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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA(OS) 134/2015

MUKESH KUMAR & ANR.

..... Appellants

Through: Ms.Bina Gupta, Mr.Abhay Anand Jena
and Ms.Radhika Sharma, Advocates

versus

KAVITA KACKER THR HER ATTORNEY MANOJ SABERWAL

..... Respondent/Caveator

Through: Mr.S.N.Choudhri, Advocate

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

% **01.03.2016**

Caveat No.1318/2015

Since the caveator is represented through counsel, the caveat stands discharged.

C.M.No.31998-31999/2015 (for exemption)

Exemption is allowed subject to just exceptions.

Applications stand disposed of.

RFA(OS) 134/2015

1. We have heard learned counsels for the parties with consent.
2. This is a defendants' appeal directed against the summary decree of the plaintiff's suit by invocation of the power conferred under Order 12 Rule 6 read with Order 15 of the Code of Civil Procedure (CPC).
3. Brief facts are that the respondent plaintiff instituted a suit against the appellant for recovery of Rs.21 lakhs towards "amount deposited" and damages. According to the suit averments the parties

had entered into an agreement to sell on 18.09.2013 made effective from 07.09.2013. The appellant agreed to sell the suit property for total consideration of Rs.44,66,000/- of which Rs.32,73,375/- was to be paid by the plaintiff to the appellant and balance Rs.11,92,625/- was payable to the builder at the time of handing over the flat. Concededly, the plaintiff had paid Rs.10,50,000/- towards earnest money to the defendant and four cheques were furnished, two drawn on Bank of Maharashtra and one each of Indus Ind Bank and IDBI Bank. These cheques were drawn in the name of first defendant and were encashed. Accordingly, according to the agreement the balance amount was to be paid on or before 15.10.2013 and Rs.11,92,625/- was to be paid to the builder and possession was to be handed over.

4. Apparently, the appellant had issued two cheques which were dishonoured/not paid on account of stock payment transactions.

5. Subsequently, the plaintiff filed the suit claiming repayment of the amount deposited. It was averred inter alia that the plaintiff was unaware of a previous agreement to sell between the appellant and another party. It was also contended before the learned Single Judge that these circumstances disentitled the defendant/appellant to repay the amount.

6. This Court after hearing counsel and considering pleadings as well as the documents admitted by the parties is of the opinion that given the averments in the written statement, particularly paras 2, 7 & 8, this was not a clear case of an unambiguous or unequivocal admission on the part of the petitioner to empower the Court to draw

a decree in terms of Order 12 Rule 6 of CPC.

7. In these circumstances, learned counsel for the plaintiff/respondent had sought instructions and stated that the impugned judgment and decree may be set aside and the matter remitted for trial on the issues which may be raised by the parties. Accordingly, in view of the statement made and having considered the pleadings as well as the material on record this Court is of the opinion that the power invoked by learned Single Judge i.e. to decree suit on admission was not properly exercised – within the parameters spelt out by the Supreme Court in *Uttam Singh Duggal & Company Ltd. vs. United Bank of India & Ors.* 2000 (7) SCC 120 and *Jeevan Diesel & Electricals Limited v. Jasbir Singh Chadha & Another*, (2010) 6 SCC 601.

8. In these circumstances, the impugned judgment and decree is hereby set aside. It is open to the parties to urge whatever has been claimed or asserted by them including the plaintiff's claim for damages. Parties are directed to present for further proceedings on 14.03.2016.

9. The appeal is allowed in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

MARCH 01, 2016/rb