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

+ CM(M) No.253/2012 & CM No.3832/2012 (for stay).

VISHAL AUTO SALES

..... Petitioner

Through: Mr. Iqbal Ashraf Rahmani and Mr.
K.C. Roy, Advs.

versus

NARENDER SINGH BISHT

..... Respondent

Through: Mr. Praveen Goswami and Mr.
Dheeraj Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.07.2017

1. This order is in continuation of yesterday's order.
2. The counsel for the petitioner / defendant in response to the queries made yesterday and recorded in the order states that the petitioner / defendant after re-possessing the auto rickshaw has re-sold the same and is now not in possession of the auto rickshaw.
3. If that be so, then no purpose will be served in passing a decree for possession of the said auto rickshaw.
4. The counsel for the respondent / plaintiff states that the respondent / plaintiff has no knowledge of re-sale.
5. Be that as it may, the counsel for the petitioner / defendant has also shown the plaint in the suit from which this petition arises and which shows that the respondent / plaintiff besides the relief of decree for possession of the auto rickshaw has in the alternative also sought the relief of recovery of Rs.3,35,075/- with interest. Thus, notwithstanding the possibility of grant of decree for possession of the auto rickshaw not existing, the claim of the

respondent / plaintiff for recovery of money will have to be adjudicated.

6. Having considered all the facts and circumstances, I have proposed to the counsel for the petitioner / defendant that the petitioner / defendant can be granted opportunity to contest the suit filed by the respondent / plaintiff subject to the petitioner / defendant agreeing to pay costs of Rs.50,000/- by Pay Order in the name of the respondent / plaintiff and further subject to other conditions imposed on the petitioner / defendant.

7. The counsel for the petitioner / defendant under instructions from Amarnath Sharma, Proprietor of the petitioner / defendant present in Court states that the petitioner / defendant is so willing / agreeable.

8. The counsel for the respondent / plaintiff is also agreeable to the aforesaid proposal.

9. Accordingly, this petition is allowed and the orders impugned therein are set-aside and the petitioner / defendant granted opportunity to contest the suit on the following conditions:-

- (i) The petitioner / defendant on or before 31st July, 2017 paying by way of costs to the respondent / plaintiff by a Pay Order in the name of the respondent / plaintiff a sum of Rs.50,000/-.
- (ii) The petitioner / defendant on or before 31st July, 2017 also filing written statement with advance copy to the counsel for the respondent / plaintiff.
- (iii) The petitioner / defendant shall not be entitled to any adjournment on any ground at any state of the suit.

10. It is made clear that the default by the petitioner / defendant to comply with any of the aforesaid conditions would deprive the petitioner / defendant

of the right to contest the suit and the orders impugned in the present petition shall remain in force and the Suit Court shall then proceed to decide the suit on the basis of *ex parte* evidence led by the respondent / plaintiff.

11. On enquiry, it is informed that the next date before the Suit Court is 26th September, 2017.

12. The Suit Court i.e. the Court of Ms. Nisha Saxena, Additional District Judge (East), Karkardooma Courts, Delhi is now requested to pre-pone the date of hearing in the suit from 26th September, 2017 to 8th August, 2017 on which date the parties to appear before the Suit Court.

13. A copy of this order be immediately forwarded to the Suit Court and be also given *dasti* under signature of Court Master to the counsels for the parties.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 12, 2017

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