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

+ CRL.M.C. 3129/2023 and CRL.M.A. 11676/2023 (stay)

RAM PRASAD GUPTA Petitioner

Through: Mr.Deepak Kohli, Mr.Yashir Singh and
Mr.Mohd. Shariq, Advocates

versus

MAHENDER TANDON & ANR. Respondents

Through: Mr.Rohit Oberoi and Mr.Umang Bhatia,
Advocates

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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23.04.2024

1. By way of the present petition filed under Section 482 Cr.P.C., the petitioner seeks setting aside of the order dated 07.03.2023 passed by learned ASJ, Tis Hazari Courts, Delhi whereby the revision petition filed by the respondents/accused persons came to be allowed and the summoning order dated 11.02.2021 passed by the learned MM was set aside and the complaint under Section 200 Cr.P.C. was dismissed.
2. Pertinently, the order dated 11.02.2021 came to be passed by the learned MM in CC No.9486/2018 titled as 'Shri Ram Prasad Gupta v. Mahender Tandon & Ors.' instituted under Section 200 Cr.P.C. for offences punishable under Sections 420/467/468/471/120B IPC. The facts as noted in the impugned order are that in his complaint, the petitioner/complainant had alleged that he alongwith his family were joint owners-in possession of a two and half storied built-up freehold property bearing No.3-B, *Banarsi Dass Estate, Timarpur, Delhi-110054*. The respondents/accused persons



approached him for purchasing the said property. At the time of the negotiations, the complainant/petitioner informed the respondents about the pendency of litigation with his brother qua the said property. An agreement to sell dated 19.08.2008 was entered into between the parties for sale of the said property for consideration of Rs.3,50,00,000/-. Earnest money of Rs.5,00,000/- was also paid. The factum of litigation was also mentioned in the said agreement to sell. The respondents, however, failed to make payment of the balance sale consideration within the stipulated time as well as extended period. Subsequently, a settlement was arrived at between the parties, whereby the petitioner returned the earnest money and a declaration/receipt of the said amount was also executed. In the said declaration/receipt, the factum of cancellation of the agreement to sell was duly acknowledged. The copy of agreement to sell and receipt for Rs.5 lacs both dated 19.08.2008 were also torn. The complainant alleged that subsequently he received a notice dated 01.02.2010 from an Arbitrator in an arbitral proceeding initiated by the respondents. In response to petitioner's letter dated 04.02.2010 seeking copy of the arbitration agreement, the arbitral tribunal vide reply dated 17.02.2010, provided him with a copy of the arbitration agreement as well as agreement to sell and the receipt. It is the case of the petitioner that both the agreements as well as the receipt were forged.

3. On appreciating the above facts, learned MM summoned the respondents as accused persons. In the revision petition preferred by the respondents, the Sessions Court, however, set aside the summoning order by observing that though notice was received in the year 2010, the petitioner/complainant failed to take any action and initiated proceedings



after 8 years. The learned Sessions Court was of the opinion that pendency of the civil cases between the parties and non-initiation of criminal proceedings for 8 years would now debar the petitioner/complainant from initiating criminal proceedings.

4. The grievance of the petitioner is that the learned Sessions Court failed to appreciate the facts of the case. In the arbitral proceedings initiated by the respondents, a handwriting expert was examined, who had opined that the arbitration agreement as well as the receipt bore the signatures of the petitioner/complainant. Pertinently, the initial agreement to sell was entered into on 19.08.2008, in furtherance of which a receipt for Rs.5 lacs received as earnest money was also executed on the same day. The petitioner claims that the documents were prepared in three sets. While one set was torn and it bore the signatures of only one witness i.e. the son of the petitioner, the agreement to sell produced later on in the arbitral proceedings bore signatures of two witnesses. Further, in the receipt, it was shown that further sums of Rs.25 lacs + Rs.25 lacs were paid. The petitioner claims that he never entered into any arbitration agreement and that the same was also forged. The petitioner also preferred civil suit challenging the arbitration agreement and the receipt. It is also informed that objections have been filed against the ex-parte arbitral award and the same is pending consideration. Vide the order of the learned MM, the respondents were summoned for the offence punishable under Section 467 IPC besides 420/468/471/120B IPC. The maximum punishment provided for offence under Section 467 IPC is life imprisonment and therefore, mere pendency of civil proceedings and delay in initiation of the criminal proceedings ought not to be a ground to quash the criminal proceedings put into motion against the respondents.



Although learned counsel for the respondents has placed reliance on a number of judicial pronouncements/authorities to the effect that summoning of an accused in a criminal case is a serious matter and that the summoning order must reflect application of mind, the same are of no assistance in the present case.

5. Upon a consideration of the fact of the present case, this Court is of the considered opinion that the order of the learned MM was passed after due appreciation of the complaint and the respondents were rightly summoned. The learned Sessions Court did not appreciate the facts in correct prospective and erred in setting aside the impugned summoning order.

6. Accordingly, the petition is allowed and the impugned order dated 07.03.2023 is set aside. As a necessary sequitur, the complaint is restored to its original number and the summoning order is also restored. In view of the same, the petition is disposed of alongwith the pending application.

MANOJ KUMAR OHRI, J

APRIL 23, 2024

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