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

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Date of Decision : 06.08.2024+ **FAO (OS) (COMM) 167/2024 and CM APPLs.44815-17/2024**

SHUBHAM JAIN AND ORS.

.....Appellants

Through: Mr.Akshay Makhija, Senior Advocate along with Mr. Hemant Kumar, Mr. Venkatesh Joshi and Ms. Bhavishya Mohaniya, Advocates.

versus

MARYAM BEE AND ANR.

.....Respondents

Through: Mr. Jai Sahai Endlaw and Ms. Sagrika Kaul, Advocates for R1.

CORAM:**HON'BLE MR. JUSTICE VIBHU BAKHRU****HON'BLE MR. JUSTICE SACHIN DATTA****VIBHU BAKHRU, J. (ORAL)**

1. The appellants have filed the present intra court appeal impugning an order dated 07.05.2024 (hereafter *the impugned order*) passed by the learned Single Judge, in CS(COMM) No.590/2023 captioned *Shubham Jain & Ors. v. Maryam Bee*, whereby interim relief was granted to the appellants pursuant to their application [IA No.16163/2023] under Order XXXIX Rules 1 & 2 of the Code of Civil Procedure, 1908 (hereafter *the CPC*).

2. The appellants have filed the aforementioned suit [CS(COMM) No.590/2023] seeking specific performance of an agreement to sell dated



27.12.2022 (hereafter *the ATS*) for sale of the built up property Mezzanine to up to sky bearing M.C. No.1806, Ward No.4, situated adjoining to the Road, Chandni Chowk, Dariba Kalan, Delhi-110006 admeasuring 82.5 square yards with roof rights alongwith all fittings and fixture duly fitted and installed therein (hereafter *the suit property*).

3. The appellants claimed in the last week of November 2022, sons of respondent no.1 (Junaid Malik and Ubaid Malik) had discussed a proposal for purchase and sale of the suit property. They claimed that they were informed that suit property was purchased by Late Smt. Zubaida Khatoon (mother-in-law of respondent no.1) and Late Sh. Sheikh Abdul Sattar Sahib (father-in-law of respondent no.1) by two sale deeds dated 25.01.1962 and 05.02.1962 registered on 09.04.1962 and 26.03.1962, respectively. The suit property was thereafter transferred to respondent no.1 by virtue of two gifts deeds both dated 23.08.1981.

4. Part of the suit property was occupied by tenants of respondent no.1. The appellants claim that respondent no.1 had assured them that the suit property would be vacated and vacant possession of the suit property would be handed over to the appellants.

5. The ATS reflects that the total sale consideration of the suit property as ₹7,00,00,000/- (Rupees Seven Crores) and a sum of ₹60,00,000/- (Rupees Sixty Lacs) was paid by the appellants as earnest money. The balance amount was required to be paid within six months of the signing of the ATS.

6. The terms of the ATS are set out below: -

“1. That the entire sale consideration money of Rs



7,00,00,000/- (Rupees Seven Crore) Only for the said Built-up property M.C. No. 1806 Chandni Chowk Delhi-110006 With all fittings and fixture duly fitted and installed therein, with electric, water and sewer connection/meters, with structure built thereon, with all amenities provided therein.

2. That the Vendor has received Rs 60,00,000/- (Rupees Sixty Lakhs only) as in earliest money and the Balance payment shall be pay up to Six Months from the date of signing of this agreement. And the Vendee will take Symbolic possession and execute Sale Deed in his favor or any other person of above said property.

3. That the First right to purchase all shops on Ground Floor should be given to the Vendee. If any third party bids higher amount to purchase the said shops, the Vendor can Deal with third party for the sale of Shops.

4. That the Vendor shall pay all the dues and taxes (Electric, Water, House Tax, GST etc.) Regarding the said property up to the date of registration thereafter that shall be borne by the vendor.

5. That the vendee will pay the cost of stamp and registration charges on the SALE DEED.

6. That the Vendor do hereby further declares and assures the vendee that the aforesaid Property is free from all sorts of encumbrances and nothing have been concealed herein and also that the title is hereby transferred 'SUBSISTS' the Vendor have full power and absolute authority to transfer OFF the same and the Vendor is the absolute owner of the said Property and that none else except the Vendor has any rights, title, interests and claims therein and IN CASE the title of the Vendor are found defective at any time hereinafter, then the Vendor and her legal heirs shall be liable to make the loss thus sustained by the vendee and shall always keep the vendee harmless against all such



losses, costs, damages and claims, which the vendee may sustain or incur or become liable to pay by reason of any legal claims made by anybody else henceforth after the execution of this Agreement.

7. That the Vendor and Vendee has assessed the cost of the Sale, which is under sale, as per the circle rates for the purpose of payment of stamp duty.

