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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on: 27th November, 2017

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CM(M) 90/2016 and CM No.2950/2016 (stay)

KRISHAN SHARMA

..... Petitioner

Through: Mr. N.K. Kantwala, Adv. with
Ms. Akanksha Jain and Ms. Sayli Petiwale,
Advocates

versus

RAJ RANI BHARDWAJ & ORS

..... Respondents

Through: Ms. Monica Kapoor, Advocate for R-1 &
R-2.
Ms. Prem Lata Sharma, Advocate with Mr.
Neeraj Sharma, Advocate for R-4 & R-5.
Ms. Chandrika Gupta, Adv. with Ms. Nisha
Sharma, Adv. for R-8.

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

JUDGMENT (ORAL)

1. The respective shares of the parties to the partition suit (CS No.356/2013), pending on the file of the Court of Civil Judge-04, Central, Delhi, from which the present petition arises, have already crystallized in terms of the preliminary decree passed on 11.03.2003. The proceedings before the learned trial Court are presently at the stage of consideration of the final decree wherein, it seemingly having been found that the subject property cannot be divided by metes and bounds the learned trial court had

earlier decided to put it to auction.

2. It is at the stage of proceedings taken out in wake of such decision that the petitioner moved an application, though captioning it as one moved under Section 151 of the Code of Civil Procedure, 1908 (CPC), but essentially making a prayer in terms of Section 3 of the Partition Act, 1893, offering to buy out the shares of the other parties. The learned Civil Judge, by the impugned order dated 28.11.2015, observed that the auction of the suit property in terms of the previous orders could not be carried out as appropriate steps were not taken, the offer of the petitioner to purchase the property “at the circle rate” being not acceptable to the other parties to the suit. Having noted such stand of the other parties and also the fact that such right to purchase the property *inter se* was not availed of earlier, the trial court disposed of the application giving liberty to the parties, including the petitioner, to participate in the court auction. It issued certain directions for the reserved price to be determined on the basis of circle rates. It is noted that in the application, which was decided in such terms by the trial court, the petitioner had stated, in the alternative, that he was ready to purchase the property at the “agreed” rate/price.

3. In terms of Section 3 of the Partition Act, 1893, upon such offer being made by one of the share holders in the property, the court is called upon to direct the price of the property to be ascertained. In this view, the order cannot be sustained. The petition is allowed. It is directed that the learned Civil Judge shall issue necessary directions for the market value of the property in question to be ascertained and, thereafter, take a fresh call on the offer of the petitioner to purchase the shares of the other parties, of course,

taking into consideration their responses to such offer.

4. The parties are directed to appear before the Civil Judge on 5th January, 2018.

5. The petition and accompanying application stand disposed of with these directions.

NOVEMBER 27, 2017

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R.K.GAUBA, J.