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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS(OS) 805/2015

SHRI M.L LAKHAN PAL

..... Plaintiff

Through

Mr.Arvind Nayar, Adv. with
Ms.Neha Singh, Adv. along with
plaintiff in person.

versus

MRS KINSHUK MALHOTRA & ORS

..... Defendants

Through

Mr.Harpreet Singh, Adv. with
Mr.Rajesh Gupta, Adv. for D-1.
Mr.Siddharth Khattar, Adv. for D-2
& D-3.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

O R D E R

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04.01.2016

I.A. No.25954/2015, CS(OS) No.805/2015, and CC No.73/2015

The above mentioned application has been filed by the plaintiff under Section 151 CPC for releasing the amount deposited by the defendant No.1.

In FAO (OS) 654/2015 the Division Bench on 7th December, 2015 passed the following order:

"We have heard the counsel for the parties. The issue is with regard to the execution of the sale deed in respect of the second floor. The appellant is agreeable to execute the sale deed in respect of the third floor. But, that is the subject matter of CS(OS) 805/2015. The learned counsel for the appellant states that the purchaser of the third floor has paid a sum of Rs 25 lacs to the appellant and the balance Rs

25 lacs lies deposited in the court in that case. He states that he shall move an application for withdrawal of the sum of Rs 25 lacs. Thereupon, he shall execute a sale deed in respect of the third floor in favour of the appellant's half share of the third floor also. The said application would be moved within two weeks.

Insofar as the basement is concerned, the learned counsel for the appellant states that he has no difficulty and that the sale deed shall be executed in favour of the respondent's nominee (Gaurav Chauhan) within two weeks.

That leaves us with the second floor. Insofar as the second floor is concerned, a suit has been filed, being CS(OS) 1565/2015 in which the appellant and the respondents are arrayed as defendants. In that suit, an interim order has been passed as a result of which the appellant is not in a position to execute a sale deed in respect of his half share. The learned counsel appearing on behalf of the respondents states that an application shall be moved before the learned Single Judge in that matter for permitting the execution of the sale deed in favour of the respondents and that thereafter, the respondents would be maintaining status quo to protect the interest of the plaintiff in that suit. The learned counsel for the appellant states that he shall fully cooperate with the respondents when such an application is moved. The said application shall be filed within two weeks and on the application being listed, the learned counsel for the appellant shall make a clear statement that he is willing and shall execute the sale deed in respect of his half share of the second floor in favour of the respondents as earlier directed in these proceedings before the learned Single Judge. On such a statement being made, the possession of the ground floor shall be handed over on the express undertaking that the appellant shall execute the sale deed, on the learned Single Judge permitting him to do so.

The appeal stands disposed of in the above terms.

Dasti."

Pursuant to the order of the Division Bench, the present application has been filed by the plaintiff.

Originally the plaintiff filed the present suit for cancellation/ declaration, possession and permanent injunction against the defendants. The defendant No.1 filed the counter claim seeking specific performance of the agreement to sell dated 20th May, 2012.

The application, main suit and counter claim are disposed of with the consent of the parties on the following terms:

1. The draft sale deed is already placed on record.
2. The plaintiff will execute the sale deed in favour of the defendant No.1 on 15th January, 2016 before the Office of Sub-Registrar, Mehrauli. The plaintiff will appear at 10:00 am for the said purpose.
3. The amount deposited by the defendant No.1 with the Registrar General of this Court shall be released in favour of the plaintiff along with interest accrued thereon.
4. The plaintiff is agreeable to pay a sum of Rs.50,000/- to the defendant No.1 at the time of execution of the sale deed towards TDS. Copy of the TDS certificate will be given to the plaintiff within six weeks after paying the same.
5. The suit is dismissed as withdrawn.

The prayer made in the counter claim for specific performance is allowed.

The pending applications are disposed of.

Counsel for the plaintiff and the defendant No.1 have made an oral request for return of half of the court fee amount in the suit as well as counter claim. The Registry is directed to issue respective certificates to the plaintiff through counsel in the suit as well as to the

defendant No.1 through counsel in the counter claim for refund of half the amount of the Court Fee in terms of Section 16A of the Court Fees Act, 1870 from the Collector within eight weeks from today.

The date fixed before the Joint Registrar on 12th January, 2016 is hereby cancelled. The matter be not listed on the said date.

Copy of the order be given dasti to both the parties under the signature of the Court Master.

JANUARY 04, 2016/jk

MANMOHAN SINGH, J