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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **RFA 896/2016**
BHAWALPUR CO-OPERATIVE GROUP HOUSING SOCIETY
..... Appellant
Through: Mr. B.R. Kaushik, Advocate

versus

HITESH KUMAR MADAN & ORS. Respondents
Through: Mr. Prosenjeet Banerjee, Advocate with
Ms. Nidhi Parashar and Ms. Anumita Chandra,
Advocates for R-1.

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI

ORDER
% **05.12.2016**

CM APPL. 45165/2016 (by the appellant for permission to delete the name of the respondent No.3 from the array of the parties)

1. In view of the orders passed on 18.11.2016, when the appellant was directed to delete the name of the respondent No.3 from the array of the respondents and file an amended memo of parties, no further orders are required to be passed on this application.
2. The application is accordingly disposed of. Amended memo of parties enclosed therewith is taken on record.

RFA 896/2016 and CM APPL. 42684-42685/2016

1. The present appeal has been preferred by the appellant/defendant No.1/Society, who is aggrieved by the order dated 20.09.2016, passed by the trial court in a suit for permanent and mandatory injunction and recovery of mesne profits instituted by the respondent No.1/plaintiff in respect of flat

No.B-772, Bahawalpur CGHS Ltd, Plot No.1, Sector 4, Dwarka, New Delhi. The impugned order has been pronounced on an application filed by the plaintiff under Order XII Rule 6 CPC, on the basis of admissions made by the appellant/defendant No.1 in the written statement filed in opposition to the suit.

2. As per the records, after the pleadings were completed in the suit, the respondent No.1/plaintiff had filed an application under Order XII Rule 6 CPC praying *inter alia* that a judgment be pronounced on the basis of admissions made by the appellant/Society in its written statement, particularly paras 2, 20, 21, 23 to 26 and 28 of the reply on merits, wherein it had admitted that the respondent No.1/plaintiff, a member of the Society was allotted a flat bearing No.721 and the respondent No.2/defendant No.2, another member was allotted a flat bearing No.772 in terms of a draw of lots held by the Society on 11.7.2014, without involving the DDA. Thereafter, the matter was referred by the appellant/Society to the DDA for regularisation of the draw of lots. In the said draw of lots, the respondent No.1/plaintiff was allotted flat No.772, which the Society had allotted to the respondent No.2/defendant No.2.

3. In the impugned judgment, the learned ADJ has recorded the statement made by the counsel for the appellant/Society that the respondent No.1/plaintiff can be handed over possession of flat No.772, provided he vacates flat No.721, which is presently under his occupation. Further, counsel for the respondent No.2/defendant No.2 had submitted that the defendant No.2 did not have any objection to vacating flat No.772 under his occupation and handing over possession thereof to the respondent No.1/plaintiff, but he should also be entitled to get possession of flat

No.812, which had been allotted to him in the draw of lots conducted by DDA pursuant to the order dated 17.04.2013, passed by the High Court in W.P.(C) 846/2013.

4. In view of the submissions made by the counsels for the parties, the trial court held that there was no dispute on the facts of the case and accordingly, the application filed by the respondent No.1/plaintiff under Order XII Rule 6 CPC was allowed. Respondent No.1/plaintiff was directed to vacate flat No.721 within 15 days from the date of receiving possession of flat No.772. As far as respondent No.2 is concerned, it was recorded that he had filed a similar suit, which was pending trial and therefore, his rights would be adjudicated in the said suit. Aggrieved by the aforesaid decision, the appellant/defendant No.1/Society has filed the present appeal.

5. Learned counsel for the appellant states that the Society has an apprehension that the respondent No.1/plaintiff will not vacate flat No.721 and continue to occupying both the flats and if that happens, then the occupant of flat No.812, Sh. Mukesh Nangia will be left high and dry.

6. The aforesaid submission is vehemently denied by the counsel for the respondent No.1, who states that his client has no such intention. He states that on the date of passing the impugned judgment itself, the respondent No.1/plaintiff through counsel had given an undertaking to the Court that the respondent No.1/plaintiff shall vacate flat No.721 within 15 days from the date of receiving possession of flat No.772 from the Society. To substantiate the said submission, counsel for the respondent No.1/plaintiff draws the attention of the Court to the statement made by Ms. Nidhi Prashar, Advocate appearing for the plaintiff, before the trial court as placed at page 37 of the paper book. He clarifies that an execution petition has been filed

by his client for seeking execution of the impugned judgment and decree dated 20.09.2016 and a similar submission has been made in the said proceedings as well.

7. This takes care of any apprehension expressed by the appellant/Society that the respondent No.1/plaintiff will not vacate the flat presently under his occupation. No other ground has been urged by the counsel for the appellant to assail the impugned judgment and decree. If there is any other apprehension that the appellant/Society harbours with regard to the manner of executing the impugned judgment and decree, it shall be at liberty to place the same before the Executing Court. While binding the respondent No.1/plaintiff to the statement made on his behalf as recorded hereinabove, the present appeal is disposed of alongwith the pending applications.

DECEMBER 05, 2016
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HIMA KOHLI, J