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

+ CM(M) 559/2016

BIHARI LAL GUPTA

..... Petitioner

Through: Mr.Ruchir Batra, Advocate

versus

INDER KUMAR BAISLA

..... Respondent

Through: Mr.S.K.S.Bhadoria, Advocate

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

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18.05.2017

CM(M) 559/2016

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India feeling aggrieved by the order dated 18th April, 2016 whereby the application filed by the petitioner, who is defendant No.2 in Civil Suit No. 12/15 has been dismissed by learned Trial Court.

2. Learned counsel for the petitioner, has submitted that a bare perusal of the copy of agreement for sale would show that petitioner/defendant No.2 has signed the said document only as a witness. There is no averment in the plaint as to how the witness to the agreement can be made liable in a suit for recovery in respect of the earnest money paid by the plaintiff to defendant No.1.

3. Learned counsel for the respondent has submitted that defendant No.2 is not only a witness to the sale agreement dated 18th May, 2012 but also

husband of defendant No.1. When the deal could not materialize, it was the petitioner/defendant No.2, who issued four post dated cheques for a sum of ₹1,50,000/-, ₹1,00,000/-, ₹1,00,000/- and then ₹50,000/- and assured to make the balance payment in cash. Out of these four cheques, two cheques were encashed and remaining two were not presented because of overwriting on the said cheques. The same were not accepted by the bank.

4. The Civil Suit under Order XXXVII CPC has been filed by the plaintiff, Inder Kumar Baisla pleading the following facts:-

(i) The plaintiff and defendant No.1 had entered into an agreement to sell in respect of the property No.B-2, Gali No.2, 3-1/2 Pusta, Kartar Nagar, Delhi-110053 against total sale consideration of ₹22,50,000/-. A sum of ₹7,00,000/- was paid by the plaintiff towards a sale consideration and the sale deed was agreed to be executed on 18th July, 2012.

(ii) In July, 2012 when the plaintiff requested for execution of the sale deed on receiving the balance sale consideration, petitioner/defendant No.2 informed that his wife was not ready to sell the house and has threatened to commit the suicide if the house was sold.

(iii) Thereafter, to return the amount of earnest money, four cheques were issued by the petitioner/defendant No.2. Since the balance payment was not made, the suit for recovery was filed and a criminal case being FIR No.595/2013 under Section 406/34 IPC was also got registered against the defendants at PS New Usmanpur. Legal notice was also served on the defendant and on their failure to pay, the suit was filed.

(iv) Joint written statement has been filed by both the defendants, who are wife and husband wherein the plea taken by the defendants is that it was the plaintiff who failed to arrange the balance sale consideration on or before

18th July, 2012 resulting into forfeiture of the earnest money.

(v) Issuance of the cheques by defendant No.2 in favour of the plaintiff was admitted by the defendant.

5. The averments made in the written statement clearly show that it was not the case of the petitioner/defendant No.2 that he was only a witness to the agreement for sale between his wife and the plaintiff. Even otherwise as a witness he was under no obligation to issue four cheques towards receiving of earnest money as pleaded by the plaintiff/respondent. The learned trial Court vide impugned order has rightly dismissed the application filed by the petitioner/defendant No.2 for deleting his name from the array of the parties.

6. The impugned order does not suffer from any illegality or infirmity so as to exercise power under Article 227 of the Constitution of India.

7. The petition is dismissed.

CM No.21274/2016

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 18, 2017

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