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

+ C.R.P. 136/2016 and CM No. 31695/2016 (stay)

ROSHAN LAL GUPTA Petitioner
Through Mr. Akshay Ringe, Advocate.

versus

ANIL SACHDEVA & ORS Respondents
Through Mr. Rajesh Manchanda, Mr. Mohit
Gupta, Mr. Ramazuddin Raja and Mr. Rahul Rai,
Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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07.09.2016

1. By the present petition, the petitioner has impugned the order passed by the trial court on 26.07.2016 dismissing the application of the petitioner under Order 7 Rule 11 CPC.
2. It was the contention of the petitioner that the plaint was instituted seeking the relief of specific performance of an agreement to sell dated 24.04.2006 in respect of the flats at Nehru Place for a total consideration of Rs.1,01,00,000/-. In the plaint, it is urged that the respondent admitted that M/s Kadam Marketing Ltd. of which the respondent is the Managing Director has in public auction on 30.11.2007 purchased the property and hence, it is the stand of the petitioner that the present suit is entirely misplaced.
3. The trial court dismissed the application noting that an issue has been

framed with regard to the agreement to sell i.e. Whether the agreement to sell dated 24.04.2006 has been frustrated due to subsequent court auction of the flats in question? In view of the same, the trial court concluded that the application under Order 7 Rule 11 CPC has become infructuous.

4. Learned counsel appearing for the respondent has stated that as per the plaint, apart from seeking the relief of specific performance, the plaintiff/respondent has also prayed for recovery of damages as an alternate relief of Rs.1,01,00,000/-. He submits that he does not press the relief of specific performance of the agreement to sell and would confine his relief before the trial court to the recovery of damages as already stated in the plaint.

5. In view of the above, there is no reason to interfere with the impugned order. The respondent shall remain bound by the statement.

6. The petition stands disposed of.

7. The respondent is at liberty to move an appropriate application for any necessary consequential steps.

JAYANT NATH, J

SEPTEMBER 07, 2016

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