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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RSA 204/2016**

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..... Appellant

Through: Mr. A.K.Dubey and Mr. Hemant
Kumar, Advocates.

versus

SHAKUNT & ORS

..... Respondents

Through: Mr. Akhilesh K. Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **17.10.2016**

1. On 5.8.2016, the following order was passed:-

CM No.27921/2016 (delay in refiling of 19 days)

1. For the reasons stated in the application, delay in refiling is condoned. CM stands disposed of.

RSA No.204/2016

2. Learned counsel for the appellant argues that there does not arise any issue of rejection of plaint under Order 7 Rule 11 CPC on the ground of availability of alternative efficacious remedy, inasmuch as, it is the option of the buyer/plaintiff whether to seek refund of the amount or to seek specific performance and a buyer who has paid money under the agreement to sell can seek the relief of refund of the advance price paid under the agreement to sell.

3. Notices be issued to the respondents, on filing of process fee, both in the ordinary method as well as by registered AD post, returnable on 27th September, 2016. Dasti.

2. It is seen that the subject suit was filed for recovery of monies by a buyer under an agreement to sell on the ground that the agreement to sell could not go through on account of default of the respondent/defendant/seller.

3. Without in any manner opining on merits of the case, issues of fact and law, counsel for the parties agree that the impugned judgments dated 1.4.2016 and 4.1.2016 be set aside and the suit be now decided in accordance with law at the stage of final arguments after both the parties lead evidence on the respective issues of fact. All aspects and issues of fact and law will be decided by the trial court at the stage of final arguments in accordance with law.

4. Parties to appear before the District and Sessions Judge (East), Karkardooma Courts, Delhi on 16.11.2016 and the District and Sessions Judge will now mark the suit for disposal to a competent court in accordance with law.

VALMIKI J. MEHTA, J

OCTOBER 17, 2016
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