8. That property under sale does not come under enemy property.

9. That the Vendor will give surviving Certificate to vendee.”

7. The appellants claim that they paid an aggregate consideration of ₹3,00,00,000/- (Rupees Three Crores) to respondent no.1. Out of said sum, the appellants have paid a sum of ₹30,00,000/- (Rupees Thirty Lacs) by cheque at the time of signing the ATS on 27.12.2022. Further, a sum of ₹30,00,000/- (Rupees Thirty Lacs) was handed over in cash. They further claim that in January 2023, one of the sons of respondent no.1 (Junaid Malik) had approached the appellants with the request to pay a sum of ₹80,00,000/- (Rupees Eight Lacs) and had assured them that the same would be adjusted towards sale consideration of the suit property. The appellants claim that they had handed over a sum of ₹60,00,000/- (Rupees Sixty Lacs) in cash on 27.01.2023 and further the sum of ₹20,00,000/- in two tranches of 10,00,000/- (Rupees Ten Lacs) each on 24.02.2023 and 16.03.2023 respectively. The appellants claim that in addition to aforesaid sum, they had also paid a sum of ₹1,00,00,000/- (Rupees One Crore) to Junaid Malik.

8. The appellants state that on 27.03.2023, Junaid Malik informed the appellants that tenants (Sh. Trilok Chand Jain and Sh. Pawan Kumar Jain)



occupying the portion of the suit property had agreed to vacate their portion on the mezzanine floor and second floor of the suit property and the appellants were required to pay sum of ₹1,45,00,000/- (Rupees One Crore and Forty-Five Lacs) as a compensation for the same. The appellants claim that they arranged a sum of ₹1,00,00,000/- (Rupees One Crore) and paid the same to Junaid Malik at his residence on 28.03.2023 with the assurance that the rest of the money would be paid upon vacation of the tenanted premises.

9. The appellants state that thereafter, on 31.03.2023, the appellants arranged a further sum of ₹45,00,000/- (Rupees Forty-Five Lacs) to pay the same to Junaid Malik. The appellants claimed that on 31.03.2023, Sh. Trilok Chand Jain and Pawan Kumar Jain (tenants) occupying part of the suit property handed over the possession of the mezzanine floor and second floor along with terrace to Anshul Jain, son of appellant no.3, who received the same on behalf of the appellants. The appellants claim that respondent no.1 was present on video call and gave her consent. They claim that since the money was paid to tenants, Trilok Chand Jain and Pawan Kumar Jain, Junaid Malik cancelled the acknowledgment of receipt of ₹1,00,00,000/- (Rupees One Crore).

10. The appellants claim that they spent further sums for renovating a part of the suit property. They claim that they are in possession of a part of the suit property and are using the same for their business.

11. The appellants also aver in the plaint that they have the financial capacity and can arrange the balance amount of ₹5,60,00,000/- (Rupees Five Crore and Sixty Lacs). They state that they, along with two other individuals



named Harpal Singh Soni and Anil Kumar Jain, have made constant efforts to communicate with respondent no.1 to have the sale deed executed in their favour.

12. Respondent no.1 has filed the written statement contesting the suit. It is respondent no.1's case that two agreements were executed on 27.12.2022. In addition to the ATS, the parties have also entered into agreement to sell (hereafter *the Second ATS*) for the suit property against a sum of ₹2,00,00,000/- (Rupees Two Crores). She claims the parties had agreed that the entire sale consideration of the suit property would be of ₹9,00,00,000/- (Rupees Nine Crores). However, the appellants had failed to pay the said amount. Respondent no.1 was ready and willing to execute the sale deed on receipt of the balance sale consideration but the appellants had resiled from their agreement.

13. Respondent no.1 contends that a sum of ₹60,00,000 (Rupees Sixty Lacs) – ₹30,00,000/- by cheque and ₹30,00,000/- in cash – was received and acknowledged under the ATS. In addition, a further sum of ₹30,00,000/- (Rupees Thirty Lacs) in cash was acknowledged as received under the second ATS. The balance sum of ₹8,10,00,000/- (Rupees Eight Crore and Ten Lacs) was to be paid within the period of six months after the execution of the ATS and the Second ATS.

14. Respondent no.1 acknowledges that an aggregate sum of ₹20,00,000/- (Rupees Twenty Lacs) towards balance sale consideration in two installments of ₹10,00,000/- (Rupees Ten Lacs) each were received on 24.02.2023 and 16.03.2023 respectively; but disputes that she had received



any other amount.

15. Respondent no.1 also states that she had agreed to give symbolic possession of the suit property since the suit property was occupied by the tenants. However, the appellants have taken over the possession from the tenants and have occupied part of the suit property without paying the agreed consideration to respondent no.1.

16. The appellants had filed an application under Order XXXIX Rules 1 & 2 of the CPC, *inter alia*, claiming that respondent no.1 was attempting to deal with the suit property and therefore, the same was required to be interdicted.

17. The learned Single Judge acceded to the relief sought by the appellants and by the impugned order directed the *status quo* as to the suit property be maintained. However, the court also imposed a condition that a sum of ₹4,00,00,000/- (Rupees Four Crores) be deposited with the Registry of this Court within a period of three months. As noted above, the appellants are, essentially, aggrieved with the imposition of this condition.

