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

+ FAO(OS) 67/2017 & CM No.17861/2017

S GURCHARAN SINGH & ANR Appellants
Through : Mr. Rohit Gandhi, Adv.
along with the appellants.
versus

NAWAL MAGAN & ORS Respondents
Through : Ms Yashasuika Sharma,
Adv. for R-2(b) along with
the respondents
Mr. Tushar Dua, Adv. for R-
3 along with Mr. Ravindran
Menon, AGM.

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Through : Mr. Rohit Gandhi, Adv.
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versus

NAWAL MAGAN & ORS Respondents
Through : Ms Yashasuika Sharma,
Adv. for R-2(b) along with
the respondents.
Mr. Tushar Dua, Adv. for R-
3 along with Mr. Ravindran
Menon, AGM.

CORAM:
HON'BLE THE ACTING CHIEF JUSTICE
HON'BLE MR. JUSTICE CHARI SHANKAR

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ORDER
15.01.2018

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1. The respondent nos.1 and 2 as owners of the property A-112, Derawal Nagar, New Delhi, entered in an agreement to sell dated 22nd August, 2014 with this property with the appellants. Part payment was received by these respondents. Upon disputes arising in connection therewith, the appellants filed CS(OS)No.149/2016 seeking specific performance of the agreement. It appears that the Indian Overseas Bank, a creditor of the respondent nos.1 and 2 set up a claim regarding this property resulting in the appellants filing two applications, I.A.Nos.8294/2016 and 16195/2016.

2. In this suit, by an order dated 31st January, 2017, the Id. Single Judge has rejected the I.A.No.8294/2016 filed by the plaintiffs for impleadment of the Indian Overseas Bank as party in the suit.

This order has been challenged by way of FAO(OS)No.67/2017. Before us all parties, including the Indian Overseas Bank have submitted that the Bank is a necessary and proper party for complete and effective adjudication of the disputes.

3. By the same order, the Id. Single Judge has rejected the I.A.No.16195/2016 also filed by the plaintiff seeking a direction to the respondent nos.1 and 2 to deposit the amount of sale consideration received by it with the Indian Overseas Bank.

The order of this rejection has been challenged by way of FAO(OS)No.68/2017.

4. It appears that on reference of all the parties in these two appeals to mediation before the Delhi High Court Mediation and Conciliation Centre, the parties have been able to resolve all issues not only between the appellants and respondent nos.1 and 2 but also with the Indian Overseas Bank and executed a Settlement Agreement dated 22nd December, 2017.

5. In support of the settlement agreement dated 22nd December, 2017 (*Exhibit C-D*), statements of S. Gurcharan Singh (*appellant no.1*), S. Amitpal Singh (*appellant no.2*), Shri Nawal Magan (*respondent no.1*), Shri Subhash Magan (*respondent no 2*) and Shri M. Ravindran Menon, Assistant General Manager of Indian Overseas Bank on behalf of the Bank have been recorded in court today.

6. These parties have stated that Exhibit C-1 correctly records the settlement entered into by them voluntarily without any kind of force, pressure or undue influence and that it has been arrived at of their own volition.

There is, therefore, no legal impediment for taking the same on record and accepting the same. It is so directed.

7. In view thereof, interest of justice would merit, if Indian Overseas Bank is impleaded as party respondent in the present matter.

8. All the parties have given their undertaking to remain bound by the terms of the settlement arrived at between them.

9. We find that in terms of clause 6 of the settlement agreement, upon receipt of the payment, detailed in Clause 4 of Exhibit C-I, the Indian Overseas Bank is required to issue sale certificates in respect of property mortgaged with it. Given the fact that basement, parking and four floors stand constructed on the suit property, the appellants would be entitled to issuance of sale certificate in respect of each floor of the property in their favour or in favour of their nominees.

In view of the above, with the consent of all parties, it is directed as follows :

(i) The order dated 31st January, 2017 dismissing the I.A.No.8294/2016 as well as I.A.No.16195/2016 is hereby set aside and quashed. The Indian Overseas Bank shall stand impleaded as party defendant No.3 in CS(OS)No.149/2016. Amended memo of parties shall be filed in the suit by the appellants within one week.

(ii) The Settlement Agreement dated 22nd December, 2017 (Exhibit C-I) is taken on record and is accepted.

(iii) The undertakings tendered by all the parties are accepted. The parties shall remain bound by the terms of the settlement and their undertakings.

(iv) The Indian Overseas Bank shall issue separate sale certificates for each of the floor of the property bearing No.A-112,

Derawal Nagar, New Delhi in favour of either the appellants or their nominees.

(v) The Registry shall draw up decree sheet in CS(OS)No.149/2016 in terms of the Settlement Agreement dated 22nd December, 2017 (Exhibit C-1).

(vi) the parties having resolved the disputes by recourse to mediation, it is directed that in terms of Section 16 of the Court Fees Act, the appellants would be entitled to refund of 50% of the court fee fixed on the plaint. The Registry shall draw up the requisite certificate in this regard.

(vii) These appeals and pending applications are disposed of in terms of the Settlement Agreement dated 22nd December, 2017 (Exhibit C-1).

Sd/-
ACTING CHIEF JUSTICE

Sd/-
C.HARTSHANKAR, J

JANUARY 15, 2018

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*True Copy
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Examiner*

