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

+ **FAO(OS) (COMM) 199/2023 and CM No.47289/2023**

MS. JAMAL SIDDIQUI & ANR.

..... Appellants

Through: Mr Anand Shankar, Mr Amitabh
Kumar Chaubey and Mr Amit Kumar,
Advocates.

versus

M/S D PAUL TRAVEL AND TOURS LIMITED Respondent

Through: Mr Rishi Sood and Mr Jaypreet
Singh, Advocates.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

HON'BLE MS. JUSTICE TARA VITASTA GANJU

ORDER

07.03.2024

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1. The appellants have filed the present appeal impugning an order dated 03.07.2023 (hereafter *the impugned order*) passed in an application (IA No.5877/2023) moved by the respondent/plaintiff in CS(COMM) 575/2019. The appellants are also impugning an order dated 28.07.2023, wherein the appellants' review petition (Review Petition No.196/2023) seeking review of the impugned order was rejected.

2. The disputes between the parties relate to an Agreement for Sale of suit property described as Property no.C-1/14, Ground Floor and Basement, Vasant Vihar, New Delhi-110057 (hereafter *the suit property*). It is the respondent's case that the parties had entered into an Agreement to Sell dated 07.04.2017 (hereafter *the Agreement*), whereby the respondent (plaintiff) had agreed to sell the suit property for a consideration of ₹7,75,00,000/- (Rupees Seven Crores Seventy Five Lakhs). The respondent



claims that the appellants were in possession of the suit property, but had failed to pay the entire agreed consideration. On the basis of the aforesaid claim, the respondent (plaintiff) had prayed as under:

“A. Pass a Decree of Specific Performance in favour of the Plaintiff and against the Defendants directing the Defendants to get the Sale Deed executed after payment of balance amount of Rs. 9,62,46,639/- (Rupees Nine Crore Sixty Two Lakh Forty Six Thousand Six Hundred Thirty Nine Only) which includes the interest paid by Plaintiff on Bank Home Loan which come to Rs. 3,19,77,832/- (Rupees Three Crore Nineteen Lakh Seventy Seven Thousand Eight Hundred Thirty Two Only) till 30.11.2018;”

3. By the impugned order, the learned Single Judge had directed the appellants to deposit a sum of ₹5,00,000/- per month as user charges for the suit property. It is the appellants' case that the said order is not in aid of any of the reliefs as sought by the respondent.

4. Admittedly, the Agreement was for the sale and purchase of the suit property and the respondent's principal claim was for recovery of the balance consideration along with interest. In the alternative, the respondent had also sought a decree for recovery of possession of the suit property. Concededly, if the suit was to be decreed, the respondent would be entitled to the balance consideration, but would not be entitled to any user charges.

5. In view of the above, this Court had, in the order dated 13.09.2023, observed as under:

“10. *Prima facie*, we find merit in the appellants' contention that an order directing the appellants to pay user charges, is unsustainable. The same amounts to partially decreeing the alternate relief sought by the respondent while the respondent continues to press for the main relief for Specific Performance.”

6. The learned counsel appearing for the respondent submits that the



respondent had since terminated the Agreement and therefore, is no longer pursuing its claim for a decree for specific performance. It is contended that the respondent's principal prayer is confined to recovery of the possession of the suit property and the *mesne* profit and damages. He states that an application for amendment of the suit had been filed. He fairly submits that since the impugned order was passed as the prayers stand, it is not sustainable. He, however, seeks liberty to approach the learned Single Judge at an appropriate stage for such interim reliefs as may be advised.

7. In view of the above, the impugned order is set aside. The pending application is also disposed of.

8. It is clarified that this order would not preclude the respondent from seeking such interim relief as available in accordance with law. All rights and contentions of the parties are reserved.

9. It is further clarified that nothing contained in this order ought to be construed as an expression of opinion on the merits of the disputes.

VIBHU BAKHRU, J

TARA VITASTA GANJU, J

MARCH 07, 2024
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