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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO 383/2016**
RAJESH KUMAR Appellant

Through: Mr.Dinesh Garg, Advocate
versus

RANI RATHORE Respondent

Through: Nemo

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

ORDER

% **12.08.2016**

C.M.No. 29343/2016 (Exemption)

Allowed subject to all just exceptions.

FAO 383/2016 & C.M.No.29342/2016 (Stay)

Impugned order of 9th June, 2016 rejects appellant's application under Order 9, Rule 13 CPC while holding that story of change of address is demolished from the fact that at the time of execution of the sale deed of 11th September, 2014 by the appellant-defendant in respect of the suit property, he had given the same address upon which process was sent to him from time to time. It is noted in the impugned order that respondent-plaintiff had placed on record copy of the plaint of suit for specific performance filed by appellant-defendant in October, 2012 in which same address i.e. A-192 was given and this demolishes the averment of appellant-defendant of his leaving the address for 4 or 5 years back.

The challenge to the impugned order in this appeal by learned counsel for appellant is on the ground that appellant was not residing at the address where he was sought to be served and, so subject to the some deposit, an opportunity ought to be granted to appellant to contest the

respondent's suit for recovery of ₹14 lacs odd as appellant has a good case on merits.

Upon hearing and on perusal of the impugned order and the material on record, I find that the appellant's version of changing his address 4 or 5 years ago is very vague, as it is not disclosed as to where the appellant had shifted from A-192. During the course of the hearing, it was submitted by learned counsel for appellant that appellant had shifted to A-187 and thereafter, to A-180 and presently he is residing at A-180.

To say the least, what has been orally submitted by learned counsel for appellant does not find mention in the application under Order 9 Rule 12 CPC. It is quite evident that appellant has no case on merits and was just avoiding the proceedings in the suit and now, wants to prolong the suit proceedings by *de novo* trial without depositing the decretal amount. This is quite evident from the fact that during the course of hearing, it was put to learned counsel for appellant if appellant is willing to deposit the decretal amount. The candid response of learned counsel for appellant was that appellant is not in a position to do so.

Upon taking an overall view of the entire matter, I find that there is no substance in this appeal. Accordingly, this appeal and the application are dismissed.

(SUNIL GAUR)
JUDGE

AUGUST 12, 2016

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