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

+ CM(M) 1175/2022, CM APPL. 47167/2022- stay

MST. IRAM BEGUM

..... Petitioner

Through: Mr. R.K. Saini & Ms. Neelam
Sahni, Advs.

versus

HAKIM MOHD. KHUBAIB BAQAI

..... Respondent

Through: Mr. Akshil Mittal, Ms. Sandhya
Chauhan & Mr. Vineet Kumar
Mishra, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER
27.03.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 17.08.2022 passed by the learned Additional District Judge -01, Central, Tis Hazari Courts, Delhi ("Trial Court") in C.S. No. 609861/2016 titled as "*Mst. Iram Begun vs Hakim Mohd. Khubaib Baqai*" whereby the application moved on behalf of the petitioner under Section 151 Code of Civil Procedure, 1908 ("CPC") seeking to place on record certain documents was dismissed by the learned trial court.

2. The recital of facts begin with the parties entering into an agreement to sell on 19.09.2015 whereby the respondent had agreed to sell the suit property to the petitioner i.e. 1471, Ground Floor, Bazar



Chitli Qabar, Jama Masjid, Delhi 110006 for a total sale consideration of Rs. 1.10 crores. The respondent allegedly claimed himself to be the owner of the suit property received to him vide a gift deed dated 28.04.2009. As per the agreement, the time for execution of sale deed was 6 months from the date of agreement to sell and for payment of balance sale consideration.

3. In the backdrop of the petitioner suspecting malafide on the part of respondent in performance his part of the agreement and after the serving of notice dated 23.02.2016 and reply by respondent dated 12.03.2016 thereto backing out from the agreement, the petitioner filed the present suit for specific performance and permanent injunction before the learned trial court on 18.03.2016.

4. Subsequent thereto, the written statement was filed by the respondent on 21.04.2016 denying the allegations in the plaint and stating that two agreement to sell were executed in respect of two portions of the suit property.

5. The petitioner's husband tendered evidence by way of an affidavit 26.07.2018 before the learned trial court and the evidence of plaintiff/petitioner was closed on 06.12.2019 and the case was fixed for defendant's evidence on 20.03.2020.

6. It is the contention of the petitioner that prior to the commencement of defendant's evidence, the petitioner on 16.03.2020 had moved an application under Section 151 CPC for bringing on record six copies of the registered sale deeds and a nakal jamabandi in respect of properties owned by the petitioner and her family to show her capability of raising funds to purchase the suit property.



7. Thereafter, the respondent filed the reply to the aforesaid application and the learned trial court vide order 17.08.2022 dismissed the application filed by the petitioner.

8. Unsettled and dissatisfied by the outcome of the application vide impugned order, the petitioner has preferred the present petition seeking indulgence of this court in the present matter.

9. Learned counsel for the petitioner submits that through the aforesaid application, the documents which were sought to be placed on record by the petitioner were for the purpose of establishing the petitioner's ability to raise money to pay the respondent towards the cost of suit property. Further, it is already averred in the pleadings that she has always been ready and willing to perform her part of agreement to sell, the documents will prove her position and willingness having sufficient means to perform her part of obligation.

10. The learned counsel for the petitioner submits that the learned trial court erred in not appreciating that it was stated in the pleadings in paragraph no. 5 of the plaint that the petitioner was ready and willing to perform her part of the contract and production of documents to be placed on record will not cause any prejudice to the respondent.

11. Further submits that the learned trial court failed to consider the preliminary objection no. 6 of the written statement of the respondent which shows that the respondent was not ready and willing to perform his part of the obligation under the agreement.

12. Learned counsel also submits that the learned trial court erred in considering that in case of specific performance where the seller is not ready and willing to perform his part of the contract, it is not necessary



for the plaintiff to produce the proof of her readiness and willingness which is the present case. Further, no prejudice will be caused to the defendant if the documents are allowed to be taken on record at this stage.

13. Conversely, the learned counsel for the respondent submits that to bring the additional documents on record, the Order VI Rule 14 mandates the plaintiff to produce documents which are relied upon, at the time of presentation of the plaint and if the same are not produced at that stage then such a document cannot without the leave of the court be received in evidence on his behalf at the hearing of the suit.

14. Learned counsel further submits that in this regard two tests have to be satisfied, firstly, the relevancy of the documents to be brought on record has to be considered and secondly the reasons for which the documents which were under the power and possession of the parties at the time of filing of the suit, were not filed at the appropriate stage.

15. The respondent submits that the sale deeds which are in favor of the family members of the petitioner have been always in her possession and power and she has failed to assign any reason for not filing them at the time of institution of the suit. Moreso, the said documents have no relevance to the present case as the suit filed by the petitioner is for specific performance of the contract wherein it is required to satisfy the conditions that she was always willing to perform her part of the contract and merely by placing the sale deeds of family members, it cannot establish the readiness and willingness of the petitioner to perform her part of the contract. Reliance has been placed on the judgement of the Hon'ble Supreme Court in *Ritu Saxena vs J.S. Grover and Another*



(2019) 9 SCC 132.

16. Respondent also contended that mere purpose of filing the present application under 151 CPC is with an intention to delay to proceedings as the case is at the fag end of disposal since final arguments are to be addressed. Further, by moving such an application the petitioner is trying to reopen the case from the stage of plaintiff's evidence that to on basis of irrelevant documents.

17. The petitioner is relying upon the sale deeds and a nakal jamabandi in respect of the properties owned by her and her family to contend her readiness and willingness to perform the part of the contract. Admittedly, by placing aforesaid sale deeds on record, it cannot be ascertained that the relatives of the petitioner are willing to sell their property to advance the sale proceeds to the petitioner so that she has sufficient amount to perform her part of the agreement.

18. Moreso, the petitioner will have to raise the funds after selling the properties, which does not formulate the necessary 'readiness' to infer that the plaintiff is possessing the amount to perform her part of the obligation under the contract, which is being sought to be specifically enforced by filing the suit. It is not out of the place also to mention that the plaintiff has not placed the documents on record at an appropriate time though the same had been in her possession. It is also not clear that why a number of sale deeds are being filed on record. The placing of the sale deeds on record is merely the self serving statement of the petitioner that she is in possession of sufficient resources to perform her part of the contract but *per se* is not the proof of a financial resources.

19. In view of the aforesaid, this Court does not find that the findings



recorded by the learned Trial Court suffer from any illegality, which may warrant interference by this Court by way of the present petition. Consequently, the present petition along with pending application is dismissed.

SHALINDER KAUR, J.

MARCH 27, 2024/ss