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

+ CM(M) 265/2016 and CM Nos. 9628/2016 (delay) & 9626/2016
(stay)

PREM CHADHA Petitioner
Through Mr.Rajiv Dewan, Advocate.

versus

DHARAM PAL SAINI Respondent
Through Mr.C.L. Dhawan, Advocate.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **04.10.2016**

1. By the present petition, the petitioner seeks to impugn the order dated 23.11.2015 by which an application filed by the petitioner for filing a valuation report prepared by the Architect was dismissed.
2. The respondent has filed the present suit for specific performance for an agreement to sell dated 13.08.2005. The petitioner has filed his written statement where the stand taken is that the respondent had agreed to advance a loan of Rs. 6,50,000/- and hence, the petitioner was asked to execute the agreement for securing the loan.
3. After the evidence of the respondent was completed, the petitioner led his evidence but before closing his evidence, he moved the present application. In the application, it was stated that two witnesses of the petitioner have been examined. On the last date hearing, the petitioner

produced one more witness, namely, Sh.Milind Upadhyay, Registered Architect and Government Approved Valuer and a copy of the affidavit and valuation report were already supplied. The valuation report however was not available on the record as it had been mixed in the case file. It was urged that the valuation report is necessary for determination of the real controversy between the parties and that the stand of the petitioner was that given the valuation, no one would have agreed to enter into an agreement to sell for a consideration of Rs. 6.50 lacs only. The trial court noted that the petitioner has not filed the valuation report either with the written statement or at the time of settlement of issues. The trial court further noting that the valuation report is not essential to decide the real controversy between the parties as the issue is about the performance of the agreement dismissed the application.

4. I have heard the learned counsel for the parties.

5. Learned counsel for the respondent has vehemently argued that the suit was filed way back in 2007. The evidence of the respondent was completed in 2013 and now, the present application has been filed to delay the matter. It is urged that during the pendency of the present petition, final arguments of the respondent have already been heard and allowing this petition would needlessly delay the trial. It is further stated that no questions have been put to any of the witnesses in cross-examination by the petitioner regarding the valuation of the property and hence, the application has been rightly dismissed. He has also relied upon the judgment of this court in the case of *Oriental Insurance Co. Ltd. vs. Lakshmi Garg & Ors., 2014 VII AD (Delhi) 188* to contend that a party cannot be permitted to delay proceedings at the time of final arguments and improve upon their case.

6. The issues were framed on 24.10.2007 and issue No. 2 reads as follows:-

“2. Whether the agreement to sell and earnest money received as alleged were executed and signed by the defendant for security of payment or repayment of the loan? OPD”

7. As per the proposed report, the petitioner seeks to value the construction value of the second floor and also seeks to assess the market value of the second floor of the property which is the subject matter of the suit. The petitioner seeks to use the certificate to support its plea and to prove issue No. 2, the onus of which is on the respondent. Hence, it cannot be said that document that is proposed to be placed on record is irrelevant.

8. As far as delay is concerned, the application of the petitioner was dismissed on 23.11.2015. On that day, the affidavit by way of evidence of the Architect was already on record. A copy of the report was available with the respondent. The impugned order instead of completing the evidence of the petitioner on that date, dismissed the application and closed the evidence of the petitioner and fixed the matter for final arguments.

9. In my opinion, the request to produce the report was made on the day when the matter was fixed for the evidence of the petitioner. It cannot be termed to be belated. The trial court could have allowed the application and completed the evidence on that date itself or on a date to be so fixed.

10. In my opinion, no prejudice would be caused to the respondent if the present application was allowed. The onus of proving issue No. 2 is on the petitioner. It would always be open to the respondent to lead rebuttal evidence if he so desires.

11. Subject to payment of costs of Rs.7,500/-, the present petition is

allowed. However, the trial court would given only one opportunity to the petitioner to lead evidence of Sh.Milind Upadhyay.

12. The present petition stands disposed of.

JAYANT NATH, J

OCTOBER 04, 2016

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