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

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*Decision delivered on: 30.01.2024*

+ **EFA(OS) (COMM) 2/2024 and CM APPL. 5170/2024 & 5171/2024**

M/S ONE QUBE REALTORS PVT. LTD.

..... Appellant

Through: Mr. Harish N. Salve, Mr. Rajiv Nayar & Mr. Saurabh Kirpal, Senior Advocates with Ms. Shyel Trehan, Mr. Rohan Poddar, Ms. Krushi Barfiwala, Mr. Pranav Sarthi, Mr. Gaurav Vutts, Ms. Ayushi Chaurasia, Mr. Vignesh Raj, Ms. Manjira Dasgupta, Ms. Adya Luthra & Mr. Hitesh Jain, Advocates.

versus

DAIICHI SANKYO LIMITED & ORS.

..... Respondents

Through: Mr. Arvind Nigam, Senior Advocate with Mr. Giriraj Subramaniam, Mr. Nabik Syam, Ms. Samridhi Hota, Ms. Aagan Kaur, Ms. Astha Ahuja, Ms. Shyra Hoon, Mr. Tanmay Arora, Mr. Agnish Aditya, Mr. Siddhant Juyal, Mr. Kunal Chatterjee & Mr. Rohan Jaitley, Advocates for respondent No.1.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**HON'BLE MR. JUSTICE AMIT BANSAL**

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

**RAJIV SHAKDHER, J. (ORAL):**

1. Issue notice.

1.1 Mr. Kunal Chatterjee accepts notice on behalf of respondent No.1, i.e. the contesting respondent.



- 1.2 We are informed by counsel for the parties that the remaining respondents, i.e. respondents No.2 to 21 are judgment debtors *qua* the subject award dated 29.04.2016.
2. With the consent of counsel for the parties, the appeal is taken up for hearing and disposal at this stage.
3. This appeal is directed against the impugned orders dated 25.01.2024 and 15.12.2023 passed by the learned Single Judge(s).
4. It is not in dispute that the appeal is concerned with an unnumbered application preferred under Order XXI Rule 58 and Section 151 of the Code of Civil Procedure, 1908 [in short, “CPC”].
5. We may also note that the appellant is aggrieved by the direction contained in the impugned orders (which are in continuation of the order dated 10.12.2021), whereby the subject property has been attached and direction has been issued to sell the same. The subject property is described as Plot No.20, Urban Estate, Sector-18, Gurugram, Haryana– 120011 (hereafter referred to as “the subject property”) admeasuring three (03) Acres.
6. It appears that pursuant to the impugned orders, the Civil Court at Gurugram has issued Warrants of Sale *vis-à-vis* the subject property taking recourse to the provisions of Order XXI Rule 35 of the CPC (See Annexure A2). A perusal of the Warrants of Sale shows 30.01.2024 was fixed as the date of sale.
7. Mr. Nigam has raised a preliminary objection concerning the maintainability of the appeal, including the fact that the appellant had approached the concerned Court in Gurugram with a similar application, in which orders have been reserved.



8. We may also note that there is certain amount of uncertainty as to whether a decision has been rendered by the concerned Court in Gurugram. Mr. Nigam says that a decision has been rendered, while Mr. Harish Salve and Mr. Rajiv Nayar, Senior Advocates, on instructions, contend to the contrary.

9. It is also Mr. Nigam's contention that the instant appeal is not maintainable under Section 13 of the Commercial Courts Act, 2015.

10. On the other hand, on behalf of the appellant, it is argued that a sale deed dated 02.08.2017 has been executed in its favour, an aspect which cannot be overlooked unless it is cancelled in a manner known to law.

11. According to us, these and other submissions that counsel for the parties have raised before us need the attention of the learned Single Judge. Before the learned Single Judge, concededly, the application referred to hereinabove filed by the appellant under Order XXI Rule 58 and Section 151 of the CPC has not been disposed of as yet. The next date of hearing in the application preferred before the learned Single Judge is 02.04.2024.

12. Therefore, the appeal is disposed of, with the consent of counsel for the parties, with the following directions:

- (i) The learned Single Judge will afford an opportunity to the contesting respondent, i.e. respondent No.1, to file a reply to the application preferred by the appellant. Mr. Nigam says he would require two (02) weeks.
- (ii) The application would be listed for directions before the learned Single Judge on Monday, i.e. 05.02.2024.
- (iii) Till such time the application is not disposed of, the sale of the subject property will not be carried out.
- (iv) The appellant will also maintain status quo as to sale of the subject



property. Also, the appellant will not create a long term lease *qua* the subject property, exceeding 30 years.

13. It is made clear that since this appeal is confined to the subject property, the directions contained hereinabove will apply only to the property in issue.

14. Needless to add, the learned Single Judge will examine the matter on merits. All rights and contentions of the parties shall remain open, to be adjudicated by the learned Single Judge.

15. The parties will act based on the digitally signed copy of the order.

**RAJIV SHAKDHER, J**

**AMIT BANSAL, J**

**JANUARY 30, 2024**

*B.S. Rohella*