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

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CS (OS) 1455/2013 & I.A. 11792/2015

MANISH KAPOOR

..... Plaintiff

Through: Mr. Dinesh Garg and
Ms. Rachna Aggarwal, Advocates.

versus

NAVEEN MALHOTRA & ANR

..... Respondents

Through: Mr. Ashish Mohan, Advocate.

And

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CS (OS) 231/2015 & I.A. 1928/2015

MERLION COMMERCIAL & TRADING P LTD

..... Plaintiff

Through: Mr. Ashish Mohan, Advocate.

versus

NAVEEN MALHOTRA & ORS

..... Respondents

Through: Mr. Dinesh Garg and
Ms. Rachna Aggarwal, Advocates.

CORAM: JUSTICE S. MURALIDHAR

ORDER

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26.08.2016

1. CS (OS) No. 1455 of 2013 has been filed by Mr. Manish Kapoor praying that a decree of declaration be issued in his favour and against the Defendant No. 2 i.e., Merlion Commercial & Trading P Ltd. ('MCTPL'), declaring the

entire third floor of the property No. A-331, Defence Colony, New Delhi was free from any encumbrances and that the Defendant No.1 was competent to execute the sale deed in favour of the Plaintiff on 30th August 2011. Consequently, the Plaintiff is competent to execute the sale deed dated 18th September 2012 in favour of the Defendant No.2.

2. The alternative prayer is that in the event the Court comes to the conclusion that the Defendant No.1 .i.e., Mr .Naveen Malhotra was not competent to sell the entire third floor of the suit property to the Plaintiff .i.e., Mr Manish Kapoor and that a decree of declaration should be passed in favour of the Plaintiff declaring that Mr. Naveen Malhotra is liable to indemnify MCTPL in terms of the *inter se* agreement either directly or through the Plaintiff for the losses/damages suffered by the Defendant No. 2.

3. CS (OS) No 231 of 2015 is a suit by MCTPL seeking a decree of declaration, declaring the equitable mortgage allegedly created by Defendants 1, 6 & 7 in the said suit i.e., Mr. Naveen Malhotra, Ms. Parineeta Malhotra and M/s Star Bazar Pvt. Ltd. in favour of Defendant No.5 .i.e., M/s Religare Finvest Ltd. as null and void and not binding upon the Plaintiff. Further relief is sought for a decree of declaration declaring the Award passed on 28th January 2014 whereby sale of suit property at A-331, Defence colony, New Delhi including the third floor thereof in satisfaction of the Award amount to be recovered by the Defendant No.5 from the Defendant Nos. 1, 6 and 7 along with interest @ 18%, as well as costs should be declared null and void.

4. It is noted in CS(OS) No. 231 of 2015 that, only Mr. Manish Kapoor , Defendant No. 2 has filed the written statement in which he has supported

the prayer of the Plaintiff i.e., MCTPL. None of the other Defendants have chosen to contest the suit. From the order passed by the Joint Registrar ('JR') on 18th November 2015, it appears that at one stage the Defendant No. 5 had undertaken to file the written statement along with application for condonation of delay and till that date i.e., 18th November 2015, no steps have been taken by the Defendant No.5 to file the written statement. Accordingly the JR closed the right of the Defendant No.5 to file the written statement. The JR had also noted that the right of Defendants 1, 3, 4, 6 and 7 to file written statement has already been closed by the order dated 8th September 2015.

5. Till date neither the order dated 18th November 2015 nor 8th September 2015 passed by the JR has been challenged. Therefore, there is no opposition to CS (OS) No 231 of 2015.

6. In terms of Order 8 Rule 10 of the Code of Civil Procedure, 1908 that there being no opposition to the prayer made in the suit, the suit CS(OS) No 231 of 2015 is decreed in terms of prayers A and B of the plaint which reads as under:

“A. Pass a decree of decree of declaration declaring the equitable mortgage allegedly created by the Defendant no. 1, 6 & 7 in favour of the Defendant no. 5 as null and void and not binding upon the Plaintiff herein;

B. Pass a decree of declaration declaring the Award dated 28.01.2014 passed by the Defendant no. 8, Shri Nitin Chaddha, Arbitrator as null and void and not binding upon the Plaintiff;”

7. The CS (OS) No. 1455 of 2013 is decreed in terms of prayer (i) of the plaint which reads as under:

“(i) a decree of Declaration may please be passed in favour of the plaintiff and against the defendant No.2 declaring that the entire third floor of property No.A-331, Defence Colony, New Delhi was free from encumbrances and the defendant No. 1 was competent to execute the Sale Deed dated 30th August, 2011 in favour of the plaintiff and consequently, the plaintiff was competent to execute the Sale Deed dated 18th September, 2012 in favour of the defendant No.2.”

8. In both the suits, the decree sheets be drawn up accordingly. The pending applications are also disposed of.

S. MURALIDHAR, J

AUGUST 26, 2016

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