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

+ CS(OS) 1874/2014 and IA 10586/2016

ANIL KUMAR Plaintiff

Through: None

versus

SHIV KUMAR Defendant

Through: Mr. Sandeep Vishnu, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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26.10.2016

The matter arises out of suit for specific performance of agreement to sell and purchase dated 10.10.2013 respecting property described as B-904, Bairwa Bharti Co-operative Group Housing Society Ltd., situated at Plot no.24, Sector-12, Dwarka Phase-2, New Delhi -110078. The suit was originally presented in this court but on account of change of the pecuniary jurisdiction, it was transferred to the District Court at Dwarka and by order dated 04.02.2016, it came to be assigned to the court of Mr. Mohd. Farrukh, Additional District Judge (South-west). Proceedings on the file indicate that the learned Additional District Judge was informed on 08.04.2016 that the matter had been settled between the parties through mediation to which process they had been earlier referred by order dated 04.02.2016. The Additional District Judge-05, Dwarka recorded the following proceedings on 08.04.2016 :-

“It is submitted that settlement has been arrived between the parties before mediation centre. Plaintiff has moved an

application u/s. 16A of Court Fee Act for refund of the court fees. Court fees be refunded as per law.

The defendant has stated to have been deposited a sum of ₹26 Lacs in pursuant to the order dated 22.07.2014 before the Registrar General of Hon'ble High Court. The said amount of ₹26 Lac be refunded to the defendant as per the para 3 of the settlement arrived between the parties before the mediation centre.

File be consigned to record room.”

It appears the above quoted order was passed by the Additional District Judge on an application under Section 151 CPC whereby the defendant referred to the settlement arrived at in mediation centre, Dwarka courts on 09.02.2016, praying, mainly for a direction for the amount of Rs.26 Lakh as earlier deposited in this court to be released in his favour. It also appears that the plaintiff had made an application under Section 16 A (Delhi Amendment) of Court Fees Act, 1870 vaguely stating that the matter has been settled through mediation and also adding that “accordingly the suit was decreed as settled”, praying for a direction for refund of 50% of the court fee to the plaintiff alongwith necessary orders / certificate.

There seems to be no order on the file deciding the suit either in terms of the settlement arrived at in the mediation or in any other manner including by way of adjudication. The Additional District Judge, having taken note of the prayers made referring to the settlement through mediation and also the applications of both sides as mentioned above, directed the amount of Rs.26 Lakh to be refunded to the defendant as per para 3 of the settlement, presumably accepting it and making it a rule of the court. This can hardly be said to be a

proper conclusion of the proceedings arising out of the civil suit.

It appears that the defendant later moved an application under Section 151 CPC seeking direction for release of the amount deposited by the plaintiff with the Registrar General. The said application was taken up by the Additional District Judge on 23.04.2016, and upon being considered, the applicant / defendant was “directed” to take steps for release of the amount of money. The applicant / defendant moved yet another application on 24.05.2016 requesting for the file of the case to be sent to the Registrar General for release of the amount of money. The said prayer was granted by order dated 24 / 25.05.2016 directing the parties to appear before the Registrar General on 30.05.2016.

By his proceedings recorded on 30.05.2016, the Registrar General made over the file to the Registrar (Original) for further proceedings. The Registrar (Original), in turn, by his proceedings of the same date, directed the matter to be taken up by the concerned Joint Registrar (Judicial) on 12.07.2016. The proceedings recorded by the Joint Registrar (Judicial) on the five subsequent dates indicate that the purpose and import of the application made by the defendant was not understood.

The matter has been treated as an application to be considered on the judicial side by this court. This court disapproves of the way the matter has been handled by the Registry and also by the court of Additional District Judge.

Given the state of facts and the proceedings recorded, it is clear that the suit has not been properly disposed of. The Additional District Judge is duty bound to pass an appropriate final order after

recording satisfaction in accordance with law that the matter was properly and amicably settled through mediation, for which, needless to add, it will have to record the statement of the parties or at least take their consent by affidavits. As far as the amount of Rs.26 Lakhs deposited in this court, should the settlement through mediation be made rule of the court, only administrative / ministerial order requires to be passed for which the Additional District Judge is fully competent in law to enforce the order by issuing requisite directions to the Registry of this court.

The matter shall be returned to the Additional District Judge concerned for appropriate further proceedings in accordance with law in above light. The parties shall appear before the said court on 07.11.2016. The Registry shall send the file well in time.

R.K.GAUBA, J

OCTOBER 26, 2016

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