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

+ CM(M) 803/2013 & C.M. Nos.12386/2013 & 25129/2015

KASHINATH PANDA

..... Petitioner

Through Mr.S.Sukherjee and Mr.Arijit Singh,  
Advocates.

versus

CHANDRA KANTA AND ORS

..... Respondents

Through Mr.Vipin Kumar Saini, Advocate for  
R-1.  
Mr.Saurabh Bhargava, Advocate for R-2  
to R-6.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

% **02.02.2016**

After some arguments learned counsels for the parties state that a decree in the suit which has been filed by the plaintiff may be passed.

The present suit is a suit for specific performance and permanent injunction filed by Dr.Kashi Nath Panda against six respondents. The builder is respondent no.1 and the presence of the respondent no.1 is relevant to deal with the present petition.

Record shows that the plaintiff had purchased a shop on the ground floor of the Flat No.24, Sanwal Nagar, New Delhi. Rear portion (south side) on the third floor of the property after it has been built up by the respondent no.1 (builder) had been sold to the wife of the plaintiff. The plaintiff and respondent no.1 had entered into an agreement to sell

dated 05.10.2005. In terms of the agreement to sell this south side portion on the third floor of the suit premises was agreed to be purchased by the plaintiff from respondent no.1 for a total consideration of Rs.7,50,000/- out of which admittedly as on date Rs.6,70,000/- stands paid. Learned counsel appearing for the plaintiff states that balance amount of Rs.80,000/- was offered to the defendant in the Trial Court but he refused to accept it. This position is disputed by learned counsel for the respondent/defendant. He submits that no such offer was made to him.

Be that as it may, the parties are now at ad idem on the point of the balance amount which the plaintiff shall pay to the defendant within three days from today. A sale deed qua the suit premises i.e. the third floor (south side) shall be executed by the respondent no.1/defendant in favour of the plaintiff within a period of one week after the receipt of the amount of Rs.80,000/- from the plaintiff. Formal draft of the sale deed shall be prepared by the plaintiff.

The plaintiff has been aggrieved by the impugned order vide which his application under Order XII Rule 6 of the CPC had been dismissed; he had not get a decree on admission. In view of the aforementioned order which has been passed today other prayers made in the petition are not pressed.

Learned counsel for the respondent no.1 points out that he has filed a counterclaim in the Trial Court and that has to be adjudicated upon. Learned counsel for the plaintiff submits that requisite court fee on the counterclaim has not been filed and the counterclaim this is not maintainable. The counterclaim may be kept alive and the same shall be

decided as per law. As far as the present suit is concerned, no further order is required in the present petition. The suit shall be withdrawn by the petitioner/plaintiff in terms of the orders passed today. Counsel for respondent no.1 shall also handover a copy of the collaboration agreement purported to be entered into between respondent no.1, original landlord and the purchasers of the North side portions of the third floor of the suit premises to the plaintiff within a period of one week from today in order that the plaintiff may take appropriate action in that regard. In view of the aforementioned order which has been passed liberty is granted to the petitioner to withdraw his suit before the Trial Court. Learned counsel for the petitioner submits that the criminal complaint i.e. C.C. No.146/2 titled Dr.Kashi Nath Panda Vs. Smt. Chandra Kanta & Ors. initiated by the plaintiff and pending in the Court of Metropolitan Magistrate, Saket Court shall also be withdrawn by the plaintiff.

Petition disposed of in the above terms.

Order dasti under signatures of the Court Master.

**INDERMEET KAUR, J**

**FEBRUARY 02, 2016**  
**ndn**