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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ IA No.124/2018 (of the plaintiff under Order IX Rule 9 CPC) in
CS(OS) 2027/2010
GAURAV AGGARWAL Plaintiff

Through: Mr. Jenis Francis & Mr. Gaurav Beri,
Adv.

Versus

MAHENDER KUMAR Defendant

Through: Ms. Rachna Agrawal, Adv. with
defendant in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.04.2018**

1. This order is in continuation of the earlier orders dated 30th November, 2017 and 5th January, 2018.
2. The counsel for the plaintiff states that though the plaintiff was present in the Court but had to rush out owing to a family emergency.
3. The counsel for the defendant states that the defendant is present in Court.
4. The counsels have been heard.
5. What has transpired today is as under:
 - (i) that the defendant along with his two other brothers is the owner of property No.M-291, Greater Kailash Part-II, New Delhi-110048 comprising of freehold land ad-measuring 400 sq. yds. and basement and ground floor constructed thereon;
 - (ii) that there is no construction above the ground floor and the terrace above ground floor also belongs to the defendant and his two brothers;

- (iii) that the defendant and his two brothers have $1/3^{\text{rd}}$ undivided share each in the said property;
- (iv) that the defendant, in the year 2010, had agreed to sell his $1/3^{\text{rd}}$ undivided share to the plaintiff for a sale consideration of Rs.3.35 crores and out of which the plaintiff had paid Rs.60 lacs on 12th February, 2010 to the defendant and for specific performance of which Agreement to Sell, the present suit was filed;
- (v) that during the pendency of this suit, in or about the year 2012, a fresh Agreement to Sell was arrived at between the plaintiff and the defendant and in which the sale consideration was enhanced to Rs.3.60 crores and the plaintiff paid another sum of Rs.75 lacs to the defendant;
- (vi) that one of the brothers of the defendant is residing in the property aforesaid, though the defendant has some parts of the property under his lock and key;
- (vii) that the third brother of the defendant has not locked any part of the property;
- (viii) that as per the defendant, the prevalent market value of the property is Rs.20 crores and in which the defendant would have $1/3^{\text{rd}}$ undivided share;
- (ix) the counsel for the plaintiff is not aware of the valuation;

- (x) the counsel for the plaintiff states that he has instructions for the plaintiff to settle the lis on refund by the defendant of Rs.1.35 crores with interest as may be deemed appropriate by this Court;
 - (xi) the counsel for the defendant states that the defendant is even today willing to sell his 1/3rd undivided share to the plaintiff for the sale consideration as per agreement of the year 2012, subject to the balance sale consideration being paid along with interest as may be deemed appropriate by this Court;
 - (xii) the counsel for the plaintiff states that he has no instructions from the plaintiff in this regard;
 - (xiii) both counsels blame each other for non-performance of the Agreement to Sell of the year 2012, with the counsel for the defendant, in addition, also contending that the present suit is in any case liable to be dismissed being for specific performance of the Agreement to Sell of the year 2010 and the plaintiff having not sued for specific performance of the Agreement to Sell of the year 2012.
6. In the aforesaid state of affairs:
- (a) Only for the purpose hereinabove mentioned, the order dated 30th November, 2017 of dismissal of the suit in default is recalled and the suit is restored to its original position;
 - (b) A decree is passed in favour of the plaintiff and against the defendant for recovery of Rs.1.35 crores with interest @6% per annum with effect from 1st June, 2012;

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(c) However, if the defendant repays a sum of Rs.1.35 cores to the plaintiff on or before 15th May, 2018, the entire decree shall stand satisfied and the defendant shall not be liable to pay any amount towards interest thereon.

No costs.

Decree sheet be drawn up.

APRIL 02, 2018

'gsr'

CS(OS) 2027/2010

RAJIV SAHAI ENDLAW, J

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