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

+ CM(M) No.811/2017 & CM No.27287/2017 (for stay).

RAHUL KUMAR TIWARI

..... Petitioner

Through: Mr. Bijender Singh, Mr. Amit Yadav,
Ms. Savita Sharma and Ms. Vidushi,
Advs.

versus

DEVEN KHULLAR

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.08.2017

CM No.27288/2017 and CM No.27289/2017 (both for exemption).

1. Allowed, subject to just exceptions.
2. The applications stand disposed of.

CM(M) No.811/2017 & CM No.27287/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 6th April, 2017 in CS No.57607/2016 of the Court of Additional District Judge-02, New Delhi District, Patiala House Courts, New Delhi) of dismissal of the application, filed by the petitioner / defendant at the stage of final arguments in the suit for examination of signature of petitioner / defendant by an handwriting expert..
4. The suit, from which this petition arises, was filed by the respondent / plaintiff against the petitioner / defendant for specific performance of an Agreement of Sale of immoveable property. The learned Additional District Judge has dismissed the application reasoning (i) that there was no issue as to the signatures of the petitioner / defendant on the Agreement to Sell of

which specific performance was claimed and since evidence is to be led on issues, without an issue to the said effect, no evidence of the handwriting expert could be led; (ii) that it was not a plea of the petitioner / defendant in his written statement also that the signatures on the Agreement to Sell were not his; and, (iii) the documents on which the signatures of the petitioner / defendant were sought to be compared with the signatures on the Agreement to Sell were also not on record.

5. I have perused the issues framed in the suit. There is no issue qua the signatures on the Agreement to Sell.

6. I have also perused the written statement of the petitioner / defendant. The petitioner / defendant therein has admitted receipt of the amounts claimed by the respondent / plaintiff to have been paid as sale consideration and has pleaded that his signatures were taken on blank papers.

7. The plea of the petitioner / defendant appears to be of the money admittedly taken, being by way of finance / loan for purchase of the house.

8. I have enquired from the counsel for the petitioner / defendant, whether the petitioner / defendant at any time after receipt of the money, repaid the said loan or tendered the same. I have not found any plea to the said effect in the written statement.

9. The counsel for the petitioner / defendant at this stage has drawn attention to para 8 of the written statement, where it is pleaded that the petitioner / defendant kept on liquidating the interest on the loan amount up till December, 2013 whereafter the respondent / plaintiff refused to accept the interest.

10. However admittedly there is no issue and the counsel for the petitioner / defendant is not very sure, whether any evidence of having paid such interest has been led.

11. Thus, no error can be found in the reasoning of the learned Additional District Judge.

12. The counsel for the petitioner / defendant has drawn attention to the photocopy of the Agreement to Sell at pages 27 and 28 of the paper book, being internal pages 2&3 of the Agreement to Sell and states that the signature in the margin on the right hand side thereof, purportedly of the petitioner, is forged.

13. However the counsel is unable to tell the effect of the said signatures being forged and as to what change effected thereby nullifies the Agreement.

14. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 01, 2017

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