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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ RFA 369/2015 & CM No.10114/2015 (for stay)
VINITA KASHYAP Appellant
Through: Mr. Dushyant Sisodiya, Adv.

Versus

SACHIN GUPTA Respondent
Through: Mr. A. Upadhyay, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **15.02.2016**

1. The appeal impugns the money decree consequent to failure of the appellant to comply with the condition of deposit of Rs.3,00,000/- in the Court subject to which leave to defend was granted to the appellant.
2. Notice of the appeal was issued and subject to the appellant depositing Rs.3,00,000/- in this Court, the execution was stayed.
3. The appellant is reported to have deposited Rs.3,00,000/- in this Court.
4. I have enquired from the counsels for the parties whether they are agreeable to the appeal being allowed, with the parties being relegated to the position as they were pursuant to the order of the learned District Judge of grant of leave to defend subject to deposit of Rs.3,00,000/-; though the appellant had then failed to deposit the said amount, has now deposited in this Court.
5. The counsel for the respondent contends that the appellant has in the process delayed the matter by more than one year and the respondent is in urgent need of the money for which he had sued. It is also stated that the

decree in favour of the respondent is for Rs.8,00,000/- with interest and a sum of approximately Rs.9,00,000/- would be due therein.

6. In these circumstances, to compensate the respondent for the delay caused by the appellant, cost of Rs.30,000/- is proposed. The counsel for the appellant is agreeable thereto.

7. The appeal is accordingly disposed of on the following terms:

- (i) The appellant to within two weeks of today pay a sum of Rs.30,000/- by pay order in the name of the respondent through the counsel for the respondent;
- (ii) If the amount is not paid within the said time, the appeal shall stand dismissed and the respondent shall be entitled to execute the decree;
- (iii) Subject to the appellant paying the said cost, the impugned decree consequent to the order aforesaid is set aside and the parties relegated to the Court of Additional District Judge (ADJ)-03, Central, Delhi and to appear before the learned ADJ on 26th February, 2016;
- (iv) The trial court file if received in this Court be forthwith returned to the learned ADJ to be put up before the learned ADJ on 26th February, 2016;
- (v) The amount of Rs.3,00,000/- deposited by the appellant in this Court to remain deposited in this Court and to be kept in a maximum interest bearing deposit for being dealt with in accordance with the judgment and decree or order in the said suit;

- (vi) The appellant / defendant shall not seek any unnecessary adjournment at any stage whatsoever and the learned ADJ shall endeavour to decide the suit within a year from 26th February, 2016;
- (vii) The respondent shall be entitled to apply to the trial court for release of the aforesaid amount of Rs.3,00,000/- with interest accrued thereon lying deposited in this Court even prior to the decision of the suit and on such terms as may be deemed appropriate by the learned ADJ.

RAJIV SAHAI ENDLAW, J

FEBRUARY 15, 2016

‘gsr’..