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

+ **CM(M) 787/2016**

WEST END PROMOTERS & BUILDERS PVT LTD

..... Petitioner

Through: Mr. Venkatesh & Mr. Sumit Sarna, Advs.

versus

LT COL DR MANJIT RAI & ORS

..... Respondents

Through: Mr. Bhuvan Gugnani, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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08.09.2016

C.M. No.29914/2016 (for exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM (M) No.787/2016 & C.M. No.29913/2016 (for stay)

1. By the present petition, the petitioner seeks to impugn the order dated 13.5.2016 by virtue of which the application filed under Order 23 Rule 3 CPC was deemed to be dismissed.

2. The present suit is filed by the plaintiff/respondent No.1 for declaration, cancellation of conveyance deed/sale deeds, permanent and mandatory injunctions, possession and mesne profits. The respondent Nos.1 to 7 are siblings/successors of siblings and the dispute is about the property bearing No.1/1, Shanti Niketan, New

Delhi. As noted above, an application was filed under Order 23 Rule 3 CPC; however, respondent No.1 filed a separate application under Section 151 CPC praying that the application under Order 23 Rule 3 CPC be dismissed as the memorandum of understanding dated 9.12.2013 has been obtained by fraud. Various grounds are stated in this application by respondent No.1 as to how she has been forced and deceived to sign the said application.

3. A perusal of the impugned order shows that the trial court has dismissed the application merely on the ground that the counsel for the plaintiff and the plaintiff states that no such settlement was arrived at. In view thereof the trial court concluded that the application under Order 23 Rule 3 CPC (wrongly noted as Order 22 Rule 3 CPC in the order) is deemed to be dismissed.

4. Order 23 Rule 3 CPC reads as follows :-

“3. Compromise of suit.- *Where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject matter of the agreement, compromise or satisfaction is the same as the subject matter of the suit: -*

Provided that where it is alleged by one party and denied by the other than an adjustment or satisfaction has been arrived at, the court shall decide the question; but no

adjournment shall be granted for the purpose of deciding the question, unless the court, for reasons to be recorded, thinks fit to grant such adjournment.”

5. As per the proviso to Order 23 Rule 3 CPC, where one party denies that any adjustment or satisfaction has been arrived at, then the court has to decide the question. In the present case, there is no adjudication of the submissions of respondent No.1 i.e. the grounds on which it is stated that the said application cannot be enforced. The trial court was obliged to adjudicate the controversy and arrive at a finding as per the above provisions and not merely dismiss the application by recording the submissions of respondent No.1.

6. In the light of the above, the impugned order dated 13.5.2016 is quashed. The trial court is directed to adjudicate afresh the application under Order 23 Rule 3 CPC taking into account the submissions of the parties uninfluenced by any observations made in this order.

7. With these directions, the petition is dismissed.

JAYANT NATH, J.

SEPTEMBER 08, 2016
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