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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 1954/2009 & I.A. 12615/2018, I.A. 5724/2024 & I.A. 5723/2024

M/S FUTURISTIC REMEDIES LTD. & ORS.Plaintiffs
Through: Mr. Arav Kapoor and Ms. Harshita Gupta, Advocates
versus

MR VIJAY DIXITDefendant
Through: Ms. Diksha Goswami, Advocate for D-1
Mr. Divyakant Lahoti, Mr. Kartik Lahoti and Ms. Anushka Awasthi, Advocates for D-2
Mr. S. Agarwal, Mr. Ayush Khare and Mr. M. Kumar, Advocates for D-3

CORAM:
HON'BLE MR. JUSTICE VIKAS MAHAJAN

% **ORDER**
21.08.2024

I.A. 12615/2018 (under Order XXXIX Rule 2-A CPC filed by the plaintiff)

1. The present application has been filed by the plaintiff alleging wilful disobedience of order dated 20.10.2009 whereby this Court had directed the defendant not to create any third party interest in the second floor along with servant quarters on the top floor of the property bearing no. 1, Street No. 1, situated at Shanti Niketan, New Delhi. Subsequently, the said order was made absolute by this Court *vide* order dated 13.09.2010.
2. Learned counsel for the plaintiff submits that notwithstanding the said



order of restraint, the defendant no.1 sold the suit property to defendant no.3 through its attorney i.e. defendant no. 2. He submits that this led to the filing of the present application under Order XXXIX Rule 2-A CPC in which plaintiff also impleaded the purchaser i.e. defendant no. 3 as well as the attorney i.e. defendant no. 2, besides defendant no. 1.

3. It is further his submission that defendant no. 3 is before the NCLT as the petition filed against it by one of the financial creditor under Section 7 of the IBC has been admitted by the NCLT *vide* order dated 04.07.2023 and a moratorium has been declared in terms of Section 14 of the IBC.

4. Learned counsel submits that the declaration of moratorium will not affect the present proceedings under Order XXXIX Rule 2-A CPC, in as much as the sale deed executed by the defendant no. 1 in wilful disobedience of the restraint order passed by this Court, will be non-est.

5. In support of his submissions, the learned counsel has placed reliance on the decisions of the Hon'ble Supreme Court in the following cases:

- i) *Balwantbhai Somabhai Bhandari Vs. Hiralal Somabhai Contractor (Deceased) Rep. by L.Rs and Ors, 2023 SCC OnLine SC 1231.*
- ii) *Vidur Impex and Traders Pvt. Ltd. and Ors. Vs. Tosh Apartments Pvt. Ltd. & Ors., (2012) 8 SCC 384.*

6. On the other hand, the learned counsel appearing on behalf of the Resolution Professional (RP) of defendant no. 3 submits that in view of the provisions of Section 60(5) of the IBC, the application needs to be filed by the plaintiff before the NCLT since the ownership of the property vests in the corporate debtor.

7. Learned counsel appearing for the plaintiff seeks to examine the



above proposition and file a short note of his submissions along with supporting judgments. Let the needful be done before the next date.

8. Let learned counsel appearing for Resolution Professional also file a similar note with supporting judgments before the next date.

9. It is informed by the learned counsel appearing for Resolution Professional that the next date before the NCLT is 04.10.2024. In this view of the matter, the statement made by the learned counsel for the Resolution Professional on 31.07.2024 shall hold good till the next date.

10. List on 18.09.2024.

VIKAS MAHAJAN, J

AUGUST 21, 2024
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