

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

FAO 319/2022 & CM. APPL. 54364/2022

Date of Decision: 10.03.2023

IN THE MATTER OF:

VEENA KHANUJA

..... Appellant

Through: Mr.Abhishek Jain and Mr.Shivansh
Bhatt, Advocates

versus

ARUN KHURANA

..... Respondent

Through: Mr.Jai Ram Garg, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.(ORAL)

1. The appellant/defendant has preferred the present appeal under Order 43 Rule 1(r) CPC against the order dated 21.09.2022 passed by learned ADJ-06, West District, Tis Hazari Courts, New Delhi in Suit No.942/2021, whereby an interim injunction has been granted in favour of the respondent/plaintiff and against the appellant in respect of roof of property bearing *No.B-3/241, Second Floor, Paschim Vihar, New Delhi-110063* (hereinafter, referred to as the '*suit property*').

2. The facts, in nutshell, are that the respondent has preferred the underlying suit for specific performance of contract, decree of possession and permanent injunction against the appellant with respect to the suit property.

In the said suit, it has been claimed that the respondent had entered into an Agreement to Sell with the appellant on 04.12.2019 for purchasing of the entire roof of second floor, described as 'part of freehold property' built on residential plot i.e. suit property along with undivided proportionate share beneath the said property. Out of the sale consideration of Rs.81,00,000/-, a sum of Rs.10,00,000/- was paid as earnest money/*bayana* on 04.12.2019. Remaining amount of Rs.71,00,000/- was to be paid on or before 20.01.2020. In May, 2020, a further payment of Rs.2,00,000/- was made by the respondent, which was acknowledged by the appellant's husband on the back page of the Agreement to Sell. On 04.12.2021, the respondent asked the appellant to execute the sale deed, but the same was not agreed to. On 08.12.2021, it came to the knowledge of the respondent that the appellant is not having the original documents of the suit property, as the same are lying mortgaged with some bank pursuant to a loan taken by the appellant from it.

3. Learned counsel for the appellant has contended that the respondent had paid only Rs.5,00,000/- towards sale consideration. It is further contended that time was of the essence of the contract and the sale consideration was to be paid on or before 20.01.2020, which the respondent failed to pay.

4. Learned counsel for the respondent, on the other hand, has submitted that remaining sale consideration was not paid only on account of the fact that the appellant did not have title documents of the suit property. He, on instructions, further submits that the respondent had shown his readiness and willingness to pay the balance sale consideration. Learned counsel, on instructions, also submits that the respondent volunteers to deposit the balance sale consideration of Rs.69,00,000/- (though this amount is disputed by learned counsel for the appellant) with the Trial Court within a period of 4 weeks.

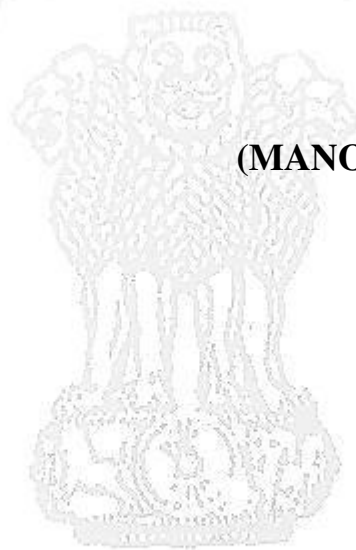
5. The Trial Court after considering the facts of the case, has found a *prima facie* case in favour of the respondent and restrained the appellant, its representatives, assignees, agents, nominees etc. from alienating, disposing off, or creating any third party interest or transferring the entire or any part of roof of the suit property till the final disposal of the case.

6. In view of the above submissions; the facts noted hereinabove; and further undertaking of the respondent to deposit the balance sale consideration, this Court finds no ground to interfere with the impugned order.

7. The present appeal is dismissed, alongwith pending application.

(MANOJ KUMAR OHRI)
JUDGE

MARCH 10, 2023/v



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