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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 241/2016, CC No.67/2016 and IA No.5831/2018 (u/O XVI
R-1 CPC)
SUSHIL VERMA Plaintiff

Through: Mr. Sandeep Khurana & Ms. Seemab
Ali Fatima, Advs.

Versus

RAKESH VARMA Defendant
Through: Defendant in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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30.05.2018

1. The parties in this suit for recovery of possession of immovable property and Counter Claim for specific performance of an agreement of sale of the said immovable property, were vide order dated 1st May, 2018 referred to the Mediation Cell of this Court.
2. Mediation has been successful with the efforts of Mr. Mohd. Anis Ur Rehman, Mediator / Advocate and a Settlement Agreement dated 8th May, 2018 purporting to be signed by the plaintiff, defendant, the counsel for the plaintiff and the Mediator has been received from the Mediation Cell of this Court.
3. The counsel for the plaintiff states that the defendant as identified by him appears.
4. The counsel for the plaintiff and the defendant in person state that the suit and the Counter Claim be disposed of in terms of the Settlement Agreement.
5. I have perused the Settlement Agreement.

6. The defendant therein has admitted title of the plaintiff to the immovable property and that the defendant is in occupation thereof as a licensee. The plaintiff under the Settlement Agreement has agreed to sell the said immovable property to the defendant on the terms contained in the Settlement Agreement. The parties, in the Settlement Agreement, have also agreed to the suit being decreed in terms of Settlement Agreement and the Settlement Agreement being made enforceable by execution.

7. I have enquired from the counsel for the plaintiff as to how an executable decree can be passed on the terms agreed which are in the nature of an agreement to sell and when the parties have yet to perform their respective obligations as contained in the Settlement Agreement.

8. I have further enquired, that if any dispute arises between the parties as to the performance of the respective obligations, how the same can be adjudicated in execution. It appears that a fresh legal proceeding will have to be pursued between the parties.

9. The counsel for the plaintiff states that instead of passing a decree, the suit and the Counter Claim be disposed of by binding the parties to the terms of the Settlement Agreement.

10. Thus though the aforesaid lacuna is found in the Settlement Agreement, of not culminating the disputes between the parties and leaving the disputes if any to arise, to brew and culminate in a further litigation, but the proposal of the counsel for the plaintiff is accepted and the suit is disposed of by binding the parties to the terms of the Settlement Agreement and with the clarification that no decree is being passed and if

any fresh disputes arise out of the Settlement Agreement, that will have to be subject matter of fresh proceedings.

11. The parties are left to bear their own costs.

12. A certificate entitling the plaintiff as well as the defendant to refund of court fees paid on the suit and the counter claim be issued to the plaintiff and the defendant respectively.

13. A copy of this order be sent to the Secretary, Mediation Cell of this Court.

14. This is yet another instance of the Mediator of the Mediation Cell having not applied correct Rules of Mediation and having not drafted the Settlement Agreement in the manner in which it should have been drafted.

15. The consequences of non-performance of the obligations should have been provided in the Settlement Agreement so that in the event of any party being in breach of its obligations, the consequences thereof in the form of a decree, either in the suit and / or in the Counter Claim should have followed and which was capable of execution.

16. The Secretary, Mediation Cell is requested to take remedial action.

RAJIV SAHAI ENDLAW, J.

MAY 30, 2018

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