



\$~1

* IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment delivered on: 17.10.2023

+ **CONT. APP. (C) 50/2023**

ANU BALHA & ORS.

..... Appellant

Versus

ICICI HOME FINANCE COMPANY LTD. AND ORS.

..... Respondents

Advocates who appeared in this case:

For the Appellant: Mr. Maneesh Goyal, Mr. Paritosh Budhiraja, Ms. Divya Singh, Ms. Pooja Sharma, Advocates with appellants No.1 to 3 in person.

For the Respondents: Mr. Amit Jain, Advocate.
Ms. Aditi Tuteja and Mr. Amarjit Singh Bedi,
Advocates for respondent No.2.

CORAM:-

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT

SANJEEV SACHDEVA, J. (ORAL)

1. Appellants impugn order dated 08.12.2022 and 01.09.2023, whereby appellants have been held guilty of contempt of Court and sentenced to undergo six weeks' Simple Imprisonment.



2. Appellants were taken in custody on 01.09.2023 and by order dated 19.09.2023, their sentence was suspended and consequent thereto, appellants were released on 23.09.2023. Accordingly, appellants have undergone over three weeks' of incarceration.

3. A Civil suit was filed by ICICI Home Finance Company Ltd. (Respondent No. 1) for recovery a sum of Rs.2,32,14,444.95 *inter alia* against the respondents. On 18.07.2019, in the suit, which was subsequently re-numbered as CS (COMM) 1336/2016, a direction was issued to the defendants 1 to 6 (including the Appellants) to deposit a sum of Rs.1.90 crores, which was allegedly received pursuant to sale of Property No. 550, Sector 23, Gurugram.

4. The contention of the appellants in the suit is that appellants are not liable to pay any amount and it is respondent No.2, the purchaser of the Property No. 550 who is liable to pay the balance amount to the plaintiff.

5. This is disputed by learned counsel appearing for respondent No.2. She contends that the appellants are relying on a document to show that respondent No.2 was liable to pay, however, the genuineness of the document is in issue and as per respondent No.2, the Agreement-to-Sell dated 20.04.2011 is a forged and fabricated document. However, without prejudice to the same and under orders of the Court, Respondent No. 2 deposited a sum of Rs.1.23 crores



with this Court.

6. Learned counsel for appellants submits that order dated 18.07.2019 in para 2 itself records that the question as to which of the parties i.e. appellants or respondent No.2 has to pay the outstanding sum to respondent No.1 is still to be determined by the learned single Judge. He submits that without prejudice thereto, a direction was issued to the appellants to deposit a sum of Rs.1.90 crores. He submits that since appellants did not have the money to deposit the amount, they were looking at some source to pay the amount.

7. During the proceedings before this Court, it transpired that appellants were also owners of Plot No. 629, Sector-21, Urban Estate, Gurugram, which was kept as a security for a loan taken from India Bulls Housing Finance Ltd. The market value of the property is stated to be far in excess of Rs. 1.90 crores.

8. Appellants undertook before this Court that they shall discharge the liability of M/s. India Bulls Housing Finance Ltd. towards the said loan and offer the said property to the learned single Judge as a security for securing the said amount of Rs.1.90 crores.

9. Keeping in view the said proposal, the sentence was suspended to enable the appellants to discharge the liability. Today a 'No Dues Certificate' dated 13.10.2023 has been produced in Court and the same is taken on record.



10. 'No Dues Certificate' issued by M/s India Bulls Housing Finance Ltd. certifies that the outstanding loan secured by Property No. 629, Sector-21, Urban Estate, Gurugram has been re-paid in full. M/s. Indian Bulls Housing Finance Ltd. has further certified that they have no claim or right against M/s. Airship Cargo Pvt. Ltd., Mr. Anu Balah and Mrs. Vidhi Balah, appellant No.1 and 3.

11. Appellants are present in Court in person. They express regret and tender an unconditional apology for not complying with the assurances given to the learned single Judge and also not complying with the said order. They submit that in view of the fact that they did not have any funds available and the above-referred property being mortgaged to M/s India Bulls Housing Finance Ltd., the order could not be complied with. They express heartfelt regret and tender a heartfelt apology.

12. Keeping in view the above facts and circumstances and also accepting the apology tendered by the appellants, we are of the view that interest of justice would be served in case the sentenced awarded by learned single Judge of six weeks' Simple Imprisonment is reduced to the period already undergone. The same is accordingly reduced to the period undergone.

13. It is, however, directed that appellants 1 and 3 and M/s. Airship Cargo Pvt. Ltd. shall not sell, alienate, transfer or part with



possession or create any third-party in the subject property i.e. Plot No. 629, Sector-21, Urban Estate, Gurugram, Haryana. The same shall be subject to any further order that may be passed by the learned single Judge. It would be open to the learned single Judge to deal with the property *inter alia* sell the same for securing the amount of Rs.1.90 crores as was directed to be deposited by the appellants. This, of course, would be without prejudice to the rights and contentions of the parties and subject to such submissions as the appellants may make in terms of order dated 18.07.2019.

14. Learned counsel for appellants pray that direction be not issued for sale of the property. It is clarified that this Court is not directing any sale of the subject property, however, leaving it to the wisdom of the learned single Judge to deal with the property in any manner that the learned single Judge deems fit in the facts and circumstances of the case.

15. Appeal is disposed of in the above terms.

16. Order *dasti* under the signatures of the Court Master.

SANJEEV SACHDEVA, J

OCTOBER 17, 2023
NA

MANOJ JAIN, J