



\$~3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

CS(OS) 868/2014

DEVI DAYAL GARG

..... Plaintiff

Through: Mr.Shakeel Sarwar Wani,
Ms.Ateepriya Bhatia and Ms.Sindhu
Suta, Advocates.

versus

RAMA GOYAL & ORS

..... Defendants

Through: Ms.Uma Aggarwal and Mr.Pulkit
Aggarwal, Advocates for defendants
No.2 to 4.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

ORDER

% **14.05.2018**

IA No.2229/2017

The application has already been disposed of vide order dated 28.08.2017. Registry is directed to not to show the same as pending in the cause list.

IA No.5609/2014

This application is under Order 39 Rule 1 & 2 of the CPC moved for injunction being pressed by the learned counsel for the defendants for arguments.

It is the case of the plaintiff that one Manoj Goel was the owner of the subject property bearing No.2, Road No.20, Punjabi Bagh East, New Delhi and he desired to sell it; hence entered into an agreement to sell and purchase dated 06.11.2013 with the plaintiff for

CS(OS) 868/2014

Page 1 of 4



a total consideration of ₹12.01 Crore. The plaintiff paid earnest money of ₹1,52,25,000/-. The payment was made by cheque of ₹51.00 Lac dated 05.11.2013 and an amount of ₹1,01,25,000/- by cash on 06.11.2013 itself. The said cheque of ₹51.00 Lac, however, was returned on 12.11.2013 by Manoj Goel to the plaintiff, but it is the case of the plaintiff the cash amount of ₹1,01,25,000/- was never returned and even otherwise since there was a breach of the agreement on the part of Manoj Goel for purchase of the subject property, hence per clause No.7 of the agreement to sell and purchase, the plaintiff is entitled to double the amount of earnest money.

Clause No.7 of the agreement dated 06.11.2013 notes:-

“7. That in case the first party fails to complete the transaction within the stipulated period as specified above then it is the discretion of the Second party either to take the double the amount of the Bayana/earnest money from the First party or to complete the transaction through suit for specific performance of the contract from the Court of law on the cost and expenses of the first party.”

It is alleged defendant No.3 has gone out of the country and the plaintiff fears the other defendants may also follow him after sale of the subject property and the plaintiff would then never be able to get a single penny.

It is to be noted on 26.03.2014 the interim order was passed by this Court to restrain the defendants from selling, alienating, transferring or parting with the possession of the subject property considering the defendant No.3 has left the country and there was an apprehension the defendant No.2 may sell the subject property to defeat the claims of the plaintiff.



The learned counsel for the defendants No.2 to 4 vehemently opposed the application, stating inter alia, the receipt of cash amount of ₹1,01,25,000/- is a forged one and the entire amount was returned to the plaintiff and there was no question to rely upon clause No.7 (supra) by the plaintiff.

Of course, these are matters which need to be tested during the course of evidence and a definitive opinion cannot be given at this stage. Nevertheless the learned counsel for the defendants submitted that in case they are allowed to sell the property they would return or deposit in the Court the amount of ₹1,01,25,000/-, but are not inclined to go in for mediation for settlement with the plaintiff.

Since the defendant No.3 has already left the country and since the defendants No.1 & 2 have shown their inclination to sell the subject property it may not defeat the claims of the plaintiff as they have offered to the plaintiff or deposit in the Court the amount of ₹1,01,25,000/-, if allowed to sell but are not inclined to settle the matter with the plaintiff, hence, their statement that they would pay the money to the plaintiff on sale of the property cannot be believed at this stage. However, it may be noted apparently there exist an apprehension that the defendants may not dispose of the property and hence it would be appropriate at this stage to preserve it and thus order dated 26.03.2014 is made absolute during the pendency of this suit as all the three principles of Order 39 Rule 1 & 2 of the CPC are satisfied in favour of the plaintiff and against the defendants.



In view of above the application stands disposed of.

CS(OS) 868/2014

List on 24.08.2018 for framing of the issues.

YOGESH KHANNA, J

MAY 14, 2018

M