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

+ CM(M) 1169/2016

PHOOL KUMAR

..... Petitioner

Through Mr.Bhagat Singh, Advocate

versus

JAGDISH

..... Respondent

Through Mr.D.S.Pawariya and Mr.Amitesh

Kumar Tyagi, Advocates

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

07.12.2016

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1. On 16.11.2016 this court had passed the following order:-

“1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to impugn the order dated 04.08.2016 by which the application filed by the petitioner seeking leave to defend in a summary suit was partly allowed and leave to defend was granted subject to deposit of Rs. 10 lacs as security.

2. The respondent has filed the summary suit for recovery of Rs.10,12,500/-. The parties entered into an agreement to sell on 28.09.2010 whereby the respondent agreed to purchase the property offered by the petitioner for a sale consideration of Rs. 31 lacs. Rs.10,12,500/- was given as an earnest money.

3. The fact is that the petitioner is unable to complete the transaction as he himself had entered into an agreement to sell with one Smt. Sahab Kaur who happens to be the mother of the respondent for purchase of the property. The said Smt. Sahab Kaur has filed a suit for cancellation of the agreement to sell entered into between her and the petitioner. The petitioner has filed a suit for specific performance against Smt. Sahab Kaur. These two suits between the petitioner and Smt. Sahab Kaur are pending but prima facie, the net effect is that the petitioner is unable to complete the transaction which is the subject matter of the agreement to sell dated 28.09.2010 which is the subject matter of the present suit.

4. Learned counsel appearing for the petitioner has vehemently argued that the suit filed by Smt. Sahab Kaur is a collusive suit filed at the instance of the respondent. He relies upon the cross-examination of Smt. Sahab Kaur in the suit for cancellation filed by Smt. Sahab Kaur where in cross-examination she has said that her son, namely, the respondent is bearing the fees of the counsel and is looking after the litigation. He submits that he has parted with Rs. 27 lacs to Mrs.Kaur and Smt. Sahab Kaur is acting in collusion with the respondent.”

5. Learned counsel who has entered appearance on behalf of the respondent states that there is no collusive suit filed by the respondent and his mother Smt.Sahab Kaur. He submits that Smt. Sahab Kaur is an uneducated lady and the claim of the petitioner is that they have paid her Rs.27 lacs in cash. He submits that no such transaction took place. He relies upon judgment of this Court in *Indira Rai vs. Bir Singh, 176 (2011) DLT 301* where this court had noted that ordinarily in a transaction for sale of an immoveable property at least part payment is made by way of demand draft/cheque so as to obtain an authentic documentary proof of the payment.

6. Keeping in view the above and also in view of the fact that there are cross Suits pending between the parties and in the interest of justice, I reduce the amount as directed by the impugned order from Rs.10,00,000/- to Rs.6,00,000/-. Hence, the defendant shall be granted leave to defend subject to deposit of Rs.6,00,000/- as a security, before the concerned trial court. The necessary deposit be made within four weeks from today.

7. Petition stands disposed of.

8. Dasti.

JAYANT NATH, J

DECEMBER 07, 2016

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