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

+ **FAO 336/2023 & CM APPL. 66619/2023**

RAJEEV AJMERA

.....Appellant

Through: Mr. Amit Saxena, Adv.

versus

**VINOD KUMAR SINCE DECEASED THROUGH LRS
AND ANR**

.....Respondents

Through: Mr. Gunjan Kathpalia, Adv. for LR
of R-1.

None for R-2.

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

15.04.2025

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1. The hearing is being conducted through hybrid mode.
2. No one has appeared for the respondent No.2 when the matter was called.
3. Having heard the learned counsel for the appellant as well as learned counsel for legal heirs of the deceased respondent No.1 and on perusal of the record, this Court proceeds to decide the present appeal preferred under Order XLIII Rule 1 of the Code of Civil Procedure, 1908 ["CPC"] by the appellant/plaintiff, thereby assailing the order dated 25.09.2023, whereby the learned Trial Court dismissed the application for review of the earlier order dated 08.06.2023 in the suit for possession filed by the appellant/plaintiff bearing CS DJ No. 19734/2016 titled as **Rajeev Ajmera v. Vinod Kumar & Anr.**



4. The long and short of the submissions, which had been advanced, is that in the suit filed by the appellant/plaintiff seeking decree for specific performance in terms of the agreement to sell dated 01.11.2009, as many as 15 issues were framed on 02.01.2018. It is pertinent to mention that issue No.11 was couched as “whether the plaintiff is entitled to recover an amount of Rs. 20 lakhs from the defendant No.1? OPP.”

5. The aforesaid issue was framed as it is averred by the appellant/plaintiff that he had paid a sum of Rs. 10 lakhs by cheque and Rs. 10 lakhs in cash to defendant No.1/respondent No.1 and defendant No.2/respondent No.2 in terms of agreement to sell dated 01.11.2009.

6. Learned counsel for the appellant invited attention of this Court to the written statement filed by the defendant No.1/respondent No.1 whereby it was acknowledged that a cheque of Rs. 10 lakhs was indeed received, but it was in the nature of a refundable security. Likewise, in the written statement filed by the defendant No.2 also there was an acknowledgment that the said cheque was received which was a refundable security. However, both have denied receipt of rupees ten lakh by cash.

7. It appears that another suit had been filed on behalf of the respondent No.2/Mrs. Sneh Puri against the present appellant bearing CS No. 119/2012 titled as **Smt. Sneh Puri v. Rajeev Ajmera**, which was decreed in her favour *vide* judgment dated 21.09.2016 passed by the learned Additional District & Sessions Judge (ADJ), MACT-2, Tis Hazari, Courts, Delhi and thereby a decree for possession was passed in favour of the plaintiff/Smt. Sneh Puri, who is the respondent No.2 in the present appeal.

8. Resultantly, the present appellant moved an application under Order VI Rule 17 CPC read with Section 151 CPC dated 09.09.2022 seeking



permission to incorporate certain additional facts or subsequent facts in the pending suit filed by the appellant/plaintiff *inter-alia* seeking a declaration to set-aside the judgment and decree dated 21.09.2016 passed by the learned ADJ in favour of the respondent No.2/Smt. Sneh Puri. The said application came to be dismissed by the learned Trial Court *vide* order dated 08.06.2023 *inter-alia* holding that the application was admittedly moved on 09.09.2022 and the relief sought by the plaintiff/appellant was beyond the period of limitation i.e. three years, and thus, time barred.

9. The grievance of the appellant is that an unnecessary observation came to be passed by the learned Trial Court while dismissing the application *vide* impugned order dated 08.06.2023, that even the relief of recovery of money had become time barred, overlooking that an issue No.11 already been framed in the pending suit. Although, a review was sought by the appellant/plaintiff, the review application was dismissed *vide* order dated 25.09.2023.

10. Without further ado, the observation made by the learned Trial Court in the impugned order dated 08.06.2023, that “*even the claim for recovery of money had become time barred*”, was unwarranted and patently wrong in law considering the background that an issue on that aspect i.e. issue No.11 had already been framed *vide* order dated 02.01.2018 in the pending suit and the parties are yet to lead evidence on the matters in issue.

11. It is apparent that the learned Trial Court failed to address itself to the error apparent in the face of record and passed the order dated 25.09.2023, which cannot be sustained either.

12. The sum result is that the present appeal is allowed to the effect that the observation contained in paragraph (12) of the impugned order dated



08.06.2023, that *the relief of recovery of money had also become time barred*, is hereby set-aside. Resultantly, the order in review dated 25.09.2023 is also set-aside. The Learned Trial Court shall proceed with the decision on all the issues including issue No.11 on appreciation of evidence in accordance with law.

13. The appeal is disposed of accordingly. The pending application is also disposed of.

DHARMESH SHARMA, J.

APRIL 15, 2025/sp/sa