$~9

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

\+ C.R.P. 272/2023, CM APPL. 50758/2023 (stay)

MR MANISH LALWANI .....Petitioner

Through: Counsel for petitioner (appearance not given)

versus

MR PRAVEEN KUMAR GOEL .....Respondent

Through: None

CORAM:
HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

O R D E R

% **03.10.2024**

C.R.P. 272/2023

1. The Revision Petition under Section 115 CPC, has been filed on behalf of the Petitioner against the impugned Order dated 11.08.2023 vide which the Application under Order 7 Rule 11 CPC filed by the revisionist, has been rejected.

2. According to the revisionist/defendant, the respondent/plaintiff had entered into an Agreement to Sell dated 08.05.2019 in respect of the ground floor of the suit property, but he failed to honour the commitment and consequently, the amount of Rs.10,00,000/- which was paid by the plaintiff, was forfeited. Now the Suit has been filed by the respondent/plaintiff seeking refund of his Rs.10,00,000/-.

3. The revisionist/defendant in his Application under Order 7 Rule 11 CPC had claimed that there is no cause of action disclosed in the plaint. The

first ground asserted is that the Suit has been filed through SPA, Mr. Sushil Kumar, who is the owner of the first floor of the subject property. The perusal of the SPA relied upon by the respondent, clearly reflects that the same does not bear the signatures of Mr. Sushil Kumar and the names of witnesses have also not been mentioned. Furthermore, the signature of Mr. Praveen Kumar on the SPA when compared to that on the plaint, it is apparent that they have not been signed by the same person.

4. The next contention is raised that the entire defence of the respondent/plaintiff is based on a Letter written by SDMC, to Mr. Sushil Kumar saying that the attachment of the property is released because all the Property Taxes have been cleared by him.

5. It is argued that this Letter *firstly,* is not addressed to the defendant. *Secondly,* Mr. Sushil Kumar to which the letter pertains is in occupation of the First Floor and has no concern of the suit property which is situated on the first shop. The sole contention of the respondent/plaintiff in not honouring his Agreement to Sell was that the property was encumbered with taxes, however from the documents itself, it is clear that the suit property was not encumbered. The plaintiff had no ground to not honour the Agreement to Sell and thus, the plaintiff is not entitled to the recovery of forfeited amount of Rs.10,00,000/-.

6. **Submissions heard.**

7. Insofar as, there being a defect in the SPA is concerned, the same rectifiable. The revisionist has taken an objection in the Written Statement, which would be adjudicated, in accordance with law. Similarly, his objection that the plaint has not been signed by the plaintiff is also subject matter of trial and cannot be considered at this stage.

8. The defendant has questioned the justification in the Application under Order 7 Rule 11 CPC that the plaintiff did not honour his obligation under ATS was on account of the property being encumbered, is belied by the document relied upon by the plaintiff, is the defense of the defendant which needs to be established by evidence. Simplicitor mention in the Letter that all dues stand cleared, needs to be appreciated in the light of when the dues to get paid and when these facts were disclosed to the plaintiff. Therefore, mere Letter cannot be a ground for rejection of the plaint. It is a triable issue as to whether the plaintiff is entitled to the recovery of forfeited amount of Rs.10,00,000/-, under the Agreement to Sell, which can be determined only after the trial.

9. The Application under Order 7 Rule 11 CPC has been rightly rejected by the learned ADJ. The Revision has no merit which is hereby dismissed.

10. The Petition is disposed of accordingly. The pending application also stands disposed of.

NEENA BANSAL KRISHNA, J

OCTOBER 3, 2024/RS