

\$~3

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

+ **CS(OS) 1714/2008**

SHRI ASHWANI KUMAR ARORA Plaintiff

Through **Mr. Arush Bhandari, Adv.**

versus

MS. RUCHI BANSAL & OTHERS Defendants

Through: **Mr. Subhash C Jindal, Adv. for D 1-3**
Mr. Udyan Srivastava, Adv. for D-4
Mr. Suresh Sharma, Adv. for D 6-7

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **22.01.2016**

O.A. No. 243/2015 (u/S 4 of Delhi High Court Rules for setting aside the order dated 15.04.2015 passed by Mr. Amit Kumar, Ld. Joint Registrar, Hon'ble Delhi High Court)

1. By this O.A. the plaintiff seeks recall of the order passed by the Joint Registrar on 15.04.2015 by which plaintiff's evidence was closed as the plaintiff did not pay the earlier cost imposed or file affidavit by way of evidence.

2. The present is a suit for specific performance. The plaintiff as a buyer seeks specific performance of the agreement to sell dated 16.06.2005. The suit property is flat/office no. 1107, 11th floor, measuring 780 sq. ft., along with one reserved car parking space bearing no. UB-3 at Ansal Bhawan, Plot No. 16, K.G. Marg, New Delhi. The total sale consideration was

CS(OS) 1714/2008

page 1 of 3

Rs.60,00,000/-, out of which plaintiff had paid sum of Rs.52,00,000/- and which is admitted to be received by the original owners viz. defendant nos. 1 to 3. Defendant nos. 6 & 7 are said to be the subsequent purchasers of the suit property and were impleaded during the pendency of the suit.

3. I may note that when earlier evidence of the plaintiff was closed a learned Single Judge of this Court vide order dated 3.2.2015 had set aside the order, subject to payment of costs of Rs.25,000/-.

4. Of course, the facts of the present case thus show negligence on behalf of the plaintiff and failing to pay the cost of filing of affidavit by way of evidence, but in view of the fact that this suit is for specific performance of the property and out of the total sale consideration of Rs.60,00,000/-, an amount of Rs.52,00,000/- has already been paid, and since CPC is a handmaid of justice and the opposite side can always be compensated with costs, I therefore recall the order dated 15.04.2015 and allow the plaintiff exactly three opportunities to complete his entire evidence and if evidence is not led in three hearings, the evidence of the plaintiff will be deemed to be closed. For giving the plaintiff the additional opportunity to lead evidence, in addition to the costs of Rs.25,000/- which were imposed on the plaintiff vide order dated 3.2.2015 and which costs have already been paid, further costs of Rs.25,000/- are imposed on the plaintiff and which shall be equally shared between the counsel for the defendant nos. 1 to 3 and counsel for defendant nos. 6 & 7. O.A. is accordingly allowed and disposed of.

CS(OS) 1714/2008

5. Since this Court does not have pecuniary jurisdiction in view of the Office Order dated 24.11.2015 issued by Hon'ble the Chief Justice in exercise of powers conferred by Section 4 of the Delhi High Court (Amendment) Act, 2015, whereby ordinary suits which are not commercial matters having pecuniary jurisdiction up to the value of rupees two crores cannot be tried by this Court and commercial matters up to the value of rupees one crore cannot be tried by this Court, this suit is transferred for decision to the jurisdictional Court under the District & Sessions Judge, Patiala House Courts, New Delhi.

6. Let parties appear before the District & Sessions Judge, Patiala House Courts, New Delhi on 10th March, 2016. Suit file be made available to the District & Sessions Judge, Patiala House Courts, New Delhi, on the date fixed.

VALMIKI J. MEHTA, J

JANUARY 22, 2016*/hkaur*

CS(OS) 1714/2008

page 3 of 3