



2024:DHC:7595



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

% **Decision delivered on: 01.10.2024**

+ **RFA 669/2024, CM APPL. 18956/2024 & CM APPL. 18957/2024**

PARYAG RAJAppellant

Through: Appearance not given

versus

GAURAV ANANDRespondent

Through: Mr. Deepak Kohli, Advocate

+ **RFA 670/2024, CM APPL. 18961/2024 & CM APPL. 18960/2024**

RAJESH KUMARAppellant

Through: Appearance not given

versus

GAURAV ANANDRespondent

Through: Mr. Deepak Kohli, Advocate

+ **RFA 671/2024, CM APPL. 18965/2024 & CM APPL. 18964/2024**

RAJESH KUMARAppellant

Through: Appearance not given

versus

GAURAV ANANDRespondent

Through: Mr. Deepak Kohli, Advocate



CORAM:

JUSTICE GIRISH KATHPALIA

COMMON JUDGMENT (ORAL)

1. The legal and factual matrix involved in these three appeals being same, the matters are taken up together for disposal. Learned counsel for respondent in all these cases has appeared on advance intimation and accepts notice, submitting that there is absolutely no merit in these appeals. Learned counsel for both sides also submitted that since copies of trial court record have already been filed by the appellants, there is no need to adjourn the matter to requisition trial court record. As such with consent of both side, I have heard final arguments today itself.

2. Briefly stated, circumstances relevant for the present purposes are that the present respondent filed three suits against the appellant Shri Prayag Raj and his son Rajesh Kumar for Specific Performance of Agreements dated 23.11.2022 to Sell three different premises, coupled with the consequential reliefs of possession, injunction and mesne profits. The suit from which RFA 669/2024 arises pertains to plot No. 83 of khasra no. 50/2, situated in Village Bhalaswa Jahangir Pur, Delhi; the suit from which RFA 670/2024 arises pertains to land admeasuring 40 sq yards in khasra no. 734, situated in Village Bhalaswa Jahangir Pur, Delhi; and the suit from which RFA 671/2024 arises pertains to plot No. 7A of khasra no. 19/15, situated in Village Samay Pur, Delhi. For convenience, the said three properties are collectively referred to herein as “the subject properties”.



3. In the complaints pertaining to the said suits, the present respondent pleaded that the appellants were known to him and they expressed their intention to sell away the subject properties; that after mutual discussions and negotiations, parties arrived at the amount of sale consideration in respect of each of the subject properties; that accordingly, the parties executed three Agreements to Sell with attendant documents namely the General Power of Attorney, Affidavit, Receipt and Deed of Will, all dated 23.11.2022; that the entire sale consideration of each of the subject properties was paid in advance to the appellants against receipts; that possession of the subject properties was not handed over by the appellants to the respondent on 23.11.2022 itself as they needed some time to shift out; that on 31.03.2023, when the respondent reminded the appellants to comply with the terms of the Agreements to Sell, the latter picked quarrel and threatened the former; that the respondent served legal notices dated 25.12.2023 upon the appellants, calling them upon to perform their parts of Agreements to Sell as the entire sale considerations had already been received by the appellants. The appellants having opted to ignore the said notices, the respondent filed three suits for Specific Performance of those Agreements to Sell against the appellants.

4. Summons of the said three suits were admittedly duly served on the appellants on 08.06.2023 and they entered appearance through counsel on 02.09.2023 but failed to file written statement till 13.12.2023. That being so, the learned trial court found it a fit case to exercise discretion under Order



VIII Rule 10 CPC on the basis of judicial precedents cited in the impugned orders itself and decreed those suits in favour of the respondent herein.

5. Hence, the present three appeals.

6. Learned counsel for appellants contends that these being the suits for Specific Performance of Agreements to Sell the learned trial court ought not to have exercised jurisdiction under Order VIII Rule 10 CPC to decree the suits. Learned counsel for appellants also contends that the suits were premature in view of clauses 6 of the agreements to sell. As regards failure to file written statements, learned counsel for appellants submits that it was due to misconduct of the previous counsel. Besides, learned counsel for appellant also submits that the execution proceedings are continuing and the learned execution court has directed issuance of warrants against the appellants, but those submissions fall beyond the scope of present appeals. In response to a specific query, learned counsel for appellants admits that no action has been initiated against the previous counsel for the alleged misconduct, so it is difficult to accept this plea to explain failure to file written statements.

7. The fact remains that for a period of more than six months after service of summons, the appellants opted not to file written statements. The appellants also did not consider it necessary to seek extension of time to file written statements. Even in the present appeals, there is not even a whisper as to why the written statements were not filed by the appellants. In the



memorandums of the present appeals, the only pleadings are the ones that could have been filed by way of written statement before the trial court.

8. The provision under Order VIII Rule 10 CPC was enacted to curb the dilatory tactics of defendants delaying the written statements, especially where they have no defence to the suit. Such deliberate inaction in filing written statement within time prescribed by law, including the enlargement of time permitted under Order VIII Rule 1 CPC, not only leads to frustration of the genuine plaintiff, but also adds to the overflowing dockets. Ofcourse, plaintiff does not have a right to seek decree under Order VIII Rule 10 CPC. On account of failure to file written statement within the time prescribed by law, the trial court is not duty bound to decree the suit in favour of plaintiff. Such decree is a matter of discretion of the trial court to be exercised judiciously.

9. In the present case, no submission has been made to assail the exercise of that discretion by the trial court. Present are the cases where there is no dispute that the entire sale consideration of all the subject properties already stood paid to the appellants and despite that they wrongfully withhold possession of the subject properties. Having examined the complaints and the documents, I find it completely unnecessary to make the parties undergo rigmaroles of long drawn trials. To my mind, it was a fit case to exercise discretion contemplated by Order VIII Rule 10 CPC and the learned trial court rightly did so guided by judicial precedents cited in the impugned orders.



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10. I am unable to find any infirmity in the impugned judgments, so the same are upheld and all these appeals as well as the pending applications are dismissed.

**GIRISH KATHPALIA
JUDGE**

OCTOBER 01, 2024/as

Click here to check corrigendum, if any