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

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

SATINDER SINGH & ORS

..... Plaintiffs

Through: Mr. K.K. Sharma, Sr. Advocate with
Mr. Rajiv Bakshi and Mr. Ram
Pravesh Rai, Advocates

versus

RAJINDER KUMAR & ORS

..... Defendants

Through: Mr. Dhruv Grover, Advocate for LRs
of D-1(A-D) (Through VC)
Mr. Jitender Chaudhary and Ms.
Shilpa Chohan, Advocates for D-2

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

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01.05.2023

I.A. 8448/2023 (Delay in filing Original Appeal) & O.A. 48/2023

1. The instant application under Section 5 of Limitation Act, 1963 has been filed on behalf of plaintiffs/applicants for condonation of delay in filing the original appeal alongwith the Original Appeal filed under Rule 5 Chapter II of the High Court (Original Side) Rules, 1967 read with Section 151 of the Code of Civil Procedure, 1908 for setting aside the order passed by the learned Joint Registrar in I.A No. 11089/2018, respectively.

2. Learned counsel appearing on behalf of applicants/plaintiffs submitted that the learned Joint Registrar failed to appreciate that under



Sections 21 and 22 of the Specific Relief Act, no limitation has been prescribed for seeking refund of earnest money and compensation in the changed circumstances, when the Relief of Specific Performance becomes impossible. Therefore, the impugned order is bad in law and is liable to be set aside. It is submitted that the learned Joint Registrar ought to have considered that the plaintiffs were constrained to file the application under Order 6 Rule 17 CPC due to the change in circumstance when the plaintiffs were informed during the proceedings dated 23rd October, 2017, that the learned Debt Recovery Tribunal has passed the final order/decreed against the defendant No. 1A to 1D, which would make the grant of Relief of Specific Performance as sought in the suit, impossible and redundant in the said changed circumstance. It is further submitted that the impugned order dated 24th April, 2019 records all the facts and circumstances showing that the Relief of Specific Performance, was not feasible in view of the issuance of recovery certificate by the learned Debt Recovery Tribunal in as much as the part of suit property was mortgaged with the defendant No. 3 bank. Additionally, the learned Joint Registrar failed to appreciate that the respondents/defendants herein, have committed breach of contract and therefore, the appellants/plaintiffs herein are also entitled to compensation for breach of contract by the defendant No. 1 through his legal heirs and defendant No.2 herein, besides its specific performance, in addition to or in substitution or such performance by the defendant.

3. Heard.

4. Issue notice. Notice is accepted by Mr. Dhruv Grover, learned counsel appearing on behalf of legal representatives of defendant No.1 (A-D) and Mr. Jitender Chaudhary, learned counsel appearing on behalf of



defendant No.2. They vehemently opposed the instant application as well as the appeal and prayed for some time to file reply/objection.

5. Let reply/objection to the original appeal and application of delay in filing the original appeal be filed within three weeks. Rejoinder, thereto if any, be filed within two weeks thereafter.

6. List on 26th September, 2023 i.e. the date already fixed.

CHANDRA DHARI SINGH, J

MAY 1, 2023

Dy/as

Click here to check corrigendum, if any