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

+ **FAO(OS) (COMM) 8/2017 & CM Nos.992-993/2017**

ASHIMA INFRASTRUCTURE PVT LTD & ORS Appellants

Through: Mr Sudhir Nandrajog with Mr Rajesh
Gupta, Advs.

versus

PARSVNATH DEVELOPERS LTD Respondent

Through: Mr Vijay Nair and Mr Vineet Sinha,
Advs.

+ **FAO(OS) (COMM) 9/2017 & CM Nos.994-995/2017**

ASHIMA INFRASTRUCTURES PVT LTD & ORS Appellant

Through: Mr Sudhir Nandrajog with Mr Rajesh
Gupta, Advs.

versus

PARSVNATH DEVELOPERS LTD Respondent

Through: Mr Vijay Nair and Mr Vineet Sinha,
Advs.

CORAM:

HON'BLE MR. JUSTICE BADAR DURREZ AHMED

HON'BLE MR. JUSTICE ASHUTOSH KUMAR

ORDER

% **10.01.2017**

The learned counsel for the appellants submits that the appellants have every intention to make the payments to respondent no.1. It is further submitted by the learned counsel for the appellants that the properties which are the subject matter of the restraint order were actually the subject matter of a mortgage with M/s Indo Star Capital Finance. The money is to be received against the said mortgage and unless and until the order which is impugned before us is modified,

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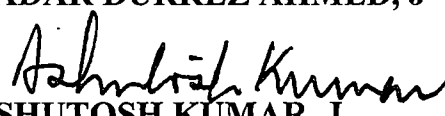
the funds would not be available with the appellants to make good the payments upto the second instalment. In the impugned order, we do not find any reference to the said mortgage of the three properties mentioned in paragraph 12 of the impugned order. The learned counsel for the appellants submitted that it was mentioned before the learned single Judge, however, there is nothing on record to indicate that the mortgage deed or the loan papers which had a reference to these properties were placed before the learned single Judge.

However, the learned counsel for the appellants now requests that these appeals may be disposed of by granting him liberty to move an appropriate application setting forth all the necessary facts in order to seek modification of the order so that the payment of money to respondent no.1 is facilitated.

We permit the appellants to withdraw these appeals with liberty to move such an application. We are making it clear that we have not made any observation on the merits of the matter. We are also making it clear that it would for the learned single Judge to take a call on the application, if moved, in accordance with law.

The learned counsel for the appellants had submitted before us that because of the restraint order in respect of the three properties mentioned in paragraph 12, the above named finance company was not releasing the funds as they are treating the order as an encumbrance on the said properties. We have already indicated that he may place all the facts before the learned single Judge in the application which may be moved by him.

The appeals are dismissed as withdrawn with the aforesaid liberty.


BADAR DURREZ AHMED, J

ASHUTOSH KUMAR, J

JANUARY 10, 2017/ns