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

+ CM No.18263/2009 (of the respondents 1&2 for recall of the order dated 11th November, 2009) in CM(M) 1287/2009

MAHESH KUMAR MEHRA Petitioner
Through: Mr. V.K. Sharma, Advocate

versus

SANDHYA MITTAL AND ORS Respondents
Through: Mr. A. Maitri, Advocate

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER
16.12.2009

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The counsel for the respondents 1 & 2 by this application accuses the petitioner of concealment. It is averred that the petitioner did not disclose to this Court the factum of withdrawal of the application for amendment filed by the petitioner in the suit filed by petitioner and pending in this Court and withdrawal of which application for amendment is stated to be having a bearing on the application under Order 7 Rule 11 of the CPC filed by the petitioner in the suit filed by the respondents 1 and 2 and pending before the Trial Court.

The only grievance of the petitioner/defendant in the CM(M) petition is to the Trial Court deferring the consideration of the application of the petitioner filed under Section 151 of the CPC, awaiting the decision on the application filed by the respondents 1 & 2 under Section 10 of the CPC in the suit pending before this court. This court has vide ex parte order dated 11th November, 2009 directed the trial court to, on 18th December, 2009 when the matter is listed next before the

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Trial Court, to hear the parties and to, if of the opinion that the hearing under Order 7 Rule 11 need not be deferred, proceed with the disposal of the same.

It has been informed that the respondents 3 to 5 herein though also defendant in the suit pending before the Trial Court are not concerned with the controversy. The application under Section 151 of the CPC has been filed by the petitioner only. Similarly, the application under Section 10 of the CPC has been filed by the respondents 1 & 2 only. In the circumstances, the service of the respondents 3 to 5 is dispensed with. Since the concerned parties are before the Court, with their consent the CM(M) petition itself has been heard.

The counsel for the respondents 1 & 2 has contended that this petition is liable to be dismissed for the reason of the petitioner having practiced concealment before this Court. As far as the aspect of concealment is concerned, it is the admitted position that the petitioner herein who is the plaintiff in CS(OS) No.916/2009 pending in this Court has paid the additional court fees in terms of the order dated 19th May, 2009 in the suit and on the valuation of the property of which possession is sought, at approximately Rs.88,00,000/-. In this view of the matter, in the opinion of this Court, no case of concealment, so as to the merit the dismissal of this petition on that ground alone is made out.

As far as the merits of this petition are concerned, the respondents 1 & 2 herein have instituted the suit from which this petition arises, against the petitioner and the respondents 3 to 6 herein for the relief of declaration regarding a sale deed of ground floor of property No.B-4/75, Safdarjung Enclave, New Delhi. The petitioner herein has subsequently filed a suit for possession in this court against the respondents 1,2 & 3 in this Court for possession of the same property. The said suit has been directed to be valued for the relief of possession at the market value and not at Rs.23,00,000/- as originally valued. The petitioner/defendant in the suit

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filed by the respondents 1 & 2 and pending in the District Court filed an application under Section 151 of the CPC for return of the plaint for filing in the court of appropriate jurisdiction. The respondents 1 & 2 have filed an application under Section 10 of the CPC in the suit filed by the petitioner herein before this Court.

The trial Court before which the suit filed by the respondents 1 & 2 is pending deferred the decision on the application of the petitioner under Section 151 of the CPC awaiting the decision on the application filed by the respondents 1 & 2 in this Court in the suit filed by the petitioner and under Section 10 of the CPC.

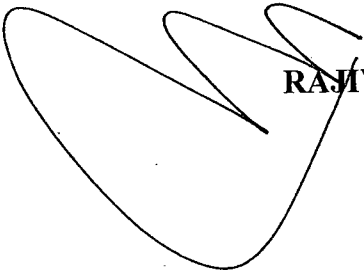
This court on 11th November, 2009 was prima facie of the opinion that there is no reason for deferment of the hearing of the application inasmuch as if the said application succeeds and the plaint is ordered to be returned / rejected, the application filed by the respondents 1 & 2 in the suit in this court under Section 10 of the CPC would become infructuous. The counsel for the respondents 1 & 2 has not disputed the said position.

In view of the aforesaid, this petition succeeds. The Trial Court is directed to on 18th December, 2009 when the suit is listed next, proceed to hear the arguments on the application of the petitioner (defendant no.3 in the suit before the Trial Court) under Section 151 of the CPC and to dispose of the same without awaiting the disposal of the application filed by the respondents 1 & 2 under Section 10 of the CPC and pending in this Court.

Since the CM(M) has been disposed of as aforesaid, the next date in those proceedings of 15th March, 2010 given on 11th November, 2009 is cancelled.

DECEMBER 16, 2009

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RAJIV SAHAI ENDLAW, J