



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

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Judgment reserved on: April 15, 2024

Judgment pronounced on: April 29, 2024

+ FAO 128/2024, CM APPL. 21965/2024—stay, CM APPL. 21966/2024—Exp. From certified copies

SHRI RAJAT DHINGRA

..... Appellant

Through: Mr. Shaji P. Chaly, Sr. Adv. with Mr. Roy Abraham, Mr. Akhil Abraham and Mr. Adithya Koshy Roy, Adv.

versus

SMT EMANSHI GULATI MARWAHA

..... Respondent

Through: Mr. S. K. Pawar, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

J U D G M E N T

1. A short controversy in the present appeal pertains to the necessity for a grant of temporary injunction to preserve the corpus i.e, the suit property.
2. The factual matrix of the issue in hand originates with paternal uncle namely Mr. Surinder Bajaj, of respondent approaching appellant herein for the sale of flat bearing no. Q-60, Ground Floor, Rajouri Garden, New Delhi-110027 (hereinafter referred as "suit property"). The talks between the parties were concluded for a sum of Rs. 1,81,00,000/- (One Crore Eight One Lakhs Only) to be the sale price of the suit property. Appellant made payments to Mr. Surinder Bajaj, who was acting as an agent of the respondent in her absence since the respondent was a permanent resident of



Canada. On 20.12.2020, appellant transferred Rs. 10,00,000/- (Ten Lakhs Only) to respondent by bank transfer.

3. In April, 2023 the appellant and the respondent entered into a sale agreement in respect of the suit property for a sum of Rs. 1,25,00,000/- (One Crore Twenty-Five Lakhs Only). However, since then, the respondent has failed to return back to India to finalize the sale agreement. The respondent informed the appellant about her failure to comply with the filing of TDS and therefore the respondent wanted to cancel the agreement. Aggrieved by the actions of the respondent, the appellant served a legal notice dated 24.11.2023 calling upon the respondent to perform her part of the contract and also to receive the balance sale consideration.

4. The above-mentioned chain of events led to filing of the suit for specific performance before the learned Trial Court by the appellant against the respondent. Subsequently, vide order dated 06.02.2024 the learned Trial Court dismissed the application filed by the appellant under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908 ("CPC") seeking injunction to refrain the respondent from selling, transferring and/or creating any third-party interest in the suit property. The said order dated 06.02.2024 passed by learned Additional District Judge, Tis Hazari Courts, Delhi in Civ DJ No. 1883/2023 titled "Rajat Dhingra v. Emanshi Gulati Marwaha" has been appealed before this court under Order XLIII Rule (1) (R) CPC by the appellant, who is also the plaintiff before the learned Trial Court and hence the present petition.

5. The learned counsel for the appellant submitted that the appellant was always ready and willing to perform his part of the contract by paying the



balance sale consideration and to complete the sale transaction. However, the respondent was and is reluctant to execute the sale deed in favor of the appellant even after receiving substantial part of the sale consideration from the appellant.

6. The learned counsel submitted that there are reasons to believe that the respondent had *malafide* intention of receiving the amount as advance from the appellant and entering into an agreement for sale of the suit property and thus the appellant had no other alternative remedy against such an act of the respondent, except to file the suit and seek an interlocutory order to protect the interest of the appellant.

7. The learned counsel further submitted that the learned Trial Court wrongly dismissed the interlocutory application on the date of the appearance of the respondent and on his submission that the respondent has not received the amount as stated in the suit and the application. Appellant emphasized upon transaction proofs attached with the plaint along with certification under Section 65B of the Information Technology Act, 2000.

8. The learned counsel concluding his arguments submitted that the learned Trial Court committed an error by dismissing the interlocutory application even without receiving a counter affidavit of the respondent. Moreover, the impugned order is a non-speaking order passed without taking into consideration any of the material pleadings and documents produced by the appellant.

9. To confute the aforesaid submissions, the respondent contended that the appellant himself was insisting on deciding the injunction application on the day when the respondent first entered her appearance through her



counsel instead of calling for reply from the respondent, therefore the learned Trial Court passed the impugned order on the application moved by the appellant under Order XXXIX Rule (1) & (2) CPC. It is submitted that learned Trial Court did not misjudge while deciding the application as the order was passed after considering the submissions made by the parties and the record.

10. Having considered the submissions made, this Court finds that the appeal merits being allowed on the ground of failure on the part of the learned Trial Court not having assigned or recorded the reasons or even establishing the circumstances for the purpose of passing an order on temporary injunction. The learned Trial Court has adopted a cavalier approach and passed the impugned order in haste. The only reason assigned by the learned Trial Court is that the plaintiff is seeking two reliefs, one for specific performance of contract and other for recovery and therefore, no *prima facie* case is made out. However, it is to be noted that learned Trial Court has not considered the rival claims as well as the circumstances of the case to form an opinion that the *prima facie* case exists/does not exist while passing the impugned order. May be the appellant has filed the suit seeking alternate reliefs but it is not the case of the appellant that he has given up the relief regarding specific performance of the contract.

11. Thus, in light of the observations made above, it would be appropriate that the learned Trial Court re-considers the application. The impugned order dated 06.02.2024 is therefore set aside. The matter is remanded back to the learned Trial Court to hear the arguments afresh on the application moved under Order XXXIX Rule (1) & (2) CPC by the appellant on the date



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already fixed before it or any other date, convenient to the learned Trial Court and to pronounce order within two weeks of hearing the arguments.

12. Appeal along with pending applications accordingly stands allowed.

SHALINDER KAUR, J.

APRIL 29, 2024/ss