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

+ RFA(OS) 3/2018
VEENA GUPTA

..... Appellant

Through: Mr. Shekhar Gupta, Advocate

versus

TARA CHAND (DECEASED) THR LRS

..... Respondent

Through: Ms. Ankita Chaudhary Rathi, Advocate

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

ORDER

% **15.01.2019**

C.M.1623/2019 (u/S. 151 CPC)

This is an application filed by the appellant in an appeal which was disposed of by an order dated 27.09.2018. The appellant seeks a direction to the respondent to hand over the original pay order No.195634 dated 28.05.2013 a sum of Rs.42,91,700/- drawn on Corporation Bank, Connaught Circus, New Delhi – 110001 and in the alternative a direction is sought to the concerned bank to cancel the pay order and refund the amount in favour of the appellant.

Notice. Counsel for the respondent accepts notice.

Attention of this Court is drawn to the order dated 07.11.2017 passed by the learned Single Judge, more particularly, paragraphs 5, 6 and 14, which we reproduce below:

“5. The defendant filed his written statement on 12th November, 2013 wherein the defendant did not deny the execution of agreement to sell dated 3rd March, 2013 and receipt of amount of Rupees Ten lakhs towards part sale consideration. Though defendant denied the receipt of Rs.42,91,700/-, yet, the learned counsel for the defendant admitted before this Court, as recorded in the order dated 7th August, 2013, that the pay order of Rs.42,91,700/- had not been utilized by the defendant.

6. During the pendency of the suit the defendant Mr. Tara Chand expired on 23rd February, 2014 and vide order dated 18th July, 2014 the legal heirs of Mr. Tara Chand were brought on record.

14. However, as the plaintiff's pay order of Rs. 42,91,700/- has not been utilized by the defendant, the plaintiff as well as her banker are at liberty to cancel the said pay order forthwith. The plaintiff is directed to deposit the balance sale consideration of Rs. 42,91,700/- with the Registry of this Court within eight weeks."

Since the recipient of the bank draft has expired and the legal heirs have made a statement that they are not aware of the whereabouts of the bank draft, the bank draft would be treated as cancelled and the amount would be refunded to the appellant herein.

The application stands disposed of

G.S.SISTANI, J

JYOTI SINGH, J

JANUARY 15, 2019

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RFA(OS) 3/2018

page 2 of 2