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

+ **FAO 143/2024**

BOBBY DOGRA

..... Appellant

Through: Mr. Devesh Dureja, Adv.

versus

ISHA BEN & ORS.

..... Respondents

Through: Mr. Arun Birbal, Adv. for DDA.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

29.04.2024

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CM APPL. 24665/2024—Exp.

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

FAO 143/2024

3. The present appeal under Order XLIII Rule 1(r)(w) of CPC read with Section 151 CPC has been filed assailing the order dated 27.03.2024 passed by the learned ADJ-02, North District, Rohini Court, Delhi (hereinafter referred as 'Trial Court'), in CS DJ 216/2024 titled as "*Bobby Dogra vs. Isha Ben*", whereby the learned trial court held that at this stage, the application under Order XXXIX Rule 1 & 2 of the Code of Civil Procedure, 1908 ("CPC") moved on behalf of the Appellant herein, did not make a prima facie case for grant of injunction against the defendant/respondent no.1 herein and called for reply to the said application and further posted the



matter on 09.07.2024 for disposal of the aforesaid application under Order XXXIX Rule 1 and 2 CPC.

4. Issue notice.

5. Learned counsel puts an appearance on advance notice and accepts notice.

6. Learned counsel for the Appellant submits that appellant filed a Civil Suit bearing no. 216/2024 for specific performance of contract for sale of immovable property against the respondent no. 1 and respondent no. 2 DDA. Further, an application for temporary injunction was moved by the Appellant under Order XXXIX Rule 1 and 2 of CPC read with Section 151 CPC seeking to restrain the defendants therein from creating third party interest in the suit property till the adjudication of the suit.

7. Learned counsel submits that the Respondent no.1 and the Appellant had entered into an agreement to sell dated 22.08.2022 whereby the respondent no.1 agreed to sell the suit property i.e. Plot No. 822, pocket C-5, Sector 34, Rohini, LIG Scheme, Delhi, allotted by DDA for an entire consideration amount of Rs. 35,00,000 and token money was also paid to the respondents at the time of the agreement. During the course of proceedings the respondent no.1 tried to create third party interest and the same was brought to the attention of the Court and the learned trial court denied to maintain the status quo. Vide the impugned order, the learned trial court held that no grounds are made out to grant injunction at this stage and listed the matter for disposal of the said application for 09.07.2024.

8. Learned counsel for the Appellant submits that learned Trial Court has not passed a reasoned order and has observed that there are no documents shown by the Appellant herein with respect to the availability of



funds and no prima facie case is made out to grant injunction against respondents. He further submits that learned Trial Court has not considered the agreement to sell arrived at between the parties which is annexed with the petition at page 40.

9. Learned counsel submits that one of the conditions with respect to the agreement to sell between the parties was that the suit property was to be transferred to the Appellant only after the completion of construction/work with respect to the suit property and thereafter the same would be declared to be free hold. Further, the Appellant had to take a loan by mortgaging one of its properties to make the rest of the payment to respondent no.1.

10. Learned counsel submits that the Appellant from its own financial resources had made the payment of Rs. 3 Lacs to the respondent and had also shown that around Rs.8-9 Lacs were available in his account in Yes Bank. It is submitted that learned Trial Court has not considered all these submissions and passed the impugned order.

11. Learned counsel further submits that after passing of the impugned order, the respondent no. 1 created third party interest in the suit property in favour of respondent no. 3 and 4 and the same was registered on 04.04.2024. Therefore there is an apprehension that respondent nos.3 & 4 are trying to further alienate the suit property in favour of the stranger.

12. Perusal of the record shows that learned Trial Court has listed the hearing of the application for 09.07.2024 although has observed that no ground is made out to allow the application at that stage without passing a speaking order.

13. In view of the aforesaid, the petitioner is at liberty to make all the aforesaid submissions before the learned Trial Court on the next date of



hearing i.e. 09.07.2024 and not to adjourn the hearing of the application to a further date.

14. The petitioner is also at liberty to move an appropriate application before the learned Trial Court in case of emergent situation for early disposal of the application under Order XXXIX Rule 1 & 2 CPC which is to be considered by the learned Trial Court as per law and as convenient to its Board.

15. With above observations, the petition stands disposed of.

SHALINDER KAUR, J.

APRIL 29, 2024/ab