



2024:DHC:1938



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% **Date of decision: 7th March, 2024**

+ C.R.P. 93/2024
SH. TILAK RAJ Petitioner

Through: Ms. Aditi Gupta, Adv.
(DHCLC)

versus

HARVINDER SINGH & ORS. Respondents
Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

DHARMESH SHARMA, J. (ORAL)

CM APPL. 14394/2024 (Exemption from filing certified copies)
and CM APPL. 14395/2024 (Exemption from filing complete record)

1. Allowed, subject to all just exceptions.
2. The applications stand disposed of.

CM APPL. 14396/2024 (Delay of 57 days in filing the present petition)

3. For the reasons stated in the application and in the interest of justice, the application is allowed and the delay of 57 days in filing the present petition is condoned.
4. The application stands disposed of.

C.R.P. 93/2024 and CM APPL. 14393/2024 (Stay)

5. The petitioner, who is defendant in a suit for recovery of damages and permanent injunction filed by plaintiff respondent No.1, is assailing the impugned order dated 09.10.2023 passed by the



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learned Additional District Judge-01, South District, Saket Courts, New Delhi¹, whereby his application under Order VII Rule 11 of the Code of Civil Procedure, 1908² for rejection of plaint was dismissed.

6. It is pertinent to mention that deceased respondent No.2 Ashok Kumar was real brother of plaintiff/respondent No.1 and is being represented through his legal heirs.

7. Shorn of unnecessary details, the plaintiff/respondent No.1 claims that he had entered into an Agreement to Sell dated 10.07.2019 with defendants No.1 and 2, namely Harvinder Singh and Ashok Kumar, who are real brothers, agreeing to purchase the suit property from them for a total consideration of Rs. 2,05,00,000/- and a sum of Rs. 60 Lacs was paid to defendants No. 1 and 2 through RTGS³ as part payment of the sale consideration.

8. It is further the case of the respondent No.1/plaintiff that balance amount of Rs. 1,45,00,000/- was agreed to be paid in two instalments of Rs. 20 Lacs through RTGS at the time of handing over of the NOC⁴/relinquishment deed from the sisters of defendants No.1 and 2 and balance final payment of Rs. 1,25,00,000/- through RTGS/ Demand Draft on or before 09.11.2019.

9. The grievance of the plaintiff/respondent No.1 was that when he approached the bank for obtaining loan on getting the title documents of the suit property from the defendants No.1 and 2, he was shocked to know that there were pending disputes between

¹ Trial Court

² CPC

³ Real Time Gross Settlement

⁴ No Objection Certificate



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defendants No.1 and 2 and their brother Mr. Aatam Prakash (defendant No.3/respondent No.3) and that Mr. Aatam Prakash has also lodged various complaints with Delhi Development Authority, Municipal Corporation of Delhi and Sub-Registrar Office not to entertain any documents of transfer of the suit property on the ground that he has share in the same.

10. It is the grievance of the plaintiff/respondent that defendants No.1 and 2 deliberately and mischievously concealed the factum of long pending disputes about ownership of the property with their brother Aatam Prakash, and hence, he has filed the suit for recovery for a sum of Rs.64,08,328/- along with *pendente lite* and future interest @ 18% per annum for repayment of part of the sale consideration paid to defendants No.1 and 2 as also damages to the tune of Rs. 10 Lacs besides permanent injunction against from creating third party rights.

11. The petitioner/defendant No.1 moved an application under Order VII Rule 11 of the CPC and the main plank of the plea was that no fraud was played by them upon the plaintiff/respondent no. 1 and even a bare perusal of the relevant clauses of the Agreement to Sell dated 10.07.2019 would show that plaintiff/respondent No. 1 consented that he would not insist for NOC from defendant No.3/respondent No.3 Aatam Prakash.

12. At this juncture, it would be relevant to extract the relevant portion of the impugned order dated 09.10.2023 passed by the learned Trial Court, which reads as follows:

“As per the fact of the plaint, the plaintiff was duped into



purchasing the property which was stated to be free from any encumbrances but actually the property was a disputed property. Complaints had been made by third brother (defendant no.3) to various authorities seeking non-transfer of the suit property as defendant no.3 also laid his claim on the suit property. As Rs. 60 Lacs were paid as part payment, plaintiff sought recovery of said amount with interest from defendants nos. 1 and 2. (Para 13)

14. It cannot be said that there is no cause of action or that the suit is barred by law for any other reason. The plaint disclosed sufficient cause of action to file the present suit and I see no merit in the application filed under Order 7 Rule 11 CPC by the defendant for rejection of the plaint as the plaint does not fall under any of the grounds mentioned in order 7 Rule 11 CPC. Hence the application of the defendant stands dismissed. No order as to cost.”

(Para 14)

13. During the course of arguments learned counsel for the petitioner took this Court through the recitals in the Agreement to Sell dated 10.07.2019 and it was canvassed that no fraud was played upon the plaintiff/respondent No. 1 who rather voluntarily consented to buy the property with open eyes and mind inasmuch as he consented to buy the property without insisting on any NOC/relinquishment deed from Mr. Aatam Prakash Raheja.

14. The said plea does not cut any ice as evidently respondent No.1/plaintiff was not disclosed that there were multiple complaints filed by respondent No.3/defendant No.3 Mr. Aatam Prakash against his real brothers laying his claim over the suit property so much so that he had also filed a criminal complaint under Section 420 of the Indian Penal Code, 1860 for alleged cheating at their hands.

15. At this stage, on a careful reading of the recitals of the Agreement to Sell dated 10.07.2019, it is manifest that sellers i.e., defendants No.1 and 2 undertook that they would do everything at



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their command to seek consent towards the sale of the property in their favour from respondent No.3/defendant No.3 brother and would pass on a clear and unconditional title upon him. Whether or not plaintiff/respondent No.1 was duped or facts were mis-represented to him is a matter of trial. The plaint read as a whole does show a semblance of cause of action. It is settled law that the defence espoused by the petitioner/defendant cannot be considered at this stage.

16. Accordingly, the present revision petition is dismissed.

17. The pending application also stands disposed of.

DHARMESH SHARMA, J.

MARCH 07, 2024

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