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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 955/2015 & C.M. No.22906/2015
APRAJITA SINGH

..... Petitioner

Through Mr. S.K. Bhattacharya and Mr.
Pramod Kumar, Advs.

versus

RUPA KUMARI

..... Respondent

Through Mr. Rahul Sharma, Adv.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **16.02.2016**

The petitioner before this Court is the plaintiff in the Trial Court. He is aggrieved by the orders dated 03.07.2015 and 13.08.2015 wherein issues earlier framed on 08.01.2013 had been recast on a subsequent application having been filed by the defendant which was under Order 7 Rule 11 of the CPC and the earlier issues which had been framed on 08.01.2013 was set aside. This was on an application filed by the defendant under Order 7 Rule 11 of the CPC. The Court had passed an absolutely illegal order. It has gone on the averments made in the said application without considering the contentions raised by the plaintiff in the plaint. The plaintiff had filed a suit for specific performance of an agreement to sell qua a property at Raj Nagar; the contention of the plaintiff was that he had paid a sum of Rs.9,53,000/- to the defendant on various occasions, the details of which find mention in para 10 of the plaint. His further averment in the plaint was that a sum of Rs.5,50,000/- which had to be received by the defendant from the plaintiff had in fact not been passed on to him

and that should also be counted for this transaction; the total amount of Rs.15,03,000/- was thus paid by the plaintiff to the defendant as earnest money qua this property No. RZF-778/8A, Gali No. 17, Raj Nagar, Palam Colony, New Delhi for which sale deed has not been executed. A decree of perpetual injunction had also been sought.

The Trial Court vide the impugned orders dated 03.07.2015 and 13.08.2015 had apparently ignored the body of the plaint and had picked up only one paragraph of the plaint to recast the issues and return a finding that the maintainability of the suit was in question and thus treated as maintainability of a suit as a preliminary issue. This order is, at the cost of repetition, is illegal as it is the entire body of the plaint (as also the other pleadings) which has to be taken into account before the issues are framed and not one paragraph from the plaint as has been done by the impugned orders. They are accordingly set aside. The issues framed on 08.01.2013, as modified by this Court in connected case being C.M. (M) No.299/2015 will stand.

With these directions, petition disposed of.

INDERMEET KAUR, J

FEBRUARY 16, 2016
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