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

% *Date of decision: 26.02.2024*

\+ **FAO (COMM) 38/2024**

PRIYA DARSHAN GUPTA ..... Appellant

Through: Mr Ankit Jain, Mr Sidhant Goel, Mr Mohit Goel, Mr Abhishek Kotnala and Mr Aditya Maheshwari, Advocates.

versus

ANOOP GUPTA ..... Respondent

Through: Mr Hitender Kapur and Mr Yatin Dhawan, Advocates.

CORAM:
HON'BLE MR. JUSTICE RAJIV SHAKDHER
HON'BLE MR. JUSTICE AMIT BANSAL

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

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

C.M. No. 11655-657/2024

1. Allowed, subject to just exceptions.

FAO (COMM) 38/2024 and C.M. No. 11654/2024 ***[Application filed on behalf of the appellant seeking interim relief]***

2. This appeal is directed against the order dated 31.01.2024 passed by the learned District Judge, Commercial Court-09 (Central District), Tis Hazari Courts, Delhi.

3. *Via* the impugned order, the learned District Judge disposed of the

application dated 21.12.2020 filed by the respondent/plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 [in short "CPC"].

4. We have heard the matter at some length.

5. Counsel for the respondent/plaintiff says that he would have no objection if further eight (8) weeks are given to the appellant/defendant to deposit Rs 50 lakhs. Furthermore, counsel for the respondent/plaintiff says that he would also have no objection if a fixed deposit is created in the name of the Registrar General of this Court.

6. The record shows that the dispute emanates from a Memorandum of Understanding [in short "MOU"] dated 17.12.2019. The MoU, broadly, covered the sale of immovable property, i.e., the basement and ground floor located at 98, Darya Ganj, New Delhi. Besides this, the MoU also involves the vesting of assets and liabilities of Gupta Mediscan Centre [in short, "Centre"] in the appellant/defendant. The assets, *inter alia*, comprise a CT scan machine and an MRI machine. The total consideration that the appellant/defendant had to pay against the sale of the subject property and retirement of the respondent/plaintiff from the business of the Centre was Rs. 3.30 crores.

7. We may also note that this MoU was forged between the parties pursuant to the partnership firm named M/s Gupta Mediscan Centre being dissolved. Concededly, the appellant/defendant and respondent/plaintiff were partners in the aforementioned partnership firm. The partnership obtaining between the disputants was the subject matter of a deed dated 05.10.2012.

8. The record shows that there is no dispute that out of Rs 3.30 crores, Rs 2.55 crores has been paid towards the subject immovable property. It is also not in dispute that a sale deed dated 20.12.2019 has been executed by the respondent/plaintiff and his father in favour of the appellant/defendant. The record also shows that the respondent/plaintiff filed a suit action for recovery of Rs. 70 lakhs [which, according to him, was the balance sum payable under the MoU], for rendition of accounts and permanent injunction.

9. It is in this context that the trial court passed the interim directions *via* the impugned order dated 31.01.2024. The operative part of the impugned order is captured in paragraph 21 which, for convenience, is extracted hereafter:

> "*21. Hence, in totality of the facts and circumstances, since triable issues have been raised to protect the interest of the plaintiff pending trial, the defendant is directed to deposit an amount of Rs. 50 lakhs in court in the form of Fixed Deposit (FD) in the name of the plaintiff within four weeks of this order and in case of the non compliance, the defendant is restrained from running business in the name and style of M/S Gupta Mediscan Centre from the business premises of the partnership firm i.e. property bearing no. 98, Darya Ganj, Delhi and using its assets including the machinery/equipment i.e. CT scan machine, MRI machine, till the settlement of account of the partnership firm or the disposal of the suit.*"

10. As indicated right at the beginning, counsel are agreeable to the timeframe for depositing the sum of Rs 50 lakhs being extended by eight (8) weeks.

11. It is ordered accordingly.

12. As indicated above, the said sum will be deposited within eight (8) weeks with the Registrar General of this Court. The Registrar General shall

invest the same in an interest-bearing security. Once the security is created, the receipt reflecting the same will be transmitted to the trial court. It will be open to the trial court to pass appropriate orders concerning the security so created.

13. At this stage, Mr Ankit Jain, counsel for the appellant, says that the appellant/defendant intends to purchase his own diagnostic equipment and machinery. Mr Jain says once the appellant/defendant makes such procurement, he intends to move an appropriate application before the trial court. As and when such an application is moved, the trial court will pass appropriate orders, after hearing both sides.

14. The appeal is disposed of in the aforesaid terms.

RAJIV SHAKDHER
(JUDGE)

AMIT BANSAL
(JUDGE)

FEBRUARY 26, 2024
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