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

+ RFA No.247/2005

OMWATI

..... Appellant

Through: None.

Versus

ASHOK KUMAR ARORA & ORS..... Respondents/Review Applicant

Through: Mr. Kirti Uppal, Sr. Adv. and Mr.
Pawan Bahl, Adv. for R-2/Review
Applicant..

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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19.04.2016

CM No.13902/2016 (for exemption).

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

Review petition No.192/2016 & CM No.13901/2016 (for stay).

3. The respondent no.1/review applicant seeks review of the judgment dated 29th October, 2015 allowing the appeal against a decree for specific performance of an Agreement of Sale of immovable property.
4. The respondent no.1/review applicant prior to filing this review preferred SLP (C) No.3551/2016 but which was withdrawn on 12th February, 2016. Though while withdrawing the SLP a statement was also made by the counsel for the respondent no.1/review applicant that he will file a review petition before the High Court but the Supreme Court in the order dated 12th February, 2016 has not observed anything in that respect.

5. The senior counsel for the respondent no.1/review applicant has been heard.
6. Review is sought on the basis of facts though emanating from an earlier legal proceeding but which were admittedly neither pleaded nor evidence was led with respect thereto.
7. The appeal remained pending in this Court from 2005 till its disposal in the year 2015.
8. Now by way of this review application the respondent no.1/review applicant/plaintiff cannot be permitted to change the entire basis of his claim and which would entail a *de novo* trial. In this context it may also be mentioned that the suit was originally filed as far back as on 5th March, 1991.
9. In my opinion the ground as urged does not constitute a ground for review. It is not the case of the respondent no.1/review applicant that there is any error apparent on the record. The error on the ground of which review is sought is not on the record lest apparent on its fact but in the pleadings on which respondent no.1/review applicant/plaintiff sued and claimed specific performance. The same as aforesaid is not a ground for review.
10. Dismissed.
11. The senior counsel for the respondent no.1/review applicant at this stage states that the appellant has since filed a petition for eviction of the respondent no.1/review applicant and the observations made hereinabove ought not to come in the way of the respondent no.1/review applicant taking any defence in the said eviction proceedings.

12. It is clarified that whatever defence is available in law to the respondent no.1/review applicant in the eviction proceedings shall not be affected by any observation hereinabove.

Dasti under signature of Court Master.

RAJIV SAHAI ENDLAW, J

APRIL 19, 2016

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