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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(OS) 877/2024&I.A. 44059/2024**
M/S ATISHAY JAIN CONSTRUCTIONSPlaintiff
Through: Mr. Tanmay Mehta, Mr. Manish
Gandhi, Advocates.
versus
SH. ANIL KUMAR VERMA & ORS.Defendants
Through: Mr. Gaurav Sharma, Advocate for D-2
& D-3.

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

ORDER

% **05.11.2024**

I.A. 44059/2024(Exemption)

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CS(OS) 877/2024

3. The plaint be registered as suit.
4. Issue summons to the defendants. Learned counsel appearing on behalf of defendant nos. 2 & 3 accepts summons and waives formal service of summons. He submits that copy of the plaint, applications and documents have been received by the said defendants.
5. Let written statement be filed by defendant nos. 2 & 3 within a period of 30 days from today.
6. On plaintiff taking steps, notice be issued to defendant nos. 1, 4 to 7 by all permissible modes. The summons shall indicate that written statement must be filed within 30 days from the date of receipt of summons.



7. The defendants shall also file an affidavit of admission/denial of the documents filed by the plaintiff, failing which the written statement shall not be taken on record.

8. The plaintiff is at liberty to file replication thereto within thirty days after filing of the written statement. The replication shall be accompanied by affidavit of admission/denial in respect of the documents filed by the defendant, failing which the replication shall not be taken on record.

9. It is made clear that any unjustified denial of documents may lead to an order of costs against the concerned party.

10. Any party seeking inspection of documents may do so in accordance with the Delhi High Court (Original Side) Rules, 2018.

11. List before the learned Joint Registrar for completion of service, pleadings, admission/denial of documents and marking of exhibits on 28.01.2025.

12. List before Court after completion of pleadings on 03.03.2025.

I.A. 44058/2024 (Under Order XXXIX Rule 1 & 2 CPC by the plaintiff)

13. Issue notice. The learned counsel appearing on behalf of the defendant nos. 2 and 3 accepts notice. On plaintiff taking steps, issue notice to defendant nos. 1, 4 to 7 by all permissible modes.

14. The present suit has been filed for specific performance of Agreement to Sell dated 21.06.2023 with regard to the suit property at C-35, Rajouri Garden, New Delhi-110027. Further, a prayer for permanent injunction has also been made.

15. Learned counsel appearing on behalf of the plaintiff submits that the plaintiff had entered into the aforesaid Agreement to Sell dated 21.06.2023 with the defendant nos. 1 to 6 for a total consideration of Rs. 26 crores out of



which an amount of Rs. 1,00,00,000/- (Rupees One Crore only) was paid by the plaintiff at the time of signing of Agreement to Sell. Further payment of Rs. 2,10,00,000/- (Rupees Two Crore Ten Lakhs only) was made by the plaintiff to the defendants between November and December, 2023. He submits that as on date, total amount of Rs. 3,25,00,000/- has been paid by the plaintiff to the defendants.

16. He invites attention of the Court to the Agreement to Sell to contend that the defendant nos. 1 to 3 have 75% share in the suit property whereas defendant nos. 4 to 6 have 25% shares in the said property. He submits that the suit property was subject matter of suit for partition [CS(OS) 541/2014] which was pending before this Court in which the aforesaid share were determined. The share of the defendant no. 7 in the said suit for partition was quantified in terms of money and she does not have any share in the suit property. However, by way of abundant caution the defendant no. 7 has been arrayed as defendant in the suit.

17. Referring to clause 4 of the Agreement to Sell, the learned counsel for the plaintiff contends that the defendant nos. 4 to 6, who have 25% undivided share in the suit property were obliged to execute the sale deed on or before 15.09.2023 and within six months thereafter, the defendant nos. 1 to 3 ought to have executed the sale deed with regard to 75% of their share.

18. He submits that it was also defendants' obligation under the Agreement to Sell to show the original title documents to the plaintiffs after getting the same released from Court.

19. He refers to the reply to legal notice dated 22.04.2024 of the plaintiff to contend that the original title deeds of the suit property were released by this Court *vide* order dated 06.11.2023 passed in the aforementioned partition suit.



He submits that despite release of the said original documents the defendants did not come forward to execute the sale deed in favour of the plaintiff.

20. He submits that the defendant nos. 1 to 3 had sent a legal notice dated 11.05.2024 terminating the Agreement to Sell dated 21.06.2023. However, notwithstanding such termination, further payment has also been accepted by the defendant no. 1 to the extent of Rs. 50 lacs on 08.08.2024 which itself shows that the legal notice terminating the agreement to sell was given up. It is also the contention of the learned counsel that the agreement to sell was not terminated by the defendant nos. 4 to 6.

21. The learned counsel appearing on behalf of the defendant nos. 2 & 3 submits that the suit property is occupied by the defendants and defendant nos. 2 & 3 have no intention of creating any further rights over the property. The statement is taken on record.

22. The attention of the Court is also invited by the learned counsel for the plaintiff to the legal notice dated 11.05.2024, to contend that the defendants are not performing their part of the contract/Agreement to Sell dated 21.06.2023 only for the reason that they are receiving multiple offers from other prospective buyers at a higher rate.

23. Having regard to the submissions made by the learned counsel and considering the fact that Agreement to Sell dated 21.06.2023 is not in dispute as well as further part consideration to the extent of Rs. 3.25 Crores is stated to have been paid. Moreover, taking into consideration the averments made in the plaint with regard to the readiness and willingness of the plaintiff to perform his part, this Court is of the view that *prima facie* case has been made out for grant of *ad interim* order of status quo, till the next date.

24. The balance of convenience is also in favour of the plaintiff. I am



satisfied that if interim relief is not granted to the plaintiff, it will suffer an irreparable loss.

25. In view of the above, the defendants are directed not to create any third party interests in the suit property till the next date of hearing.

26. Provisions of Order XXXIX Rule 3 CPC be complied with *qua* the defendants within two weeks from today and affidavit of compliance be filed within a period of three days thereafter.

27. Defendants may file replies to the application within four weeks on receipt of notice. Rejoinder thereto, if any, be filed within a period of four weeks thereafter.

28. List before the learned Joint Registrar for completion of service, pleadings, admission/denial of documents and marking of exhibits on 28.01.2025.

29. List before Court after completion of pleadings on 03.03.2025.

VIKAS MAHAJAN, J

NOVEMBER 5, 2024/NI