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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA No. 251/2015 & CM No.7326/2015
PAWAN KUMAR YADAV Appellant
Through: Mr. Kuljeet Rawal, Adv.

Versus

LIFE INSURANCE CORPORATION OF INDIA
& ORS Respondents
Through: Mr. Soumyajit Pani, Adv. and Mr.
Satish Kaul, R.M. LIC.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **29.02.2016**

1. The appeal impugns the order dated 26th November, 2014 of the Court of the Additional District Judge (ADJ)-15 (Central) of dismissal in default of suit no.193/14/71 filed by the respondent no.1 Life Insurance Corporation of India (LIC) against the appellant and the respondents no. 2 to 21 herein.
2. Notice initially to the respondent no.1 LIC only was issued and after the counsel for the respondent no.1 LIC appeared, subsequently notice was ordered to be issued to the other respondents also. The appellant has however not taken steps for service of notice on the other respondents.
3. The counsel for the appellant states (i) that the suit from which this appeal arises was filed by the LIC way back in the year 1971 for the relief of recovery of Rs.3,56,291.86p by foreclosure of a English mortgage in its favour of a property at Fatehpuri, Chandni Chowk, Delhi in which the appellant and the other respondents no.2 to 21 claim a right/share; (ii) that in the said suit, a preliminary decree for recovery of money was passed and

it was further ordered that in case the decretal amount is paid, the respondent no.1 LIC shall bring to the Court all documents in its possession and such documents shall be delivered to the defendants in the suit or to such person as they may appoint and the respondent no.1 LIC shall also re-transfer the said property free from mortgage; (iii) that the proceedings which were pending before the Court and which have been dismissed in default were proceedings in pursuance to the preliminary decree; (iv) that all the dues of the respondent no.1 LIC have been paid but the respondent no.1 LIC has not delivered back the documents of title of the property and not re-conveyed the property in accordance with Section 60 of the Transfer of Property Act, 1882; (v) it was for this reason that the appellant, before the ADJ had objected to dismissal in default of the suit since the respondent no.1 LIC had not fulfilled its obligations under the preliminary decree; (vi) that the learned ADJ was under a misconception that the appellant who was the defendant no.7 before the Trial Court had not filed the affidavit/objection which he had by an earlier order been directed to file; the same stood filed; and, (vii) that it is for this reason that even though the impugned order is of dismissal in default of the suit filed by the respondent no.1 LIC but the appellant has preferred this appeal.

4. The counsel for the respondent no.1 LIC states that in pursuance to the enquiries made after the last order, it has been found that the documents of title of property were filed by the respondent no.1 LIC before the Trial Court and are still lying in the Trial Court in a box. He further states that the respondent no.1 LIC is now left with no claim over the property at Fatehpuri or with respect to the title deeds and would be in a position to do any

re-conveyance at it may be required to do in law in favour of whosoever the Court may direct. He further states that the partition suit between the appellant and the respondents no.2 to 21, including with respect to the subject property at Fatehpuri, is pending consideration.

5. The counsel for the appellant also confirms the pendency of the partition suit and informs that the same is at the stage of final arguments, though some applications are pending.

6. In view of the statement of the counsel for the respondent no.1 LIC, the counsel for the appellant withdraws this appeal with liberty to either (a) seek appropriate orders with respect to release of title deeds lying deposited in the Trial Court in the suit from which this appeal arises and with respect to the person in whose favour the re-conveyance is to be executed by the respondent no.1 LIC, from the Court in which the partition suit is pending; or (b) to execute the preliminary decree aforesaid directing respondent no.1 LIC to return the title deeds and to re-convey the property.

7. Binding the respondent no.1 LIC to the statement aforesaid and with liberty sought to the appellant and with further liberty to the appellant as well to other parties to the appeal to apply for revival in case of need, the appeal is dismissed as withdrawn.

No costs.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 29, 2016

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