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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. No.193/2017 & CM No.31701/2017 (for stay).
NISHIT MAHAJAN & ANR Petitioners
Through: Sree Narain Jha, Mr. Sanjeev Sharma
and Mr. D.D. Sharma, Advs.

versus

ASHCON BUILDERS PVT LTD Respondent
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.09.2017**

CM No.31702/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

C.R.P. No.193/2017 & CM No.31701/2017 (for stay).

3. This Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order (dated 11th July, 2017 in CS No.17756/16 of the Court of Additional District Judge-04 (South-West) District, Dwarka Courts, New Delhi) of dismissal of the application filed by the petitioners / defendants under Order VII Rule 11 and Order XII Rule 6 of the CPC for rejection of the plaint and for dismissal of the suit on admissions.

4. The counsel for the petitioners / defendants has been heard.

5. The respondent / plaintiff M/s. Ashcon Builders Private Limited has instituted the suit from which this petition arises, for recovery of balance price of the immovable property agreed to be sold to the petitioners / defendants, pleading that though the said balance price was to be paid by the

petitioners / defendants at the time of being put into possession but the petitioners / defendants, taking advantage of the death of the Director of the respondent / plaintiff Company, entered into possession of the immovable property agreed to be sold, without paying the balance price thereof.

6. The petitioners / defendants applied under Order VII Rule 11 and Order XII Rule 6 of the CPC on the basis of a Power of Attorney stated to have been executed by the wife of the deceased Director in favour of some other person who is also stated to be a Director of the respondent / plaintiff Company, authorising execution of the Sale Deed *inter alia* in favour of the petitioners / defendants and in recital of which Power of Attorney it is mentioned by the executant thereof that the respondent / plaintiff Company had informed her that the balance sale consideration had been received by the respondent / plaintiff Company.

7. It appears that the land underneath the property, to be constructed by the respondent / plaintiff Company and agreed to be sold by the respondent / plaintiff Company was owned by the deceased Director and for that reason the need for obtaining Power of Attorney from his wife arose. It is plausible that the recital aforesaid in the Sale Deed is in anticipation of receipt of balance sale consideration.

8. Neither is the said Power of Attorney executed by the respondent / plaintiff Company, for the respondent / plaintiff Company to be bound thereby nor does the said Power of Attorney give, nor have the petitioners / defendants given, any particulars / proof of payment made.

9. The learned Additional District Judge, in the impugned order, has correctly dealt with the matter and in fact the filing of the application as well

as the filing of the petition is misconceived.

10. The petition is dismissed with costs of Rs.10,000/- payable by the petitioners / defendants to the Delhi High Court Bar Association Lawyers Social Security and Welfare Fund, New Delhi and proof of which payment be furnished to the Court where the suit is pending on the next date of hearing as a condition for the petitioners / defendants' further participation in the suit.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 01, 2017

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