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

+ CS(OS) No.314/2004

J.L.KAPOOR

..... Plaintiff

Through: Ms. Shobhana Takiar, Adv.

versus

GIRISH CHOPRA & ANR.

..... Defendants

Through: Mr. Sanjeev Anand with Mr. Akshay
Kapoor, Advs. for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **03.11.2016**

1. Though IA No.5450/2013, IA No.7463/2013 and IA No.6460/2014 all of the defendant no.2 Mr. Naresh Kumar Joshi are also shown in the note of the Court Master as pending and listed for today but the counsel for the defendant no.2 Mr. Naresh Kumar Joshi states that all the said applications have already been disposed of.
2. The applications are treated as disposed of and be not shown in the cause list.
3. IA No.13378/2016 has been filed by the defendant no.2 Mr. Naresh Kumar Joshi under Section 151 of the Code of Civil Procedure, 1908 (CPC) seeking clarification.
4. This suit already stands decreed on 22nd November, 2010 and now evidence on the claim of the defendant no.2 for restitution under Section 144 of the CPC is being recorded by the Court Commissioner in terms of the order dated 14th May, 2015.
5. This application has been necessitated because the defendant no.2 Mr. Naresh Kumar Joshi along with his affidavit by way of examination-in-chief

filed some documents and to which objection was taken by the counsel for the plaintiff on the ground of the said documents having not been filed earlier.

6. The counsel for the applicant/ defendant no.2 Mr. Naresh Kumar Joshi contends that since recording of evidence on the claim for restitution has been ordered only vide order dated 14th May, 2015, the occasion for filing documents in support of the claim for restitution did not arise earlier.

7. The counsel for the plaintiff contends that the claim for restitution was made earlier vide IA No.6229/2008 and the documents should have been filed at that time.

8. A perusal of the order dated 14th May, 2015 shows how the claim of the defendant no.2 Mr. Naresh Kumar Joshi for restitution was kept alive at successive stages of the suit. In this view of the matter, it is deemed appropriate to clarify that the documents filed by the defendant no.2 Mr. Naresh Kumar Joshi along with affidavit by way of examination-in-chief shall be taken on record and permitted to be proved in accordance with law.

9. IA No.13378/2016 is disposed of.

CS(OS) No.314/2004.

10. I may state that as per settled law the Court Commissioner appointed to record evidence is to proceed with the recording of evidence and recording the objections if any of the parties, as that which had arisen in this case and is not to at each and every stage refer the parties to the court derailing the recording of the evidence.

11. The counsel for the plaintiff also points out that the suit in which these restitution proceedings are taking place was below the

minimum enhanced pecuniary jurisdiction of the court.

12. There is merit in the said contention of the counsel for the plaintiff.

13. This suit in accordance with Office Order dated 24th November, 2015 of Hon'ble the Chief Justice in exercise of powers under Section 4 of the Delhi High Court (Amendment) Act, 2015 is liable to be transferred to the subordinate courts.

14. The property to which the suit pertains is in Safdarjung Enclave, New Delhi – 110 029 which falls within the territorial jurisdiction of District South, Saket Courts Complex, New Delhi.

15. The suit is accordingly transferred to the court of Additional District Judge/District Judge (South), Saket Courts Complex, New Delhi.

16. However the recording of evidence by the Court Commissioner already appointed to continue.

17. The counsels on enquiry inform that the Court Commissioner is not recording the evidence on the court file but on a separate file.

18. The Court Commissioner to file his report along with evidence recorded before the court to which the suit is marked on such transfer.

19. The parties to appear before the Additional District Judge/District Judge (South), Saket Courts Complex, New Delhi on 14th December, 2016.

RAJIV SAHAI ENDLAW, J

NOVEMBER 03, 2016

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