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

+ **CS(OS) 2475/2007**

**DR. MUKESH SHARMA & ORS.**

..... Plaintiffs

Through: None.

Versus

**DR. MAHEASHWAR NATH SHARMA**

..... Defendant

Through: Ms. Shivangi Singh and Mr. Sumit  
Kumar Vats, Advs.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

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**26.04.2017**

1. None appears for the plaintiffs.
2. The counsel for the defendant states that in compliance of the earlier order dated 23<sup>rd</sup> March, 2017 paper book of RFA(OS) No.18/2017 preferred against the judgment dated 1<sup>st</sup> March, 2017 passing a preliminary decree for partition and for accounts was supplied to the counsel for the plaintiffs.
3. Considering the number of shareholders, it appears that the properties cannot be divided by metes and bounds and a final decree for partition by sale of the properties and distribution of sale proceeds as per shares declared in the preliminary decree has to be passed.
4. Though copy of the order dated 22<sup>nd</sup> March, 2017 in RFA(OS) No.18/2017 shows that the Division Bench has directed *status quo* with respect to the subject properties to be maintained but the same will not come in the way of this Court passing a final decree for partition by sale as *CS(OS) 2475/2007*

aforesaid and which decree shall of course be subject to the orders in the appeal aforesaid.

5. Accordingly, a final decree for partition of property No.10, Todarmal Lane, Bengali Market, New Delhi and of plot of land bearing No.C-2/2, Sector11, DLF Model Town, Faridabad, Haryana is passed, by sale of the properties and by distribution of the sale proceeds in terms of the shares declared in the preliminary decree for partition and on the following terms and conditions:

(I) All parties shall be entitled to participate in the sale and if any of the parties is the highest bidder, would be entitled to purchase the property/ies on the same terms on which the bids were invited.

(II) Whichsoever party is in possession of whichsoever property shall in pursuance to the sale deliver vacant peaceful physical possession thereof and if fails to do so, shall be liable to be removed therefrom in execution as of a decree for possession;

(III) As far as the decree for accounts is concerned, Mr. Amitabh Narayan, Advocate (Mob.9818200333) is appointed as the Court Commissioner to take accounts and to submit a report.

6. The fees of the Court Commissioner is tentatively fixed at Rs.2 lacs, besides out of pocket expenses and to be paid equally by the plaintiffs on the one hand and defendant on the other hand.

7. The parties are left to bear their own costs.

Decree sheet be prepared.

**RAJIV SAHAI ENDLAW, J.**

**APRIL 26, 2017/bs..**

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