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

+ **CS(OS) 3720/2014**

MOHD ASHHAR

..... Plaintiff

Through: Ms. Sana Ansari, Adv. with plaintiff
in person.

versus

ZEESHAN ZAMA KHAN & ANR

..... Defendants

Through: Mr. Mubashir Mushtaq, Adv. for D-1
Md. Aslam, Adv. for D-2.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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09.02.2016

1. On 5.2.2016, the following order was passed:-

“1. Attention of counsel for the plaintiff has been drawn to the fact of non-maintainability of the suit because an unregistered agreement to sell entered into after amendment of Section 53-A of the Transfer of Property Act, 1882 by Act 48 of 2001 w.e.f 24.9.2001, cannot create rights in the nature of part performance unless the agreement to sell is stamped and registered. This arise on account of conjoint reading of amended Section 53-A of Transfer of Property Act, 1882 and Article 23-A of the Stamp Act as applicable to Delhi.

2. At request, made on behalf of the counsel for the plaintiff, list on 9th February, 2016.”

2. In view of the above, and considering the facts of the present the suit being of perpetual and mandatory injunction, accordingly, counsel

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for the plaintiff on instructions from the plaintiff, who is present in person seeks liberty to withdraw the suit and file a fresh suit as per the correct cause of action.

3. The Suit and all pending applications are accordingly allowed to be withdrawn with the aforesaid liberty observing that the plaintiff in the fresh suit to be filed, would be entitled in accordance with law to the benefit of Section 14 of the Limitation Act. It is also observed that nothing observed in any interim order passed in this suit is a reflection on merits for or against any of the parties to the present suit and any aspect of merits, whether for interim purpose or final purpose, will be decided in the fresh suit which will be filed by the plaintiff. Parties are left to bear their own costs.

Counter-Claim No.41/2015

4. Since the suit is being withdrawn counter claimants/defendants seek to withdraw their counter claim with liberty to file a fresh defence/counter-claim or fresh proceedings in accordance with law, and therefore, counter-claim is allowed to be withdrawn with the same liberty including the benefit of Section 14 of the Limitation Act which has been granted to the plaintiff.

5. Since the suit and the counter-claim are withdrawn before recording of evidence, plaintiff as also the counter-claimants will be entitled to refund of 50% of court fees in terms of Section 16-A of the Court Fees Act, 1870 and the Registry will therefore issue the necessary certificate in favour of the respective parties.

VALMIKI J. MEHTA, J

FEBRUARY 09, 2016

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