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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 131/2025 & CM APPL. 76635/2024**

SARDAR BALWINDER SINGHAppellant
Through: Mr. Naresh Kumar Chamal,
Adv.
versus

SH. UMED SINGHRespondent
Through: None.

CORAM:
HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER
% **13.05.2025**

CM APPL. 76637/2024

1. This application has been moved on behalf of the applicant/appellant for condonation of delay of 97 days in filing the present appeal.
2. For the reasons stated in the application, the same is allowed.
3. This application stands disposed of.

FAO 131/2025 & CM APPL. 76635/2024

4. It appears that the appellant initially preferred a petition under Article 227 of the Constitution of India assailing the impugned order dated 09.07.2024 passed by the learned Additional District Judge-04, North-West District, Rohini Courts, whereby his application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) has been dismissed.
5. However, the learned Single Judge of this Court *vide* order

dated 07.05.2025 while observing that it was an appealable order, *suo*

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motu directed that the present petition be treated as a First Appeal against the Order, and accordingly, the present appeal has been assigned to this Court.

6. No one is present for the respondent despite sending advance notice.

7. In a nutshell, it appears that the appellant has preferred a suit for recovery of an amount which has been paid by him to the respondent/DDA towards purchase of the 89-A, measuring 100 sq. yds, Khasra No.30/13, Village Pansali, Abadi known as Deep Vihar, New Delhi ('subject property'). It appears that during the pendency of the suit, an interim order dated 30.11.2021 was passed whereby the respondent, *inter alia*, had been restrained from selling the subject property till the disposal of the application under Order XXXIX Rule 1 & 2 of the CPC unless she deposits the security amount of ₹11,50,000/- in the Court.

8. Learned counsel for the appellant has urged that he moved an application under Order XXXVII Rule 5 of the CPC for a direction to the respondent/defendant to furnish some security which came to be dismissed *vide* order dated 09.07.2024. Aggrieved of which he preferred CM(M) 3298/2024 before this Court whereby the learned Single Judge dismissed the said petition as not pressed while reserving all rights and contentions of the parties, *inter alia*, observing that the contempt petition was also pending and in case the respondent/defendant violates the interim order dated 30.11.2021, a decision would be made in accordance with law.

9. Learned counsel for the appellant submits that it was later on found that the contempt petition which was listed in miscellaneous

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category was also disposed of *vide* order dated 09.07.2024 without



even hearing the appellant. It is pointed out that the property has been sold to a third person who has instituted a complaint with the police and the relevant sale documents in favour such third person were also attached with the application under Order XXXIX Rule 2A of the CPC.

10. The main grievance seems to be that the appellant has not been heard on the present application and the impugned order dated 09.07.2024 has been passed without considering all the relevant documents.

11. In view of the above, the present appeal is allowed. The matter is remanded back to the learned Trial Court with a direction that the application of the appellant/plaintiff under Order XXXIX Rule 2A of the CPC be heard afresh and a decision be taken in accordance with law.

12. This appeal is disposed of in the abovesaid terms.

DHARMESH SHARMA, J.

MAY 13, 2025

Ch/Sa