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

+ **CS(OS) 467/2016**

OM PRAKASH DHAR DWIVEDI Plaintiff

Through: Mr. Rajiv K. Garg, Mr. Govind Singh
& Ms. Kavita Rawat, Advs.

Versus

RAJENDER KUMAR MITTAL Defendant

Through: Mr. Dinesh Garg & Ms. Rachna
Agarwal, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **04.01.2017**

IA No.75/2017 (of the plaintiff for directions)

1. The application is in the nature of execution and filing thereof in the suit is misconceived and the application has to be dismissed with cost.
2. The counsel for the plaintiff / applicant assures that he will in future take care.
3. The application is dismissed.
4. The counsel for the defendant however appears on advance notice and states that the reliefs claimed in the application, even it were to be claimed by way of execution are in any case misconceived. It is stated that though in terms of order and decree dated 7th December, 2016 the plaintiff forwarded a draft of the sale deed to be executed by the defendant but the said sale deed besides in favour of the plaintiff was also in favour of Sh. Anoop Kumar Dwivedi, Sh. Anuj Kumar Dwivedi & Sh. Anurag Dwivedi being the three sons of the plaintiff Om Prakash Dhar Dwivedi and thus the defendant did not execute the same.

5. The counsel for the plaintiff states that under the agreement to sell, the plaintiff was entitled to have the sale deed executed either in his own favour or in favour of his nominees.
6. The counsel for the defendant rightly states that the agreement stands superseded by the decree and though he had asked the counsel for the plaintiff to have the order and decree amended but the plaintiff instead of seeking the same has filed the aforesaid misconceived application.
7. The counsel for the plaintiff states that the plaintiff at his own risk and cost and without imposing any additional liability on the defendant wants the sale deed to be executed in favour of the plaintiff and in favour of the three sons aforesaid of the plaintiff.
8. To obviate any further delay in release of the sale consideration deposited in this Court in favour of the defendant, it is deemed appropriate to allow the aforesaid on oral request of the counsel for the plaintiff.
9. Accordingly, binding the plaintiff and his three sons to the statement aforesaid of the counsel for the plaintiff, the defendant may execute the sale deed in favour of the plaintiff and his three sons aforesaid.
9. Though the counsel for the plaintiff had on an earlier occasion also made a request for refund of court fees but was told that the same can be refunded only if he does not want a decree and to which he had not agreed but today again makes the same request and is today also not agreeable to recall of the decree. In the circumstances, no refund of court fees can be ordered.

10. On the statement of the counsel for the defendant that though the defendant has been impleaded as Rajender Kumar Mittal but his bank account is in the name of Rajender Kumar, it is further directed that the release of the amounts deposited in this Court in favour of the defendant, as already directed vide order dated 7th December, 2016, be made by pay order / bank draft in favour of Rajender Kumar.

RAJIV SAHAI ENDLAW, J

JANUARY 04, 2017

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