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

+ **RFA(OS) 14/2022**

YOGENDER NATH BHARDWAJ Appellant

Through: Mr Anunaya Mehta and Ms Satya
Sha, Advocates.

versus

GURPREET SETHI Respondent

Through: Mr Hitender Kapur along with Mr
Yatin Dhawan, Advocates.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

ORDER

20.03.2024

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

1. This appeal is directed against the judgment and order dated 16.03.2022.
2. Via impugned judgment and order, the learned Single Judge has passed a preliminary decree in CS (OS) 169/2021, having regard to the sale deed dated 22.07.2014 (hereafter, "sale deed").
3. It is not disputed by the counsel for the parties that as per the sale deed, the appellant and respondent are entitled to 50% share in the suit property.
- 3.1 The appellant, however, wishes to resile from the sale deed, which is opposed by the respondent.

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4. The reason the appellant is desirous of avoiding the sale deed emanates from the purported failure on the part of the vendors to disclose that the suit property was mortgaged at the time of execution of the sale deed, with HDFC Bank [Azadpur Branch].

5. The suit property was evidently tendered as collateral security to secure the working capital loan disbursed to the vendor(s).

6. Counsel for the parties, however, do not dispute that the loan stands repaid and the mortgage stands redeemed.

7. Mr Anunaya Mehta, learned counsel, who appears on behalf of the appellant, says that since the appellant wishes to seek voiding the sale deed, a substantive suit action i.e., CS (Comm) 497/2022 has been instituted. This fact is not disputed by Mr H Kapur, learned counsel, who appears on behalf of the respondent.

8. As a matter of fact, the appellant has moved an application, i.e., C.M. 10338/2024 in which notice was issued on 20.02.2024, to stay the proceedings in CS (OS) 169/2021, in which the impugned order has been passed.

8.1 We may note that title of the order dated 20.02.2024 wrongly adverts to the application preferred by the appellant for condonation of delay, i.e, CM Appl 33535/2022. The order dated 20.02.2024 shall stand corrected to that extent.

9. Notably *qua* this application, no reply has been filed by the respondent. Mr Kapur, however, says that since facts are not in dispute, the respondent's contention both *vis-a-vis* the appeal and the application would be the same.



9.1 In other words, Mr Kapur says that since the respondent is entitled to 50% share in the suit property as per the sale deed, the impugned judgment and order need not be disturbed.

9.2 That said, Mr Kapur does realize that since a substantive suit, i.e., CS (Comm) 497/2022 has been filed by the appellant assailing the sale deed, it would have to be dealt with one way or the other by the learned Single Judge.

10. Therefore, given the aforesaid circumstances, in our opinion, the best way forward would be to direct the Registry to place the partition suit i.e. CS (OS) 169/2021 and CS (COMM) 497/2022 before the same judge.

11. The concerned Judge will pass appropriate orders in the first instance in CS (COMM) 497/2022.

11.1 In the event that the appellant were to succeed in CS (COMM) 497/2022, upon an appropriate application being moved, the learned Single Judge will pass necessary directions with regard to the issue as to whether or not the preliminary decree dated 16.03.2022 should be recalled.

12. Needless to add, the respondent will be entitled to place for consideration his defence in the respondent's suit action in CS (COMM) 497/2022. The final judgment in the said matter will be delivered having regard to the defence that the respondent may put forth in the said suit action.

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

14. All pending applications shall also stand closed.

15. It goes without saying that if the appellant were to succeed in CS



(COMM) 497/2022, the observations made in the impugned judgment and order dated 16.03.2022 would not come in the way of the learned Single Judge passing an appropriate order in an application that the appellant may prefer in CS (OS) 169/2021.

16. We may emphasize that all defences and contentions of the parties will remain open for consideration by the learned Single Judge.

RAJIV SHAKDHER, J

AMIT BANSAL, J

MARCH 20, 2024/rt

Click here to check corrigendum, if any

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