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

+ CM(M) No.961/2017 & CM No.32286 (for stay).

DR V B ROY & ANR

..... Petitioners

Through: Mr. A.K. Verma and Mr. Vibhu  
Verma, Advs.

versus

RAVINDRA KISHORE SINHA

..... Respondent

Through: Mr. Manish Mohan with Ms.  
Shivangi Sinha and Ms. Manisha  
Saroja, Advs.

**AND**

+ CM(M) No.962/2017 & CM No.32289/2017 (for stay).

DR V B ROY & ANR

..... Petitioners

Through: Mr. A.K. Verma and Mr. Vibhu  
Verma, Advs.

versus

RAVINDRA KISHORE SINHA

..... Respondent

Through: Mr. Manish Mohan with Ms.  
Shivangi Sinha and Ms. Manisha  
Saroja, Advs.

**CORAM:**

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

**ORDER**

% **05.09.2017**

**CM No.32287/2017 and CM No.32288/2017 (both for exemption) in  
CM(M) No.961/2017 and CM No.32290/2017 and CM No.32291/2017  
(both for exemption) in CM(M) No.962/2017.**

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

**CM(M) No.961/2017 & CM No.32286 (for stay). and CM(M)  
No.962/2017 & CM No.32289/2017 (for stay).**

3. These petitions, both under Article 227 of the Constitution of India, impugn the order (dated 25<sup>th</sup> May, 2017 in CS No.2995/2016 of the Court of

Additional District Judge-02 (East District), Karkardooma Courts, Delhi) of dismissal of three applications filed by the petitioners / defendants.

4. The first application was under Order XI Rules 12&14 of the Code of Civil Procedure, 1908 (CPC) for a direction to the respondent / plaintiff to produce the complaint made against the petitioners / defendants to the Police. The second application was under Order XVI Rule 6 of the CPC seeking direction to the Commissioner of Police for production of the Action Taken Report on the aforesaid complaint of the respondent / plaintiff. The third application was under Order XIV Rule 5 of the CPC for framing of additional issues.

5. These two identical petitions have been filed but the counsel for the petitioners / defendants clarifies that the challenge in CM(M) No.961/2017 is to dismissal of the application under Order XI Rules 12&14 of the CPC and the challenge in CM(M) No.962/2017 is to dismissal of the application under Order XIV Rule 5 of the CPC. The counsel on further enquiry states that he has not challenged the dismissal of application under Order XVI Rule 6 of the CPC.

6. The respondent / plaintiff instituted the suit, from which these petitions arise, for recovery of a sum of Rs.32,00,000/- stated to have been advanced as loan to the petitioners / defendants. The petitioners / defendants in their written statement do not dispute receipt of the said amount of Rs.32,00,000/- from the respondent / plaintiff but claim the same to be as advance sale consideration for sale of the property by the petitioners / defendants to the respondent / plaintiff and claim to have forfeited the said sum of Rs.32,00,000/- for failure of the respondent / plaintiff to perform the balance part of the said Agreement.

7. The counsel for the respondent / plaintiff appears on advance notice.
8. I have enquired from the counsels whether there is any Agreement to Sell in writing providing for such forfeiture.
9. The counsels for the parties state that there is no Agreement to Sell in writing and the Agreement was oral but the respondent / plaintiff in the complaint aforesaid to the Police had admitted the transaction of Agreement to Sell.
10. I have further enquired from the counsel for the petitioners / defendants, what was the sale consideration and whether the same is also recorded in the complaint made by the respondent / plaintiff to the Police.
11. The counsel for the petitioners / defendants states that there is a difference between what the respondent / plaintiff claims the sale consideration to be and what the sale consideration was according to the petitioners / defendants. However both counsels clarify that there is no mention in the complaint aforesaid of any Agreement of Forfeiture by the petitioners / defendants of the amount received of Rs.32,00,000/.
12. I have enquired from the counsel for the petitioners / defendants, whether in the absence of any forfeiture clause in writing, any forfeiture can be effected. Attention of the counsels is invited to the dicta of the Supreme Court in ***Kailash Nath Associates Vs. Delhi Development Authority*** (2015) 4 SCC 136 and thereafter to the judgment of this Court dated 31<sup>st</sup> July, 2017 in CRP No.3/2017 titled ***Palm Art Apparels Pvt. Ltd. Vs. Enkay Builders Pvt. Ltd.*** holding that forfeiture can only be of earnest money and not of part sale consideration and only when there is a specific agreement therefor and in the absence thereof, without proof of damage having been suffered, no forfeiture can be effected.

13. The counsel for the petitioners / defendants admits that the petitioners / defendants in their written statement have not pleaded any loss or damages having been suffered by them or given any particulars thereof and no issues have been framed to that effect.

14. The argument of the counsel for the petitioners / defendants is that since the respondent / plaintiff has sued for recovery of money on the basis of a loan transaction, without proving the said transaction, cannot recover the money.

15. Attention of the counsels has been drawn to Order VII Rule 7 of the CPC and to the dicta of this Court in ***Sukho Devi Vs. Laxmi Devi*** 2013 SCC OnLine Del 3125 and ***SRM Infracon Pvt. Ltd. Vs. AN Elegant Hospitality*** 2016 SCC OnLine Del 6500 which appear to suggest that if the Court ultimately finds money to be due from the defendant to the plaintiff but on a different account than that pleaded in the plaint, the Court can still grant relief rather than relegating the parties to further litigation.

16. I have made all the aforesaid observations being of the view that in exercise of powers under Article 227 of the Constitution of India, it is the duty of this Court to ensure that the proceedings before the Trial Court are conducted in accordance with law and the time of the Court is not unduly wasted. It appears that if the suit can be decided on the aforesaid principles, the time and money of the parties and time and resources of the Court should not be unnecessarily spent on trial when the same time can be devoted to other suits which cannot be decided without trial.

17. Be that as it may, in so far as these petitions are concerned, I have enquired from the counsel for the respondent / plaintiff the objection of the respondent / plaintiff to produce the copy of the complaint.

18. The counsel for the respondent / plaintiff states that the respondent / plaintiff has on affidavit accompanying the reply to the application under Order XI Rules 12 and 14 of the CPC already stated that the respondent / plaintiff is not possessed of any copy of the complaint.

19. The counsel for the petitioners / defendants states that it has not been so expressly stated.

20. The counsel for the respondent / plaintiff states that on or before the next date of hearing, affidavit of the respondent / plaintiff categorically stating that the respondent / plaintiff is not possessed of any copy of the complaint made, shall be filed before the Trial Court.

21. That takes care of CM(M) No.961/2017.

22. As far as the challenge in CM(M) No.962/2017 to the dismissal of the application under Order XIV Rule 5 of the CPC is concerned, in view of what has been observed hereinabove, the additional issues sought, *inter alia* to the effect that if the respondent / plaintiff fails in proving the loan transaction, he will be left with no cause of action for the suit and whether the respondent / plaintiff is estopped from taking a stand of loan in view of the complaint earlier made, do not arise for consideration and no error can be found in the order of dismissal of the application under Order XIV Rule 5 of the CPC.

23. Resultantly CM(M) No.962/2017 is dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J**

**SEPTEMBER 05, 2017**

‘pp’..(*Corrected and released on 6<sup>th</sup> October, 2017*).