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

\# **CNR No. DLHC010479042026**

\+ FAO 328/2026, CM APPLs. 68853-55/2026

KALAWATI .....Appellant

Through: Mr. Satish K. Sansi, Advocate

versus

KAMALDEEP & ANR .....Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

O R D E R

% 05.10.2026

CM APPL.-68855/2026(Exemption)

1. Allowed, subject to all just exceptions.

2. The application is disposed of.

CM APPL.-68854/2026 (Condonation of Delay in re-filing the present appeal)

1. For the reasons stated in the application delay in re-filing the appeal is condoned.

2. The application is disposed of.

FAO 328/2026

1. By way of the present appeal filed under Section 104 read with Order XLIII Rule 1 of the Code of Civil Procedure, 1908 (CPC), the appellant seeks to impugn the order dated 07.04.2026 passed by the learned District Judge, Rohini Courts, Delhi in Case No. 914/2025, whereby the learned Trial Court, on an application filed by respondent No.1/plaintiff under Order XXXIX Rules 1 and 2 CPC, allowed the same and restrained the defendants therein from creating any third-party interest and from delivering possession of the suit property to any third party, except with the orders of the learned Trial Court, during the pendency of the subject suit.

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2. The plaintiff (respondent No.1 herein) has filed a suit for specific performance and permanent injunction. It is the case of the plaintiff that the appellant/defendant No.1 had executed an agreement to sell dated 30.04.2022 in respect of property bearing *No.20/A-1, measuring 200 square yards out of Khasra Nos.24/10 and 24/11, situated in the area of Village Prahladpur Bangar, Colony known as E-Block, Jain Colony, Khera Khurd Road, Delhi*, built up to two floors, i.e., ground and first floor (hereinafter referred to as 'the suit property'). The total sale consideration was Rs.39,50,000/-, out of which a sum of Rs.10 lacs was paid to defendant No.1. The sale deed could not be executed as defendant No.1 was not in possession of the ground floor of the suit property, which was in the possession of defendant No.2 and qua which litigation was pending. The plaintiff further claims that an undertaking dated 04.11.2022 was executed extending the agreement, and that after possession of the ground floor became available, the defendant No.1 failed to perform her part of the agreement and execute the sale deed.

3. The appellant, who is defendant No.1 in the suit, has preferred the present appeal by contending that the learned Trial Court has failed to appreciate that the suit filed by the plaintiff seeking specific performance of the agreement to sell dated 30.04.2022 lacks merit. It is contended that not only had the plaintiff failed to demonstrate his readiness and willingness, but the suit itself was filed about four years of the aforesaid agreement to sell. Further, reliance is placed on the decision of "*Suraj Lamp & Industries Pvt. Ltd. through Director v. State of Haryana"*, reported as **(2012) 1 SCC 656**, to contend that an unregistered document ought not to have been taken into consideration.

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4. A perusal of the record would show that the parties had entered into the aforesaid agreement to sell in respect of the suit property. The plaintiff claims to have paid a sum of Rs.10 lacs towards part payment of the total sale consideration of Rs.39.50 lacs. In the plaint, it has been claimed that the ground floor of the suit property was in the occupation of defendant No.2, who is the son of defendant No.1. The same remained occupied and litigation was pending qua the possession thereof.

5. On the other hand, the appellant claims that the plaintiff failed to pay the balance sale consideration and that a notice dated 27.11.2022 was issued for cancellation of the agreement to sell. It is further the appellant's case that she thereafter entered into an agreement with *Ram Rattan Gupta* and *Mukesh Gupta* on 12.12.2025. Defendant No.1 does not deny the execution of the agreement to sell or receipt of Rs.10 lacs. The sole contention of the appellant is the delay on the part of the plaintiff to pay the balance sale consideration.

6. As noted above, the plaintiff has claimed that, in view of the litigation pending between defendant Nos.1 and 2, defendant No.1 could not have handed over vacant and peaceful possession of the entire suit property. Defendant No.1 does not dispute that there was litigation between defendant Nos.1 and 2 and in the execution proceedings, possession of the ground floor was directed to be handed over to defendant No.1. The record also reflects that warrants of possession in respect of the ground floor of suit property were issued vide order dated 12.09.2025.

7. In view of the aforesaid discussion, in the considered opinion of this Court, the learned Trial Court rightly held that the plaintiff has been able to make out a *prima facie* case and that the balance of convenience also tilts in

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his favour. The contentions relating to the delay, readiness and willingness, and whether an unregistered document would entitle the plaintiff to seek the relief as prayed for in the suit, are matters which would require consideration at trial.

8. In view of the aforesaid facts and circumstances, I find no ground to entertain the present appeal and the same is accordingly dismissed along with the pending applications.

MANOJ KUMAR OHRI, J

OCTOBER 5, 2026/*rd*

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