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

+ C.R.P. 198/2017

MEENA JINDAL Petitioner

Through: P.K. Malik, Adv.

Versus

AMRIT RANI & ANR Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **06.09.2017**

CM Nos.32448-49/2017 (both for exemptions)

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

C.R.P. 198/2017 & CM No.32447/2017 (for stay)

3. This Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (CPC) impugns the order [dated 7th June, 2017 in CSDJ No.18913/2016 of the Court of Additional District Judge -14 (ADJ) (Central), Tis Hazari Courts, Delhi] of dismissal of the application of the petitioner / defendant no.1 under Order XII Rule 6 of the CPC for dismissal on admissions of the suit filed by the respondent no.1 / plaintiff against the petitioner / defendant no.1 and respondent no.2 Davesb Kumar.
4. Though vide the impugned order, two other applications of the petitioner / defendant no.1 were also dismissed but no challenge is made thereto and the challenge as aforesaid is confined to the dismissal of the application under Order XII Rule 6 of the CPC.

5. The respondent no.1 / plaintiff has instituted the suit from which this petition arises, *inter alia* for cancellation of the sale deed “pertaining to the plaintiff’s property bearing no.5968, First Floor, Block 3, Street 4, Dev Nagar, Karol Bagh, New Delhi-110005 and declaring the same as null and void *ab-initio*”. It is *inter alia* the case of the respondent no.1 / plaintiff that the respondent no.1 / plaintiff never intended to sell her property and never received any sale consideration or part of it and in fact was never aware of sale of her property and the defendant no.2 / respondent no.2 Davesb Kumar being the son of the respondent no.1/plaintiff made a facade of the transactions in the bank account of the respondent no.1 / plaintiff taking advantage of his employment in the said bank.

6. Dismissal of the suit on admissions was sought by the petitioner / defendant no.1 at the stage, it is informed of framing of issues in the suit, on the ground that the respondent no.1/plaintiff in her cross-examination recorded on 24th May, 2016 in Complaint Case No.852/1/10 under Sections 302/307 of the IPC deposed as under:

“Q. Did you execute any sale deed pertaining to property No.Block No.3-B, Gali No.3-4 situated at Basti Raigar, Dev Nagar, Karol Bagh, New Delhi in favour of Meena Jindal?

Ans. I never executed any sale deed in favour of Meena Jindal in respect of above said property.

The witness is shown the sale deed dated 19.10.2010 which is mark X and after going through the same, she states that at points A,B,C,D,E,F,G,H and, I, do not bear her signature on mark X.

It is correct that I filed civil suit bearing No.826/11 to declare null and void the sale deed which is mark X. It is correct that I want to take my above mentioned property back from Meena Jindal. It is correct that I told to Meena Jindal a case of forgery would be filed against her in case she did not return the property. I cannot say whether I told

Menna Jindal that in case, she did not return my above mentioned property then she would be implicated in murder case of Deepanshu. Before, filling the complaint dated 18.01.2011 to Police I did not warn Meena Jindal that she would be implicated in the murder of Deepanshu.

Q. Did you claim your property back from Meena Jindal by way of complaint dated 18.01.2011?

Ans. It is correct that except our items which accused person has taken from me, I claimed property from Meena Jindal.”

7. It was contended in the application under Order XII Rule 6 of the CPC that the respondent no.1 / plaintiff having denied her signatures on the sale deed, was not entitled to continue with the suit on the ground of the sale deed having been got executed from her by practicing deceit, fraud, undue influence and misrepresentation.

8. Finding inconsistency in the description of the property in the prayer in the plaint and in the question put to the respondent no.1/plaintiff in cross-examination aforesaid, I have enquired from the counsel for the petitioner / defendant no.1 whether not the descriptions given are of two different properties.

9. The counsel for the petitioner / defendant no.1 states that the reference is to the same property.

10. The learned ADJ, vide the impugned order, has dismissed the application reasoning that on a reading of the entire deposition, it could not be said that the respondent no.1 / plaintiff was liable to be non-suited for admission made in the deposition in the complaint case aforesaid. It has further been reasoned that the statements recorded in a criminal case cannot be read in the civil suit.

11. I have gone through the entire deposition of the respondent no.1/plaintiff in the complaint case aforesaid spanning from page nos.44 to

76 of the paper book and between the dates 22nd March, 2011 and 12th August, 2016 and agree with the reasoning given in the impugned order, that on a reading of the entire deposition it cannot be said that the respondent no.1 / plaintiff is liable to be non-suited in the suit from which this petition arises for any admission made in the said deposition. The respondent no.1 / plaintiff in fact, in part of the deposition reproduced hereinabove has admitted the filing of the subject suit also. In fact, if the respondent no.1 / plaintiff had in answer to the question asked from her, admitted to execution of the sale deed, the petitioner / defendant no.1 would have contended that the same is also an admission liable to defeat the present suit. Execution of a document under the circumstances pleaded in the plaint is no execution in law and from the deposition reproduced above, it cannot be said that the stand in the deposition is contrary to the stand in the plaint in the suit from which this petition arises.

12. There is no merit in the petition.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

SEPTEMBER 06, 2017

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