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

+ RFA 364/2006

SH. GOBIND RAM @ GOBIND LAL ..... Appellant  
Through: None.

versus

SH. HARMOHAN KHURANA AND OTHERS ..... Respondents  
Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

**ORDER**

% **05.10.2018**

1. No one appears for the appellant. This appeal is on the Regular Board of this Court since 3.7.2018.

2. This appeal was earlier dismissed in default on 18.5.2010 and was restored on 15.11.2011. This appeal was thereafter again dismissed in default on 22.7.2013 and subsequently restored on 8.10.2015.

3. The impugned judgment dismisses the suit for specific performance filed by the appellant/plaintiff but decrees the suit for an amount of Rs.50,000/- paid by the appellant/plaintiff to the respondent no.1/defendant no.1 under the subject Agreement to Sell dated 20.7.2003.

Admittedly the total sale consideration for sale of the suit property was Rs.4 lacs and of which only Rs.50,000/- was paid by the appellant/plaintiff to the respondent no.1/defendant no.1.

4. I have gone through the evidence led by the appellant/plaintiff with regard to readiness and willingness as required under Section 16(c) of the Specific Relief Act, 1963. Readiness means financial capacity to pay the balance sale consideration right from the date of agreement to sell till the passing of decree vide ***N.P.Thirugnanam (Dead) by LRs. Vs. Dr. R.Jagan Mohan Rao and Others (1995) 5 SCC 115***. However, it is seen that no documentary evidence whatsoever has been filed by the appellant/plaintiff to prove his financial capacity so as to pay the balance sale consideration of Rs.3.50 lacs.

5. In the judgment passed by this Court in the case of ***M/s Hotz Industries Pvt. Ltd. Vs. Dr. Ravi Singh (Since Deceased Through LRs) & Ors (2018) 249 DLT 638*** it has been held that self-serving averments of financial capacity cannot be held as discharge of onus of proof of having financial capacity to pay the balance sale consideration. Also it has been held in the case of ***M/s Hotz Industries Pvt. Ltd. (supra)*** that discretionary

relief of specific performance cannot be granted where just about 15% of the consideration is paid in advance. Ratio of the judgment of the case of ***M/s Hotz Industries Pvt. Ltd. (supra)*** therefore squarely applies in the facts of the present case for holding that the appellant/plaintiff did not show his readiness or financial capacity to pay the balance sale consideration of Rs.3.50 lacs and in the facts of the present case discretionary relief of specific performance cannot be granted in view of the payment by the appellant/plaintiff of only a sum of Rs.50,000/- out of the total sale consideration of Rs.4 lacs.

6. Since no one appears for the appellant, this appeal is dismissed in default and for non-prosecution. In view of the fact that this appeal has already been dismissed in default twice and restored twice and the present order of dismissal in default is the third order of dismissal in default, at the time of dismissing this appeal in default and for non-prosecution, it is ordered that that no application for restoration/recall of this order be entertained unless the appellant/plaintiff deposits a sum of Rs.30,000/- with the website [www.bharatkeveer.gov.in](http://www.bharatkeveer.gov.in).

**VALMIKI J. MEHTA, J**

**OCTOBER 05, 2018/Ne**  
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