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

+ **RSA 285/2016**

RAJESH AGGARWAL & ANR. Appellants

Through: Mr. A.K. Sharma, Advocate.

versus

ANIL AGGARWAL Respondent

Through: Mr. Anupam Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **26.09.2016**

C.M. Appl. No.35295/2016 (for exemption)

Exemption allowed subject to just exceptions.

C.M. stands disposed of.

CAVEAT No. 837/2016

Since counsel for the caveator has entered appearance the caveat stands discharged.

RSA 285/2016 and C.M. Appl. No. 35294/2016 (for stay, U/S 151 CPC)

1. This Regular Second Appeal was argued at length. All the aspects and arguments urged on behalf of the appellants were examined. The issue in the present appeal is that the appellants,

having executed the release deed Ex.PW1/2 in favour of the respondent/plaintiff, cannot continue in possession of the suit premises and with respect to which the subject suit was filed by the respondent/plaintiff and decreed by both the courts below. It is seen that all the legal heirs of the deceased Sh. Kailash Chand Aggarwal had executed the release deed in favour of the respondent/plaintiff who therefore became the sole owner of the suit premises. None of the other legal heirs of Sh. Kailash Chand Aggarwal have questioned the release deed except the appellants/defendants. Appellants/defendants in any case also admit execution of the release deed Ex. PW1/2. The issue of minority of the two other children of Sh. Kailash Chand Aggarwal, namely, Sh.Manish Aggarwal and Smt. Kanchan Aggarwal is an issue which cannot be urged on behalf of the appellants/defendants as neither Sh.Manish Aggarwal nor Smt.Kanchan Aggarwal, brother and sister of appellant No. 1, ever questioned the release deed on the ground that they were minors at the relevant point of time.

2. At this stage, counsel for the appellants/defendants, on instructions from the appellant No.1, states that the appeal is not

pressed on merits, but the appellants/defendants be given time to vacate the suit premises as their children are minor. It is also prayed that mesne profits decreed by the trial court and amount of which is deposited in the first appellate court, be returned to the extent of 50% to the appellants/defendants for not pressing the second appeal.

3. The aforesaid terms with respect to vacation of the suit premises by the appellants till 30.6.2017 and return of 50% of the mesne profits deposited in the first appellate court to the appellants is agreeable to the counsel for the respondents.

4. Accordingly, this Regular Second Appeal is disposed of as not pressed but the appellants/defendants are granted time to vacate the suit premises till 30.6.2017, subject to the appellants/defendants filing their affidavits of undertakings in this Court within two weeks from today to vacate the suit premises on or before 30.6.2017. Appellants can also withdraw 50% of the amount deposited before the first appellant court, along with interest accrued thereon, if any, if the said amount has been put in a fixed deposit. Balance amount of 50% with interest will be released to respondent/plaintiff by the first appellate court.

5. Accordingly this appeal is disposed of as not pressed but the appellants/defendants are granted time to vacate the suit premises on or before 30.6.2017 subject to the appellants/defendants filing the affidavits of undertakings as stated above. The amount will be distributed by the first appellate court in terms of the observations made hereinabove. Parties are left to bear their own costs.

6. A copy of the order be given *dasti* to counsel for the parties.

VALMIKI J. MEHTA, J

SEPTEMBER 26, 2016

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