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

+ **FAO(OS) 403/2015**

SUNIL KUMAR

..... Appellant

Represented by: **Mr.Amar Nath Saini, Advocate**

versus

MOHIT KUMAR SINGHAL & ORS

..... Respondents

Represented by: **Mr.Ashok Kumar Garg, Advocate**
with **Ms.Kavita Agarawal, Advocate**
for R-1 and R-2
Ms.Shivangi Vaid, Advocate for
Ms.Renu Gupta, Advocate for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **03.02.2016**

1. Having heard learned counsel for the parties we find partial merit in the appeal for the reason case pleaded in the plaint has rightly been found by the learned Single Judge to be contrary to the written collaboration agreement bearing signatures of the appellant.
2. As per the written collaboration agreement the share of the appellant in the suit property would comprise half open stilt area and the upper ground floor and the first floor, meaning thereby the first two storeys out of the four storied building constructed. The other two floors at the top belong to the builder.
3. Claim in the plaint is for the entire building.

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4. Pleadings in the plaint to get over the written agreement is that the appellant was highly intoxicated on the date when the signatures were taken prima-facie appears to be a ruse for the reason, if this was so, the signatures would not be firm. From the firmness of the signatures it is apparent that the plea is meritless. Further, it does not stand to any logic and reason that a builder would use money to construct a four storied building, all floors whereof would be of the owner of the land. If the appellant was to be the owner of all floors on the land what would be the consideration payable by him to the builder to construct needs to have been pleaded in the plaint.

5. The learned Single Judge has rightly found no prima-facie case in the plaint as laid.

6. However, the prayer to restrain the defendants from creating third party rights in the upper ground floor and the first floor should have been allowed.

7. The appeal is accordingly disposed of modifying the impugned order dated May 07, 2015. The defendants in the suit shall not create any third party rights in the upper ground floor and the first floor as also half area under the stilt in favour of any party till disposal of the suit.

CM No.13163/2015

Dismissed as infructuous.

PRADEEP NANDRAJOG, J.

MUKTA GUPTA, J.

FEBRUARY 03, 2016/mamta
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