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

+ CS(OS) 2251/2012

AKASH DARALL Plaintiff

Through: Mr. Anand Lochav, Adv. with
plaintiff in person.

versus

INDER SINGH & ORS Defendants

Through: Mr. O.P. Bharti Gowsami, Adv.

CORAM:

HON'BLE MR. JUSTICE J.R. MIDHA

ORDER

% **23.08.2018**

1. The plaintiff instituted this suit on 09th July, 2012 seeking specific performance of the agreement to sell dated 28th November, 2007. This suit was listed on 27th July, 2012 and this Court issued summons to the defendants for 25th September, 2012.
2. On 25th September, 2012, defendants No.1 to 13, 15 and 16 entered appearance before the learned Joint Registrar and submitted that defendant No.14 has already expired before the institution of the suit.
3. The plaintiff filed I.A.878/2013 for impleading the LR's of defendant No.14. This application was dismissed on 19th December, 2013 and it was recorded that the suit against the defendant No.14 stands abated.
4. On 15th May, 2015, the suit was dismissed in default. The plaintiff filed I.A.18699/2015 and I.A.18700/2015 seeking restoration of the suit.
5. On 22nd February, 2017, this Court restored the suit subject to cost of Rs.2,500/- to be paid by the plaintiff to each of the defendants within two weeks. However, the plaintiff did not pay the aforesaid cost within the time

granted.

6. On 05th February, 2018, the plaintiff sought extension of time to deposit the cost whereupon this Court enhanced the cost of Rs.2,500/- to Rs.7,500/- to each of the 16 defendants. This Court further directed if the cost was not paid on or before 20th February, 2018, the suit would be posted for orders.

7. On 05th February, 2018, the counsel for the defendants intimated the Court that defendant No.1 expired on 31st August, 2015 and defendant No.7 expired on 10th September, 2016. However, no steps have been taken by the plaintiff to substitute the legal representatives of defendants No.1 and 7 and, therefore, the suit abated against defendants No.1 and 7. Learned counsel for the defendants submits that the whole suit of the plaintiff has abated on account of abetment against defendants No.1, 7 and 14.

8. On 22nd April, 2018, the plaintiff paid cost of Rs.37,500/- to counsel for the defendants whereas the cost of Rs.1,12,500/- was payable by the plaintiff.

9. Learned counsel for the plaintiff seeks waiver of the cost enhanced by this Court vide order dated 05th February, 2018.

10. Learned counsel for the defendants submits that the plaintiff's suit be dismissed for failure to pay the cost imposed by this Court. It is further submitted that the defendants have filed an application under Section 340 Cr.P.C. for prosecuting the plaintiff for forging the alleged agreement and raising a false claim before this Court. Learned counsel for the defendants submits that the details of the forgery committed by the plaintiff are given in the application. It is further submitted that the suit is clearly barred by limitation having filed after more than three years on the alleged breach. It is submitted that the plaintiff is seeking specific performance of the alleged agreement dated 28th November, 2007 after more than four years of the

alleged breach. Reference is made to alleged agreement which was to be performed by the defendants by 10th December, 2007 and in para-7, the plaintiff has alleged the breach by the defendants of the agreement.

11. This Court is of the view that the suit was restored subject to cost which was condition precedent to the restoration. Reference be made to Section 35 B of Code of Civil Procedure, 1908. The plaintiff has defaulted in the payment of the cost imposed by this Court for restoration of the suit. No ground for waiver of the cost is made out. Since the restoration was subject to cost which has not been paid, the suit is not restored. The plaintiff's suit is dismissed.

12. With respect to the defendants' application CRL.M.A.19434/2012 under Section 340 Cr.P.C., there is merit in the contentions urged by learned counsel for the defendants that the plaintiff's suit is frivolous. However, no further orders are warranted at this stage considering that the plaintiff's suit has been dismissed. The application is therefore, disposed of.

13. I.A.13530/2012 is also disposed of.

J.R. MIDHA, J.

AUGUST 23, 2018

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