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

+ CS(OS) 275/2015 and I.A. 23272/2015

S KANWALJIT SINGH & ANR Plaintiff
Through: Mr. G.S. Narula, Advocate with
Mr. M. Sarwar, Advocate

versus

MOLLY KAPOOR Defendant
Through: Mr. Sangramsingh R. Bhonsle,
Advocate with defendant in person.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

% **ORDER**
04.11.2015

I.A. 23211/2015 (by the defendant u/O IX R 7 CPC)

1. The present application has been filed by the defendant praying inter alia for setting aside the ex-parte order dated 07.10.2015.
2. Counsel for the defendant states that the parties have been able to negotiate a settlement through court annexed mediation and have filed a compromise application with the request that the suit may be decreed in terms of the Settlement Agreement dated 29.10.2015. He requests that the present application be allowed and the *ex-parte* order dated 07.10.2015 be set aside so that the Settlement Agreement can be taken on record.
3. Issue notice.

4. Counsel for the non-applicants/plaintiffs accepts notice and states that he has no objection to the present application being allowed.

5. For the reasons stated in the application, the same is allowed. The ex-parte order dated 07.10.2015 is set-aside.

6. The application is disposed of.

I.A. 23272/2015 (joint application u/O XXIII R 3 CPC)

1. The present joint application has been filed by the plaintiffs and the defendant under Order XXIII Rule 3 CPC stating inter alia that during the pendency of the present suit, the parties have arrived at a settlement.

2. The plaintiffs have instituted the present suit praying inter alia for a decree of specific performance, permanent injunction and recovery of damages etc. in respect of the second floor and terrace alongwith one servant quarter of premises No.E-406, Greater Kailash, Part-I, New Delhi.

3. It is stated by the counsel for the plaintiffs that the plaintiffs had entered into an Agreement to Sell dated 28.03.2014 for purchasing the suit premises from the defendant for a total sale consideration of Rs.2,55,00,000/-. At that time, the plaintiffs had paid earnest money to the tune of Rs.60 lacs to the defendant and she had agreed to

execute a Sale Deed in respect of the suit premises in favour of the plaintiffs within a period of four months from the date of executing the Agreement to Sell. However, later on, the defendant had refused to execute the Sale Deed in favour of the plaintiffs, thus compelling them to institute the present suit.

4. Summons were issued in the suit on 02.02.2015 and a status quo order was granted in favour of the plaintiffs on the said date. The defendant was served by substituted means and vide order dated 07.10.2015, she was proceeded against ex-parte. Subsequently, the plaintiffs and the defendant jointly approached the Court by filing an application for being referred to mediation, which was duly allowed vide order dated 19.10.2015. On the said date, counsel for the defendant had stated that he would take steps to file an application for setting aside of the ex-parte order dated 07.10.2015. The said application, registered as I.A.2321/2015, has been allowed as above.

5. In the course of mediation, the parties have been able to arrive at a settlement as recorded in the Settlement Agreement dated 29.10.2015, a copy whereof has been enclosed with the present application. Counsels for the parties jointly state that the terms and conditions of the settlement are recorded in para 7 of the Settlement Agreement, whereunder the defendant has agreed to receive an

additional sum of Rs.15 lacs from the plaintiffs in the present suit and in CS(OS) 1967/2015 and execute a Sale Deed in favour of the plaintiffs in both the suits in respect of the second floor. The parties have agreed that the plaintiffs in the present suit shall be entitled to 65% undivided share in respect of the second floor of the suit premises and the plaintiffs in CS(OS) 1967/2015 shall be entitled to 35% undivided share in the second floor.

6. Counsel for the defendant confirms that his client has received the entire sale consideration from the plaintiffs in the present suit and in CS(OS) 1967/2015 and she is ready and willing to execute the Sale Deed in respect of the suit premises in favour of the plaintiffs in the present suit and CS(OS) 1967/2015, within one week.

7. Counsel for the plaintiffs states that in view of the settlement arrived at between the parties, his clients shall cooperate with the defendant in approaching the competent Court for quashing of FIR No.349/2014 registered at Police Station: Greater Kailash.

8. The Court has perused the present application. The same has been signed by the plaintiff No.1 for self and as a Power of Attorney Holder of the plaintiff No.2 and by the defendant and is supported by the affidavits of the signatories to the application. Enclosed with the

application is the Settlement Agreement dated 29.10.2015, which has also been signed by the plaintiff No.1 for self and as a Power of Attorney Holder of the plaintiff No.2 and the plaintiffs in CS(OS) 1967/2015 as also the defendant and their respective counsels and the learned Mediator.

9. As the counsels for the plaintiffs and the defendant jointly state that they have arrived at the aforesaid settlement of their own free will and volition and without any undue influence or coercion from any quarters, there appears no legal impediment in accepting the settlement. The parties shall remain bound by the terms and conditions of the settlement.

10. The suit is decreed in terms of the settlement recorded in the Settlement Agreement dated 29.10.2015. Decree sheet be drawn accordingly.

11. The suit is disposed of while leaving the parties to bear their own expenses.

12. In token of acceptance of the terms and conditions of the settlement recorded hereinabove, the parties shall affix their signatures on the order sheet alongwith their counsels.

13. At this stage, learned counsel for the plaintiffs states that in view of the fact that the parties have arrived at a settlement through

the court annexed mediation, prior to the stage of framing of issues, the plaintiffs are entitled to claim refund of court fees in terms of Section 16 of the Court Fees Act.

14. In view of the aforesaid submission made by the counsel for the plaintiffs, the Registry is directed to issue a certificate in favour of the plaintiffs for refund of the court fees under Section 16 of the Court Fees Act.

15. File be consigned to the record room.

16. The date already fixed stands cancelled.

HIMA KOHLI, J

NOVEMBER 04, 2015

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