioners state that, without ascertaining whether the transfer by RTGS had actually taken place or not, the petitioners transferred the suit property in the name of Respondent 1. Thereafter, the petitioners claimed that they came to learn that the transfer by RTGS had not been done and they have been misled by the respondents on that count.

8. Resultantly, as against the amount of ₹ 2.5 crores and ₹ 95 lacs, payable by the respondents, to the petitioners, against the aforesaid property, it is stated that the respondents have paid only ₹ 1.1 crores and ₹ 1.2 crores by cheque. The amount of ₹ 95 lacs remains



outstanding.

9. In these circumstances, while things stand thus, the plaintiff alleges that the respondents have, without informing the petitioners, mortgaged the suit property with the bank against a loan availed by them. The bank has, thereafter, apparently initiated proceedings against the respondents, as the loan remained unpaid.

10. As the petitioners reside in the suit property, they anticipate that, as a result of any coercive action that the bank may choose to initiate, they would be dispossessed.

11. This prompted the petitioners to issue a legal notice on 24th January, 2022. In the notice, as there was no favourable response, the petitioners moved CS 117/22 before the learned ADJ, from which the present proceedings emanate.

12. The petitioners also submit that the bank, as on 15th March, 2022 also put up a public notice in the newspaper, for disposing of the suit property.

13. In these circumstances, the petitioners also moved an application before the learned ADJ under Order XXXIX Rules 1 and 2 of the CPC, seeking an interlocutory injunction.

14. It is alleged that, despite the matter having been listed before the learned ADJ on more than one occasions, the learned ADJ has not



taken up an application of the petitioners under Order XXXIX Rules 1 and 2 of the CPC.

15. In the circumstances, instead of keeping this proceeding pending, I deem it appropriate to dispose of this petition with a direction to the learned ADJ to take up the application filed by the petitioners under Order XXXIX Rules 1 and 2 of the CPC. It is stated that the application under Order XXXIX Rules 1 and 2 of the CPC is now listed before the learned ADJ on 19th April, 2022.

16. The learned ADJ is, accordingly, requested to take up the application of the petitioners under Order XXXIX Rules 1 and 2 of the CPC on the said date, without granting any adjournment in the matter and to take a decision thereon.

17. Pending such decision, there shall be a *status quo* regarding title and possession in respect of the suit property.

18. Let a copy of this order be served on Respondents 1 and 2 through the Process Server attached to this Court at the addresses provided in the memo of parties, which are as under:

- (i) Flat No. C-1/24, 2nd Floor, Vasant Apartment, Plot No. C-58/ 2, Sector- 62, Noida, Uttar Pradesh- 201309
- (ii) G-12B, 4th Floor, Okhla Jamia Nagar, Abdul Fazal Enclave-1, South Delhi, Delhi - 110002

19. This petition is disposed of in the aforesaid terms.



20. Copy of the order be given *dasti*.

C. HARI SHANKAR, J

APRIL 7, 2022

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