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

% Date of decision: 5th February, 2024

+ C.R.P. 43/2024

PARVEEN SINGHAL Petitioner

Through: Mr. Awijit Paliwal and Ms.
Aprajita Verma, Advs.

versus

MOTIA RANI GHAI Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 6530/2024 (Ex.)

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

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3. The petitioner, who is the plaintiff in the Civil Suit bearing No. 408/2020 before the learned Trial Court, is aggrieved of the order dated 21.12.2023 passed by the learned Additional District Judge-01, Shahdara District, Karkardooma Courts, Delhi¹, whereby his application under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908² was dismissed.

4. Having heard the learned counsels for the petitioner/plaintiff

¹ ADJ

² CPC



and on perusal of the record, I find that the present appeal is bereft of any merits. Shorn of unnecessary details, the petitioner/plaintiff filed the pending suit against the respondent/defendant seeking specific performance of the contract dated 24.02.2020, whereby he had agreed to buy the property in question measuring 20 Sq. Yards for a total sale consideration of Rs. 1,12,00,000/- and had given the advance amount of Rs. 15,00,000/-, which provided that the sale deed would be executed by 24.06.2020. It is the own case of the petitioner/plaintiff that since COVID-19 lockdown had been imposed by the Government of India w.e.f. 22.03.2020, he vide letter dated 24.06.2020 requested the respondent/defendant to extend the time for performing his part of the contract by three months, which was evidently returned by the respondent/defendant vide reply dated 07.07.2020.

5. In the aforesaid backdrop, on filing of the written statement by the respondent/defendant, an application under Order XII Rule 6 read with Section 151 of the CPC was moved by the petitioner/plaintiff, which came to be dismissed by the learned ADJ assigning the following reasons:

“The object of Order XII Rule 6 CPC is to enable the parties to obtain a speedy judgment at least to the extent of the relief, plaintiff is entitled to as per the admission of the defendant. In case of **"Charanjit Lal Mehra and Ors. Vs Smt. Kamal Saroj Mahajan and Anr."** AIR 2005 SC 2765, the Hon'ble Supreme Court has held that order 12 Rule 6 CPC is enacted for the purpose to expedite the trials and if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute of the matter, then in such a case, in order to expedite and dispose of the matter such admission can be acted upon.

A bare perusal of the written statement filed by defendant shows that defendant has not made any admission as claimed by



the plaintiff in his application, rather it has been asserted by the defendant in reply on merits in para 7 of her written statement that *"That the contents of para no. 7 of the suit under reply are matter of record. But, the fact that the Govt. of India announced first unlockdown since 01.06.2020 and after that defendant vigorously approached the plaintiff and requested to complete the pending process in the matter of said property but the plaintiff never pay any attention towards the request of the defendant. Then, defendant through her legal counsel sent a legal notice dated 22.06.2020 to the plaintiff "*. The plaintiff has not clarified as to on which admission/denials of the written statement, he is relying upon in the present application. The defendant also took the defense that the plaintiff got failed for the execution of the agreements on time then the amount deposited by him became forfeited. There is no unequivocal, clear, unambiguous or unconditional admission made by the defendants in their written statement. It appears that the present application has been moved by the plaintiff just to delay the proceedings.

Therefore, in light of above discussion this court is of the opinion that the present case cannot be decided without leading evidence by the parties and as such the plaintiff is not entitled for judgment in the suit at this stage as there are triable issues involved in the present matter. The application of the plaintiff under order XII rule 6 CPC is accordingly dismissed.

Judgments referred to by Id. Counsel for plaintiff have no application to the facts of the present case in view of abovesaid discussion.

It is made clear that nothing said herein above shall affect the merits of the case or prejudice the rights of any of the parties.

Application stands disposed off."

6. Learned counsels for the petitioner/plaintiff has urged that the respondent/defendant has made a clear admission that such an agreement had been executed and notice dated 22.06.2020 was given even before the date for performance of the agreement to sell and thereby forfeiting the earnest money as well. It is submitted that there was no denial on the part of the respondent/ defendant that he was bound by the terms and conditions of the Agreement to Sell.

7. I am afraid this Court cannot agree more with the reason



accorded by the learned Trial Court that there was no clear, unconditional or unequivocal admission on the part of the respondent/defendant. Needless to state that the petitioner/plaintiff has to prove in the trial that he was always ready all and willing to execute his part of the performance of the agreement. The respondent/defendant on the other hand has *prima facie* averred that due to the non-performance of the agreement by the petitioner/plaintiff, he has been irreparably prejudiced as he needed the finances for running his own business.

8. The issues raised by the respondent/defendant are by all means triable issues, which cannot be decided without leading evidence by the parties.

9. Accordingly, the present revision petition is dismissed without prejudice.

10. A copy of this order be sent to the learned trial Court for information and records.

DHARMESH SHARMA, J.

FEBRUARY 05, 2024

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