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

+ CM(M) 1089/2017

SHAMSHER SINGH

..... Petitioner

Through: Ms. Smriti Vasisht and Mr. Piyush
Rajat, Advs.

Versus

ROHTASH SINGH & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.09.2017

CMs No.35575/2017, 35576/2017 & 35577/2017 (all for exemption)

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

CM(M) 1089/2017 & CM No.35574/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders [dated 27th May, 2017 and 1st July, 2017 in Suit No.128/2016 (New No.12344/2016) of the Court of Additional District Judge (ADJ)-12 (Central), Tis Hazari Courts, Delhi] allowing the application of the respondent No.1/plaintiff for amendment of the plaint and declining the request of the petitioner/defendant to file written statement with respect to such amendment.
4. The counsel for the petitioner/defendant has been heard.

5. The suit, from which this petition arises, was filed by the respondent No.1/plaintiff for specific performance of an agreement of sale of immoveable property.
6. The respondent No.1/plaintiff, after conclusion of trial, when the suit was ripe for final arguments, applied for amendment of the plaint, to in alternative to the relief of specific performance, claim the relief of refund of double the earnest money and which amendment has been allowed by the impugned order dated 27th May, 2017.
7. The contention of the counsel for the petitioner/defendant is that the amendment could not have been allowed at the stage of final arguments and it was open to the respondent No.1/plaintiff to take the said plea at an earlier stage before the framing of the issues.
8. I have in judgment dated 18th September, 2017 in CM(M) No.1039/2017 titled ***Ram Mohan Vs. Anil Kumar*** dealt in detail on this subject and for the reasons stated therein, there is thus no merit in the challenge to the order dated 27th May, 2017 allowing the amendment.
9. As far as the challenge to the order dated 1st July, 2017 is concerned, the learned ADJ in the order dated 27th May, 2017 recorded that the amendment allowed to claim alternative relief in the plaint shall not occasion leading of evidence by the parties nor any separate issue to be framed therefor and the said alternate claim shall be considered in the legal perspective of/with the limited effect of adjudication on the point that if the plaintiff cannot succeed in the suit for specific performance, then whether the plaintiff is entitled to refund of double the earnest money paid.

10. The counsel for the petitioner/defendant, on enquiry, states that the earnest money was of Rs.5 lakhs and the petitioner/defendant admits receipt thereof.

11. The alternative relief of refund of earnest money especially when receipt thereof is admitted, does not entitle any evidence to be recorded thereon.

12. The counsel for the petitioner/defendant has argued that as per the agreement to sell, the petitioner/defendant is entitled to forfeit the same in the event of breach of the agreement by the respondent No.1/plaintiff.

13. Whether breach is on the part of the petitioner/defendant or on the part of the respondent No.1/plaintiff will in any case be determined on the issues already framed in the suit and thus there is no need to frame any issue in that respect or to allow the petitioner/defendant to take any plea in this regard.

14. As far as the claim of the respondent No.1/plaintiff for refund of double the earnest money is concerned, though I have wondered that as to how double the earnest money, even in the event of breach of the agreement by the petitioner/defendant can be ordered without there being any evidence of any loss or damage having been suffered by the respondent No.1/plaintiff but since the respondent No.1/plaintiff is satisfied with not leading any further evidence on the matter, it is deemed appropriate to not interfere with the said part of the order also with liberty to the petitioner/defendant to make requisite arguments in this regard in the written arguments which the petitioner/defendant may file.

15. The suit is of the year 2008 and is on the verge of completing ten years of pendency. The Courts, with the changing times, have to devise new methods for quick disposal of the suits and cannot remain bound by the principles of yester years, of each amendment leading to a fresh set of pleadings, fresh issues to be framed and further evidence to be led, especially when the party claiming the alternate relief is not claiming the right of proving the same.

16. Any interference at this stage would lead to the final arguments in the suit scheduled to be heard, being derailed.

With the aforesaid observations, the petition is disposed of.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 26, 2017

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(Corrected & released on 6th October, 2017)