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

+ RFA(OS) 75/2016

VIKAS AGGARWAL

..... Appellant

Represented by: Mr.Surjit Singh Malhotra, Advocate

versus

SHIR BAL KRISHNA GUPTA & ORS

..... Respondents

Represented by: Mr.P.D.Gupta, Sr.Advocate instructed
by Mr.Atul Gupta and Mr.Abhishek
Gupta, Advocates for R-1 and R-2

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **27.10.2016**

CM No.36219/2016

Allowed. Court fee shall be paid positively within 2 weeks from today.

RFA (OS) No.75/2016

1. Impugned order dated July 20, 2016 allows IA No.1029/2016 filed by the respondents/defendants praying that the suit seeking specific performance of the agreement to sell dated December 01, 2012 be decreed and the plaintiff be called upon to pay to the defendants in equal proportion the balance sale consideration with duty cast upon them to execute the necessary sale-deed or in the alternative to deposit in Court the balance sale consideration.

2. As a result of the application being allowed decree has been passed in favour of the appellant requiring the appellant to deposit within four weeks

the balance sale consideration in sum of Rs.6.24 crores with direction that the respondents would thereupon execute the necessary sale-deed and hand over possession of the suit property.

3. After noting the prayer made in IA No.1029/2016 and the prayer made in the suit the learned Single Judge has recorded as under:-

“It is apparent from the prayer made in the above application that the defendants have in fact conceded to the aforesaid prayers.

The learned counsel for the plaintiff was pointedly asked whether the plaintiff was still pressing the aforesaid prayers and he answered in the affirmative. The application is allowed.”

4. Thereafter, noting the order dictated in IA No.1029/2016 the suit has been decreed passing directions as above noted.

5. Grievance in the appeal is that the appellant had told the Court on July 20, 2016 that an application was filed in the Registry to amend the plaint and yet in spite thereof the learned Judge passed the impugned order.

6. In other words the recording of the fact : *The learned counsel for the plaintiff was pointedly asked whether the plaintiff was still pressing the aforesaid prayers and he answered in the affirmative. The application is allowed* is disputed.

7. At the hearing of the appeal on September 30, 2016, whereas learned senior counsel for the appellant asserted that no such statement was made by learned counsel for the plaintiff as is recorded in the paragraph noted hereinabove, learned senior counsel for the respondents refuted the same and said that far from telling the Court that any application was filed in the Registry to amend the plaint, counsel for the plaintiff on being asked by the Court said that he plaintiffs pressed the suit qua the prayers made therein.

8. Deferring hearing in the appeal we had directed that the appellant should file an application before the learned Single Judge pointing out that a stand taken as adopted by the appellant is incorrectly recorded in the impugned order. The appellant thereafter filed IA No.12567/2016 stating therein that it had brought to the notice of the Court when the suit was decreed that on July 19, 2016 the appellant had informed to the Court that it had filed an application to amend the plaint and that this fact was not recorded in the order dated July 20, 2016.

9. The learned Single Judge has dismissed the application recording that the order dated July 20, 2016 was dictated in Court and no mention was made in Court when the order was dictated that the plaintiff had filed an application seeking to amend the suit.

10. A presumption arises to the correctness of facts which have transpired in a Court as are recorded in a judicial order.

11. Now, in IA No.12567/2016 which was filed after the order dated July 20, 2016 was passed, it has not been pleaded that the statement attributable to learned counsel for the plaintiff that on being pointedly asked whether the plaintiff was still pressing the prayers in the suit, counsel for the plaintiff answered in the affirmative, is incorrectly recorded.

12. If said recording in the order dated July 20, 2016 is not questioned, nothing remains for the appellant to argue for the reason whatever be the proposed amendment sought the fact of the matter would remain that on July 20, 2016 when defendants conceded to the suit being decreed as prayed for, upon the Court asking the plaintiff whether the plaintiff would still persist with the prayers in the suit and the answer was yes.

13. We dismiss the appeal but without any order as to costs.

CM No.36218/2016

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

PRATIBHA RANI, J.

OCTOBER 27, 2016

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