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

+ **CS(OS) 856/2009**

JADAV CHANDRA DEY Plaintiff

Through: Mr. P.K. Maitra, Adv.

versus

DEV RAJ ARORA Defendant

Through: Mr. Rajeshwer Kumar Gupta, Adv.
with Ms. Meghna Nagpal, Adv., &
Mr. Umesh Arora, Adv. for one of the
LRs.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **24.11.2016**

IA No.12794/2016 (under Section 5 of the Limitation Act on behalf of
defendant/respondent)

The delay in filing the reply to the OA no.434/2015 of the plaintiff which is directed against the order dated 09.10.2015 of the Joint Registrar is condoned.

The application is disposed of with these observations.

OA No.434/2015 (against the order dated 09.10.2015 of the plaintiff)

1. Heard. Perused.
2. The controversy involved in this appeal directed against the order of the Joint Registrar arises out of the suit for recovery of damages with interest in the sum of Rs.35,34,575/- instituted by the plaintiff/appellant.

From the submission of the parties and the documents on record it emerges that the defendant/respondent claiming to be owner in possession of the suit property had agreed to sell the same, for consideration, in favour of the plaintiff/appellant by way of document styled as “Advance Agreement to Sell” dated 01.07.2008. It has been pointed out and needs to be noted that in para 13 of the stipulations in the said agreement to sell it had been assured by the vendor (the defendant) unto the vendee (the plaintiff) that the suit property is free from, *inter alia*, “legal flaws”. Some part payment was received by the defendant as earnest money with timelines indicated for the balance to be paid and for the former Sale Deed to be executed. Indeed, as per the said document the parties had agreed that the time was of the essence to the agreement. Para 21 of the terms and conditions agreed upon in the said document indicate that in the event of vendee making a default in performance of any of the conditions for which it was responsible, the vendor was to be entitled to forfeit the whole of the earnest money and, conversely, if the vendor were to make default in the performance of any of the conditions he was liable to pay double the amount of the earnest money as compensation. It is the last clause which is stated to be the basis of the cause of action pleaded in the case at hand.

3. The plaint discloses that the plaintiff was constrained to issue and serve a legal notice on the defendant dated 19.11.2008 invoking the default clause and demanding payment of double the amount of the earnest money by way of compensation primarily stating that it had come to his knowledge that the defendant had entered into similar agreement to sell relating the same property for consideration in favour of third party, *i.e.*, Mrs.Ruma

Jhuma in which respect a formal communication from the said third party dated 03.08.2008 had been received which fact allegedly had been “*intentionally and deliberately suppressed*” by the defendant. The legal notice noticeably, also stated that the defendant had failed to give a copy of the “sanctioned building plan” of the subject property. These averments are reiterated in the plaint seeking appropriate relief in the nature of damages.

4. It is noted that the plaint was amended to bring in additional facts and after the case had been sent for trial for framing of issues on 15.02.2010, an additional issue was pressed and was framed with regard to “non supply of copy of the sanctioned building plan” which is one of the main grounds for pleading the cause of action.

5. It is against the above backdrop that the plaintiff moved an application under Order 11 Rules 1,2 and 14 CPC (IA No.3827/2015) making a prayer for interrogatories to be delivered to the defendant to disclose facts regarding the sanctioned building plan of the property in question and status of it being freehold or otherwise at the relevant point of time. This application was considered by the Joint Registrar but dismissed by order dated 09.10.2015 mainly observing that the existence of the sanctioned building plan in the present case was “*not important*”. The original appeal at hand assails the said view taken by the Joint Registrar.

6. I have heard both sides and have gone through the record. This court is of the opinion that the view taken by the Joint Registrar cannot be upheld. The question as to whether the property agreed to be sold by the aforementioned document had been lawfully constructed and in accordance

with the valid sanctioned building plan would remain an important question to be addressed particularly in the light of the additional issue which has been framed, as referred to earlier. During the course of submission, the counsel for the defendant submitted that defendant is second purchaser of the suit property and, therefore, would not have the original documents/sanctioned building plan in his possession. This, in the opinion of the court cannot be an answer accepted in response to the prayer for discovery.

7. In the aforementioned factual matrix, the proper course is for the defendant to be directed to discover on oath all facts and documents concerning sanction of the building plan on the basis of which the super-structure of the suit property was constructed. The defendant is directed to do so within two weeks of this order. With these observations the appeal is disposed of.

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1. At this stage the learned counsel for the defendant submits the case has to be transferred to the District courts in view of the change of the pecuniary jurisdiction. Learned counsel for the plaintiff fairly concedes to this prayer.

2. Having regard to the valuation put to the reliefs claimed in the suit at hand, the suit is transferred to the court of District Judge (South-East) District at Saket Court Complex, Delhi for further proceedings in accordance with law.

3. In this view, the necessary compliance with the order of this discovery shall be secured by the transferee/trial court before proceeding further.

4. The case shall be taken up by the transferee court on 17.12.2016 when the parties shall appear for further proceedings in accordance with law.
5. The learned District Judge, South-East District may in her discretion retain the file on her board or make it over to any Additional District Judge under her control.
6. The Registry shall ensure that the file reaches the transferee court well in time.

R.K.GAUBA, J.

NOVEMBER 24, 2016
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