

* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of decision: 5th January, 2022.

+ CM(M) 13/2022

KAVITA TUSHIR

..... Petitioner

Through: Mr. Gaurav Singh, Advocate

Versus

PUSHRAJ DALAL

..... Respondent

Through: Mr. Rajesh Yadav, Senior Advocate
with Mr. Vikas Sharma, Advocate

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

[VIA VIDEO CONFERENCING]

CM No. 428/2022 (for Exemption)

1. Allowed, subject to just all exceptions.
2. The application is disposed of.

CM(M) 13/2022 and CM No. 429/2022 (for Stay)

3. The present petition under Article 227 of the Constitution of India impugns the order dated 21st August, 2021 passed by the Additional District Judge – 03 (South), Saket, New Delhi (Trial Court) in Civil Suit bearing CS No.194/2020, whereby the application filed on behalf of the petitioner/defendant under Order VII Rule 11 of the Code of Civil Procedure, 1908 (CPC) has been dismissed.
4. The present petition arises from a suit for specific performance filed

on behalf of the respondent/plaintiff in respect of purchase of the property belonging to the petitioner, being a flat located at Ground Floor bearing No. C/6/13/1 at Safdarjung Development Area, New Delhi. The suit was based on agreement to sell dated 30th June, 2015 which was later superseded by the agreement to sell dated 10th March, 2018. Besides seeking the relief of specific performance in the suit, an alternate relief of recovery of sum of Rs.1.95 crores towards damages was also sought. The suit was filed in March, 2020 and the petitioner filed her written statement along with an application under Order VII Rule 11 of the CPC on 27th March, 2020. The respondent filed his reply to the said application under Order VII Rule 11 of the CPC on 11th January, 2021, to which a replication was filed by the petitioner on 20th March, 2021. The arguments on the application were concluded on 1st April, 2021 and the Trial Court proceeded to decide the same vide the impugned order passed on 21st August, 2021.

5. The Trial Court, vide the impugned order, has dismissed the application filed on behalf of the petitioner on the basis that:

- (i) the grounds raised by the petitioner in the application under Order VII Rule 11 of the CPC are mixed questions of facts and law and are therefore, matters of trial.
- (ii) there cannot be any bar in filing the present suit by the respondent against the petitioner on the ground that there has been violation of other laws as averred by the petitioner in the application under Order VII Rule 11 of the CPC, and if that is so, a separate action can be taken by the petitioner against the respondent.
- (iii) disputed questions raised by the petitioner recording destruction of first agreement to sell and execution of the agreement to sell are matters of trial.

6. Counsel appearing on behalf of the petitioner submits that (i) the plaint is barred by law as the sale transaction, which is the subject matter of the agreement to sell, was not permissible in law; (ii) it has been alleged in the plaint that Rs.57,00,000/- was paid by the respondent to the petitioner in cash, which is barred under the provisions of the Income Tax Act. In this regard, he places reliance on Sections 269SS and 269T of the Income Tax Act; and (iii) all amounts in terms of the agreement to sell have been paid to the sons of the petitioner and not to the petitioner.

7. Mr. Rajesh Yadav, senior counsel appearing on behalf of the respondent submits that (i) amounts through cheques were paid to the sons of the petitioner as per the instructions of the petitioner herself but the cash amounts were paid to the petitioner herself; (ii) the sons were the witnesses to the agreement to sell and the agreement to sell bears their signatures as witnesses; (iii) the details with regard to payments have been provided in the plaint and in the agreement to sell; (iv) clause 1 of the agreement to sell dated 10th March, 2018 contains the details of the payment already made by the respondent to the petitioner. It has been recorded therein that out of the total sale consideration of Rs.1,20,00,000/-, a sum of Rs.1,10,75,500/- has already been paid by the respondent to the petitioner; and (v) without prejudice to the contention that Sections 269SS and 269T of the Income Tax Act are not applicable in the facts and circumstances of the present case, the payments in cash were made before the said sections became part of the statute.

8. I have heard the counsels for the parties. It is a settled position of law that while deciding an application under Order VII Rule 11 of the CPC, the Court only has to see the averments made in the plaint and the documents filed along with the plaint. Based on the above, this Court does not find any

merit in the submission of the petitioner that the plaint and the documents filed with the plaint do not disclose any cause of action or is barred under any law.

9. This Court is of the *prima facie* view that Sections 269SS and 269T of the Income Tax Act would not be applicable in the facts of the case as the said Sections deal with loans or deposits made and not payments made pursuant to an agreement to sell. In any case, the said Sections became part of the statute only from June, 2015. It has been contended on behalf of the respondent that the payments were made prior to the June, 2015 and this can only be determined in the trial. Even if it is assumed that the relief of specific performance cannot be granted and that the agreement to sell was not valid in law, the respondent has made an alternative prayer for recovery of Rs.1.95 crores towards damages. There cannot be any piecemeal rejection of a plaint under provisions of Order VII Rule 11 of the CPC. Therefore, in any case, the suit would have to proceed with trial.

10. It appears that all these grounds have been taken by the petitioner only to resile from her obligations under the agreement to sell and to delay the adjudication of the suit. In my view, the present petition is completely frivolous and misconceived.

Dismissed with costs of Rs.30,000/-

AMIT BANSAL, J.

JANUARY 05, 2022

dk