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

% *Date of Decision: 21.02.2023*

+ **FAO(OS) 250/2019**

YASHWANT PAL

..... Appellant

Through: **Mr. Jitender Chaudhary, Adv.**

versus

SATINDER SINGH & ORS

..... Respondents

Through: **Mr. K. K. Sharma, Sr. Adv.**
With Mr. Rajiv Bakshi & Mr.
Ram Pravesh Rai, Advs. for R1
to 3.

Mr. Dhruv Gorver & Mr.
Shreya Maggu, Advs. for R4 to
7.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MR. JUSTICE AMIT MAHAJAN

VIBHU BAKHRU, J.

1. The appellant has filed the present appeal impugning an order dated 16.10.2019, whereby its application under Order XXXIX Rule 4 (styled as an application under Section 151 CPC) being I.A No. 14356/2019, was dismissed.

2. The appellant along with the predecessor of respondent nos. 4 to 7 (hereafter '**the vendors**') entered into an Agreement to Sell dated

06.01.2011 (hereafter '**the Agreement to Sell**'), whereby they agreed to sell a property bearing no. S-257, Greater Kailash, Part-1, New Delhi-110048 (hereafter '**the suit property**') to respondent nos.1 to 3 for a total consideration of ₹7,50,00,000/- (Rupees Seven Crores and Fifty Lakhs only). Respondent nos.1 to 3 (hereafter '**the purchasers**') paid a sum of ₹1,80,00,000/- (Rupees One Crore and Eighty Lakhs only) immediately at the time of entering into the Agreement to Sell and paid a further sum of ₹20,00,000/- (Rupees Twenty Lakhs only) thereafter.

3. The appellant claims that out of the aforesaid sum of ₹2,00,00,000/- (Rupees Two Crores only), he received a sum of ₹45,00,000/- (Rupees Forty-Five Lakhs only).

4. At the material time, a part of the said property was mortgaged to Catholic Syrian Bank (hereafter '**the Bank**'). It is the appellant's case that the vendors were required to discharge a loan of ₹2,70,00,00/- (Rupees Two Crores Seventy Lakhs only) availed from the Bank to make the suit property free from any encumbrance. He also claims that the purchasers had agreed to pay the said amount upfront to enable the vendors to do so. However, the purchasers had failed and neglected to pay the entire amount and therefore, the suit property could not be released from the mortgage in favour of the bank.

5. The purchasers filed the present suit [CS(OS) No. 2536/2017] claiming a decree of specific performance. The said plaint was moved before the Court on 17.12.2013 and on that date, the learned Single Judge passed an order restraining the defendants (the appellant and

respondent nos. 1 to 3 – the vendors) from creating any third-party interest in the suit's premise/property. The said order was subsequently modified and clarified by an order dated 23.09.2016 pursuant to an application filed by the Bank. It was clarified that the interim stay order interdicted the defendants (the vendors) from dealing with the suit property but did not affect the rights of the Bank to enforce its security interest in the suit property.

6. A part of the suit property has since been sold by the successor-in-interest of the Bank. Thus, the vendors are not in a position to transfer the suit property to the purchasers.

7. It appears that the purchasers had also during the proceedings in the suit contended that they are now interested in recovering the money as part of the suit property has already been sold. In the aforesaid context, the learned Single Judge, in the proceedings held on 09.08.2019, observed that “[F]rom a reading of the order dated 24th April, 2019, it appears that the plaintiffs are no longer interested in specific performance.”. The court had after taking note of the aforesaid development, deferred framing issues. This was because the purchasers had indicated that they would confine their claim only to recovery of money, and therefore the issue whether the Agreement to Sell was required to be specifically performed need not be framed.

8. The said position continues to obtain till date and the issues have not been framed.

9. In the meanwhile, the purchasers filed an application seeking amendment to the plaint to claim recovery of certain amounts

including the amount of ₹2,00,00,00/- (Rupees Two Crores only) as paid by them. The said application was rejected by the concerned Registrar by an order dated 24.04.2019. It is stated that although the purchasers have filed an appeal against the order dated 24.04.2019, they have not pursued the appeal and the same is lying in defects.

10. In the aforesaid context, the appellant had filed the application seeking vacation of the interim order dated 17.12.2013 restraining the vendors from alienating any part of the suit property. The said application was dismissed by the impugned order.

11. It is contended on behalf of the appellant that since the purchasers have confined their relief only to recovery of money, the interim orders restraining the sellers from parting with any part of the suit property does not survive. The appellant is also aggrieved by the observations made in the impugned order that since the receipt of ₹2,00,00,00/- (Rupees Two Crores only) is admitted a decree is required to follow.

12. We have heard the learned counsel for the parties.

13. We find no infirmity with the decision of the learned Single Judge in rejecting the petitioner's application for vacation of the stay order dated 17.12.2013. As noticed above, the plaint has not been amended as yet; the issues have not been framed; and the suit continues to be a suit for specific performance. Clearly, the said suit cannot be decreed in whole as a part of the suit property has already been alienated. However, the question whether the said suit can be decreed in part, has not been examined as yet.

14. There is no dispute that the parties have entered into the Agreement to Sell and the vendors also acknowledge receipt of ₹2,00,00,00/- (Rupees Two Crores only).

15. Merely because a part of the property has since been sold by the secured creditors is certainly not a ground for vacating of the stay order. The appellant's application was founded on the premise that the purchasers have confined their relief to recovery of money. However, as noted above, the plaint has not been amended as yet.

16. Insofar as the observation made by the learned Single Judge that a decree has necessarily to follow, we find that the said observation is pre-mature as the suit is required to be tried. Admittedly, at this stage there is no claim for recovery of a sum of ₹2,00,00,00/- (Rupees Two Crores only). Therefore, we consider it apposite to clarify that the said observation in the impugned order to the effect that a decree is required to necessarily follow is not binding on either of the parties.

17. The appeal is disposed of with the aforesaid observations.

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VIBHU BAKHRU, J

AMIT MAHAJAN, J

FEBRUARY 21, 2023

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