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

+ **FAO(OS) 4/2023 & CM APPL. 3056/2023, CM APPL. 47955/2023**

**SMT SATI BHATTACHARYA**

..... Appellant

Through: Mr. T. V. George, Advocate

versus

**SHRI P C AGRAWAL AND ORS**

..... Respondents

Through: Mr. Jatin Sehgal, Mr. Shivashish Dwivedi and Mr. Yashi Bajpai, Advocates for R-1

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Date of Decision: 22<sup>nd</sup> April, 2024

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA**

**JUDGMENT**

**MANMOHAN, ACJ : (ORAL)**

1. The present appeal has been filed under Section 10 of the Delhi High Court Act, 1966, challenging the impugned order dated 30<sup>th</sup> November, 2022, passed in CS (OS) 196/2012, whereby the learned Single Judge dismissed the I.A. No. 11151/2019 filed by the Appellant herein under Order



XIV Rule 5 of Code of Civil Procedure, 1908 ('CPC'), seeking framing of the following additional issues<sup>1</sup>:

- "a. Whether the alleged Agreement to Sell dated 27.12.2005 between defendant no.1 to 3 in favour of defendant no.4 is a forged document.*
- b. Whether the signature of defendant no. 1, 2 and 3 in the alleged agreement to sell dated 27.12.2005 are forged signature.*
- c. Whether there is any privity of contract between the plaintiffs and defendants no. 1 to 3."*

2. The Appellant herein is the defendant no.2, Respondent No.1 is the plaintiff and Respondent Nos. 2 to 4<sup>2</sup> are defendant nos. 1, 3 and 4 respectively in the civil suit.

3. The suit has been filed by the Respondent No.1 herein claiming that Respondent No.4 herein had purchased the property bearing No. E-929, Chittaranjan Park, New Delhi ('suit property') from Appellant and Respondent Nos. 2 and 3 vide Agreement to Sell ('ATS') dated 27<sup>th</sup> December, 2005, and subsequently, the Respondent No.4 in view of aforesaid purchase, further agreed to sell the suit property to Respondent No.1 herein vide ATS dated 16<sup>th</sup> July, 2008, for a sale consideration of Rs. 3,18,00,000/-. It is stated that Respondent No.1 paid a sum of Rs. 55,00,000/- to the Respondent No.4 towards sale consideration under ATS dated 16<sup>th</sup> July, 2008 and the pending amount was to be paid at the time of taking over of possession of suit property, on or before 31st July, 2009. It is stated that however, the Respondent No.4 failed to deliver the possession of suit property to Respondent No.1

<sup>1</sup> Initially framed vide order dated 9<sup>th</sup> May, 2016, in CS (OS) No. 196/2012

<sup>2</sup> Proforma parties in this appeal



4. In these circumstances, the Respondent No.1, in the suit, sought specific performance of the ATS dated 16<sup>th</sup> July, 2008. It is stated in the plaint that the ATS dated 27<sup>th</sup> December, 2005, has merged into the ATS dated 16<sup>th</sup> July, 2008 and all the defendants in the suit are liable to execute a sale deed in favour of Respondent No. 1.

5. It is a matter of record that Appellant herein was duly served with summons in the suit in the year 2012; however, she elected not to contest the suit and accordingly, did not file any written statement. Subsequently, vide order dated 12<sup>th</sup> March, 2014, her right to file written statement was closed and vide order dated 19<sup>th</sup> January, 2016, her right to conduct admission / denial of documents also stood closed.

6. The issues in the suit were framed vide order dated 09<sup>th</sup> May, 2016, on the basis of the pleadings on record. The evidence of Respondent No. 1, who was examined as PW-1 was recorded on 06<sup>th</sup> May, 2019. It was at this belated stage that the Appellant herein filed the I.A. No. 11151/2019 under Order XIV Rule 5 CPC seeking framing of the additional issues in the suit. Since, the Appellant herself had not filed any written statement, she referred to the contents of the written statement filed by Respondent No. 3 to allege that the ATS dated 27<sup>th</sup> December, 2005, was not signed by the Appellant as well as Respondent Nos. 2 and 3; and on this basis sought framing of the additional issues noted hereinabove.

7. The learned Single Judge has dismissed the application on the ground that in the absence of a written statement by Appellant, the issues of fact proposed by her do not arise for consideration. In addition, the learned Single Judge has observed that the application is barred by delay and laches.



8. Having heard the learned counsel for the parties, we are of the considered opinion that the present appeal is without any merits. The suit was filed in the year, 2012 and the Appellant despite service of summons elected to not file a written statement, which led to her right to file written statement being closed on 12<sup>th</sup> March, 2014. The learned Single Judge has rightly held that in the absence of any written statement on behalf of the Appellant, the issues of fact proposed by her do not arise for consideration. There is no assertion by the Appellant on the record of the suit proceeding that the ATS dated 27<sup>th</sup> December, 2005, was not executed by her. The Appellant cannot overcome the effect of the order dated 12<sup>th</sup> March, 2014 closing her right to file written statement by filing I.A. No. 11151/2019. Permitting the Appellant to agitate these issues of fact in the absence of a written statement would negate the effect of the order dated 12<sup>th</sup> March, 2014.

9. The Appellant has sought to rely upon the written statement of Respondent No. 3 to propose the additional issues. However, a perusal of the order dated 09<sup>th</sup> May, 2016, shows that on the said date when the issues were framed in the suit, Respondent No. 3 was duly represented through her counsel and no issue of forged ATS dated 27<sup>th</sup> December, 2005 was pressed on behalf of Respondent No. 3. The Respondent Nos. 2 and 3 on 09<sup>th</sup> May, 2016, in fact, conceded that they had sold their share in the suit property in favour of the wife of Respondent No. 4. Thus, Respondent No. 3 abandoned her stand in the written statement. The Appellant by filing I.A. No. 11151/2019 and proposing the issues is seeking to canvass a plea contrary to the stand of Respondent No. 3 recorded in order dated 09<sup>th</sup> May, 2016. The Appellant however, is precluded from relying upon the written statement of



the Respondent No. 3 in view of the proceedings recorded in order dated 09<sup>th</sup> May, 2016.

10. We are also in agreement with the finding of the learned Single Judge that the application is barred by delay and laches as the recording of evidence of the Plaintiff witness, i.e., PW-1 already stood concluded prior to the filing of the present application.

11. Accordingly, the present appeal is dismissed along with pending applications.

**ACTING CHIEF JUSTICE**

**MANMEET PRITAM SINGH ARORA, J**

**APRIL 22, 2024/hp/aa**