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

+ EX.P.149/2016 & EAs No.757/2016 & 758/2016 (both for exemption)

SURENDER MALIK

..... Decree Holder

Through: Mr. N.K. Aggarwal, Adv.

Versus

RAJ BALA

..... Judgement Debtor

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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18.11.2016

1. Execution is sought of a judgment and decree dated 5th January, 2015 in CS(OS) No.1944/2012 of specific performance of an agreement of sale of immovable property.
2. The defendant/judgment debtor has preferred RFA(OS) No.71/2015 against the said judgment and decree and which was disposed of vide consent order dated 9th October, 2015 whereby it was agreed between the parties that the defendant/judgment debtor will pay a sum of Rs.50 lakhs to the plaintiff/decreed holder in full and final settlement of the claim of the plaintiff/decreed holder for specific performance and if the defendant/judgment debtor does not pay the said amount within a period of one year therefrom, the plaintiff/decreed holder shall be entitled to execute the decree.
3. Though the plaintiff/decreed holder has filed the order dated 9th October, 2015 of the Division Bench of this Court along with execution but has not filed the decree of which execution is sought.

4. The counsel for the plaintiff/decreed holder, upon being asked states that the decree has not been prepared.
5. Even if that be so, the plaintiff/decreed holder has to apply for execution treating the last para of the judgment as decree but the judgment of the learned Single Judge also has not been filed. I may in this regard notice that though the order of the Division Bench is on the basis of the statement of the parties recorded before the Division Bench but the said statements have also not been filed.
6. Such filing without requisite documents is as good as no filing and the Registry should not have accepted and listed the execution petition and the execution petition is liable to be rejected.
7. The counsel for the plaintiff/decreed holder has however in the Court handed over the copy of the judgment dated 5th January, 2015 of the learned Single Judge and wherefrom it transpires that the total agreed sale consideration was Rs.35 lakhs. It can safely be presumed that the valuation of the suit, of which decree is sought to be executed, must have been the same.
8. Once that is so, the filing of the execution petition before this Court is in contravention of the Office Order dated 24th November, 2015 of Hon'ble the Chief Justice of this Court in exercise of powers under Section 4 of the Delhi High Court (Amendment) Act, 2015 and as per which the execution has to be filed in the Court of minimum pecuniary jurisdiction.
9. From the statement today made by the counsel for the plaintiff/decreed holder it also appears that the plaintiff is not sure whether decree has been

prepared or not. In the ordinary course, it should have been prepared by now.

10. Thus, rejecting the execution petition with liberty to the plaintiff/decreed holder to apply to the Court of appropriate pecuniary jurisdiction, the plaintiff/decreed holder is also directed to make a categorical statement when applying to the appropriate Court, whether the decree sheet has been prepared or not. If the decree sheet has not been prepared, the plaintiff/decreed holder to approach the Registry therefor and the Registry is directed to, on all compliances being made, prepare the decree.

RAJIV SAHAI JUDGE, J.

NOVEMBER 18, 2016

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