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

+ **CS(OS) 2536/2013**

SATINDER SINGH & ORS

..... Plaintiffs

Through: Mr. Rohit Nagpal, Adv. with
Mr. D.D.Sharma, Adv./P-3 in person.

versus

RAJINDER KUMAR & ORS

..... Defendants

Through: Mr. Dhruv Grover, Adv. for D-1.
Mr. Jitender Chaudhary &
Ms. Shilpa Chohan, Adv. for D-2.
Ms. Sonaakshi Dhiman with
Mr. Nishant Shankar, Adv. for D-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **09.08.2019**

1. Vide order dated 24th April, 2019, the application of the plaintiffs for amendment of the plaint was dismissed. Thereafter on 2nd May, 2019, when the suit came up before this Court, on the counsel for the plaintiffs stating that the plaintiffs wish to challenge the order dated 24th April, 2019, the suit was renotified for today.
 2. No Chamber Appeal has come up before this Court till date.
 3. The counsel for the plaintiffs today also states that the suit be adjourned to enable the plaintiffs to prefer a Chamber Appeal against the order of dismissal of their application for amendment.
 4. The counsel for the defendant no.2 has argued, (i) that the plaintiffs
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have instituted this suit for specific performance of an agreement of sale of immovable property, whereunder the defendants no.1 and 2 had agreed to sell the property to the plaintiffs; (ii) that the defendant no.1 had mortgaged his share of the property with a bank and in pursuance to The Securitisation and Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002 (in short SARFAESI Act), the share of the defendant no.1 in the property, comprising of first floor and above, has been auctioned; (iii) that the agreement to sell does not separately value the shares of defendants no.1 and 2 and once the share of the defendant no.1 in the property is not available for sale to the plaintiffs, in view of auction thereof, the suit cannot be enforced against the defendant no.2 also and is liable to be dismissed.

5. On enquiry, whether the share of the defendants no. 1 and 2 were specified in the agreement to sell of which specific performance is sought, it is stated that the shares were not specified and since they were not specified, the agreement is incapable of performance.

6. On further enquiry, as to what was the share of the defendant no.1 in the property which was auctioned, it is stated that the auction was with respect to the first floor, second floor with terrace rights, without specifying the share.

7. I have enquired from the counsel for the defendant no.2, how the same entails dismissal of the suit at this stage and why the agreement, insofar as by the defendant no.2, cannot be enforced. Attention has also been drawn to Section 45 to the Transfer of Property Act, 1882.

8. The counsel for the defendant no.2 has no answer.



9. It is quite obvious that arguments are being raised without application of law.
10. The counsel for the defendant no.3 Phonix ARC Pvt. Ltd. states that the Phonix ARC Pvt. Ltd., having auctioned the property, is not left with any right therein and be deleted.
11. The counsel for the plaintiff has no objection. The counsel for the defendant no.1 and the counsel for the defendant no.2 also have no objection.
12. Accordingly, the defendant no.3 Phonix ARC Pvt. Ltd. is deleted from the array of defendants and endorsement to the said effect be made by the Court Master under his signature in the memo of parties in today's date.
13. The suit is otherwise ripe for framing of issues.
14. I have perused the order dated 24th April, 2019 of the Joint Registrar dismissing the application of the plaintiffs for amendment of the plaint and find the amendment sought, to claim the relief in the alternative of refund of Rs.2 crores paid and to recover compensation. The Joint Registrar has dismissed the application for amendment on the ground of relief sought to be added being barred by time.
15. From a reading of the order dated 24th April, 2019, it appears that the plaintiffs are no longer interested in specific performance. I have thus enquired from the counsel for the plaintiffs that if it is so, why should issues qua the relief of specific performance be framed and which are unnecessary.
16. Though the counsel for the plaintiffs is unable to take a definite stand but at this stage, the plaintiff no.3 Mr. D.K.Sharma, Advocate, sitting in the



Court, has affirmed that the plaintiffs now only want refund of the money of Rs.2 crores paid with interest and compensation.

17. Attention of the counsel has been drawn to *Ravi Mohan Vs. Anil Kumar* 2017 SCC OnLine Del 10922, *Bhayana Builders Pvt. Ltd. Vs. Kamal Kumar* 2017 SCC OnLine Del 12018, *Kahini Developers Pvt. Ltd Vs. Mukesh Morarji Panchamatia* 2013 SCC OnLine Bom 220, *Jagdish Singh Vs. Natthu Singh* (1992) 1 SCC 647, *Babulal Vs. Hazari Lal Kishori Lal* (1982) 1 SCC 525 and *Ex-Service Enterprises (P) Ltd. Vs. Samey Singh* 1975 SCC OnLine Del 56 holding the amendments under Sections 21 and 22 of the Specific Relief Act, 1963 to be not barred by time and being statutorily permissible to be made at any time and in the light whereof it appears order dated 24th April, 2019 of the Joint Registrar to be set aside.

18. The counsel for the defendant no.2 seeks adjournment.

19. In the light of the above, the framing of issues is deferred, inasmuch as, if any, issue arises qua the relief of recovery and compensation, only those issues will be framed so that trial can be expedited.

20. List on 16th January, 2020.

RAJIV SAHAI ENDLAW, J

AUGUST 09, 2019
‘ak’..