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

+ RFA 69/2014

PRAVEEN KUMAR SHARMA ..... Appellant

Through: Ms. Protima Parihar, Advocate

versus

SH IRSHAD & ANR ..... Respondents

Through: Ms. Vibhya Mahajan Seth and Ms.  
Heena Dua, Advocates for R-1

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SHAKDHER**

**ORDER**

% **15.10.2015**

1. This appeal is directed against the judgment and decree dated 12.11.2013. The appellant / plaintiff had filed a suit for specific performance, which was dismissed by the trial court. A perusal of the judgment shows that the trial court came to the conclusion that the appellant / plaintiff had failed to establish that he was ready and willing to perform his part of the contract and, would therefore, not be entitled to relief of specific performance of the contract and, consequently, possession of the suit property. This finding was primarily pivoted on the fact that the appellant / plaintiff had not led any evidence on this aspect of the matter.

1.1 The learned counsel for the respondents / defendants says that though affidavit of evidence of the appellant's / plaintiff's witnesses had been filed, cross-examination could not take place. The learned

counsel for the respondent's / defendant's, therefore, says that she would have no objection to the matter being remanded for continuation of trial from the stage at which it was positioned prior to passing of the impugned judgment and decree.

1.2 The learned counsel for the appellant / plaintiff is also agreed to such a direction being issued.

1.3 The only other submission that the counsel for the appellant / plaintiff has made before me, is that, the time for consummation of the transaction was, according to the appellant / plaintiff, extended by the respondent / defendant till 29.06.2005.

2. The submission made by the appellant / plaintiff in this regard has been noticed in the impugned judgment and decree, as well. Therefore, quite obviously, this is an aspect which the trial court may have to delve upon at the time of passing of a final judgment in the matter.

3. Accordingly, the impugned judgment and decree is set aside. The parties are directed to appear before the trial court on 16.11.2015. The trial court will give an opportunity to the appellant / plaintiff to lead evidence in the matter and, consequent thereto will give an opportunity to the respondents / defendants to cross-examine the appellant's / plaintiff's witnesses. Thereafter, the trial court will also give due opportunity to the respondents / defendants to lead evidence with a right to the appellant / plaintiff to cross-examine his witnesses. If necessary, the trial court will consider as to whether any additional issue needs to be framed with regard to the appellant's / plaintiff's contention that time line was extended till 29.06.2005. Needless to

say, the respondents / defendants will be heard before any such issue is framed.

4. With the aforesaid observations in place, the captioned appeal is disposed of.

5. The Registry will, forthwith, despatch the record received, to the trial court.

6. Dasti.

**RAJIV SHAKDHER, J**

**OCTOBER 15, 2015**

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