18. Mr Akshay Makhija, learned senior counsel for the appellants submit that imposition of such a condition is manifestly erroneous as there is no allegation that the appellants would not be able to pay the balance sale consideration. He submits that the appellants had high net worth and therefore, had made an unequivocal statement that they are ready and willing to pay the balance sale consideration. He submits that since there is no challenge to the appellants' net worth, there is no requirement for the appellants to make the aforesaid deposit. He referred to the decision of the



Coordinate Bench of this Court in *M/s. Ansal Properties & Industrial Private Limited v. Rajinder Singh & Another*: FAO(OS) No.32/1989 decided on 04.08.1989. On the strength of the said decision, he contended that in a case where there was any apprehension that the plaintiff may not have the money to pay the agreed consideration, an order for making the deposit in the Court may be made. This is in order to bind the plaintiff or to satisfy the Court about truthfulness of the averments that the plaintiff is ready and willing to perform the agreement. However, this course should be adopted rarely and only in cases where the Court is of the opinion that the plaintiff's averment to the effect that the plaintiff is ready and willing to perform the contract may not be true. He also submitted that there would have been no difficulty in making the payment, but the appellants have learnt that respondent no.1 and her brother-in-law (brother of her husband arrayed as respondent no.2) was also claiming a share in the suit property and their *inter se* disputes are pending.

19. Mr. Endlaw, learned counsel appearing on behalf of respondent no.1, who appears on advance notice submits that respondent no.1 is ready and willing to transfer the suit property in favour of the appellants on the appellants paying the balance consideration. However, the appellants were not ready and willing to do so. He also submits that since the appellants are in possession of the part of the suit property and are carrying on their business from part of the suit property, they are not ready and willing to perform their obligation.

20. We have heard the learned senior counsel for the appellant and the learned counsel for respondent no.1.



21. It is apparent from the pleadings that the disputes between the parties are having several facets. First, there is a controversy as to the aggregate sale consideration for the suit property. Whilst, the appellants contend that the total agreed sale consideration is ₹7,00,00,000/- (Rupees Seven Crores), respondent no.1 contends that the agreed sale consideration is ₹9,00,00,000/- (Rupees Nine Crores). Second, there is a dispute as to the amount of sale consideration paid by the appellants. According to the appellants, they have paid a total sum of ₹2,85,00,000/- (Rupees Two Crores and Eighty five lacs). However, respondent no.1 acknowledges receipt of only ₹1,10,00,000/- (Rupees One Crore and Ten Lacs). Third, there is a issue whether the appellants are ready and willing to perform their obligation. As is apparent from the submissions made by Mr Makhija, the appellants are now apprehensive regarding the title of the suit property in view of the *inter se* disputes between respondent no.1 and her brother-in-law, who is arrayed as respondent no.2.

22. However, it is material to note that even, according to the appellants the balance consideration of ₹5,60,00,000/- (Rupees Five Crore and Sixty Lacs) would be payable to respondent no.1. Thus, undisputedly, they have paid only a small fraction of the total sale consideration. However, notwithstanding the same, the appellants are now in possession of the part of the suit property; they have renovated the same as a showroom; and are carrying on their business. There is no document on record of respondent no.1 handing over the possession of the part of the suit property to the appellants or agreeing to the same. These are relevant facts for considering a conditional interim order.



23. The decision in *M/s. Ansal Properties & Industrial Pvt Limited v. Rajinder Singh & Another* (supra) is of little assistance to the appellants. In that case, this Court had directed the proposed sale consideration to be deposited before any further orders are passed in the suit. This Court had also held that suit for part performance of the agreement to sell would be maintainable only if the party suing pays consideration for the whole contract, reduced by the consideration of the part that is left out for any performance. It is in the aforesaid context; this Court had held that the directions to deposit the money should be adopted only if the Court is of the opinion that the averments of the plaintiff that it is ready and willing to perform the contract may not be true.

24. In the present case, the learned Single Judge has directed that the deposit of amount is a condition for grant of interim relief. It is well settled that the Court has the discretion to grant any interim relief, *albeit* on such conditions as may be considered apposite.

25. In the given facts, we find no infirmity with the decision of the learned Single Judge in granting interim relief on the condition of making deposit of a sum of ₹4,00,00,000/- (Rupees Four Crore) with the Registry of this Court. This is considering the appellants' contention that they have already spent a sum of ₹3,00,00,000/- (Rupees Three Crore) including expenses and a sum of ₹1,45,00,000/- (Rupees One Crore and Forty-Five Lacs) allegedly paid to the tenants.

26. It is also material to note that according to the appellants bulk of the payments made by them are in cash.



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27. It is contended on behalf of respondent no.1 that she is ready and willing to execute the sale deed, however, the appellants are apprehensive of the proceedings on account of the claim made by respondent no.2.

28. In the given facts of this case, we are unable to accept that the learned Single Judge has exercised the discretion capriciously, arbitrarily or in disregard of well settled principles of law.

29. In view of above, appeal is unmerited and is, accordingly, dismissed. All pending applications also stand disposed of.

VIBHU BAKHRU, J

SACHIN DATTA, J

AUGUST 06, 2024

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