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

+ **CS(OS) 3451/2012**

VIJAY ISRANI

..... Plaintiff

Through: Mr. Dinesh Garg, Ms. Rachna
Agrawal, Advs. along with plaintiff in
person.

Versus

SANJAY ANAND

..... Defendant

Through: Mr. Swetank Shantanu, Mr. Pratap
Shanker, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **22.03.2018**

**IA Nos. 4006/2018 (u/O XXIII R-3 & 3A CPC) & 4007/2018 (of the
plaintiff u/S 16 of the Court Fees Act)**

1. The parties in this suit for specific performance of an agreement of sale of immovable property were, vide order dated 20th July, 2017, referred to the Mediation Cell of this Court.
2. Mediation has been successful with the efforts of Mr. Manu Nayar and Mr. S. S. Ahluwalia, Advocates / Mediators and an application being IA No.4006/2018 under Order XXIII Rule 3 of the Code of Civil Procedure, 1908 along with a copy of the Settlement Agreement purported to be signed by the sole plaintiff and the sole defendant and by their advocates and the mediators, has been filed.
3. The counsel for the plaintiff and the counsel for the defendant support the settlement / compromise and the application and state that the application is also accompanied with the affidavits of the parties.

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4. I have perused the settlement / compromise arrived at between the parties.
5. The same, in Clause 6(e), provides for the defendant to not sell the property for a period of five years to any third party and if chooses to do so, provides for a pre-emptive right of the plaintiff to purchase the same.
6. I have enquired from the counsel for the parties as to how the said part of the settlement / compromise can be said to be lawful, for a decree under Order XXIII Rule 3 of the CPC to be passed in terms thereof. It is found that if such inexecutable decrees are passed and execution are filed thereof, the same unnecessarily remain pending, keeping the parties entangled in litigation.
7. Neither counsel has been able to satisfy qua the lawfulness of the said part.
8. Option has been given to the counsel for the plaintiff, to take the refund of the money agreed to be refunded, after five years, if wants to have a pre-emptive right of purchase for a period of five years; else there is no consideration for the said part of the agreement/compromise.
9. Option given, has not been accepted by the plaintiff, stated to be present in person in the Court.
10. Making it clear that the plaintiff, shall not be entitled to file any execution for enforcement of Clause 6(e) insofar as the same relates to the said period of five years and that if at all the plaintiff needs to take benefit of the same, shall have to file a separate suit therefor, the settlement / compromise is accepted and IA No. 4006/2018 is allowed.
11. A decree is passed in terms of the Settlement Agreement and this order, both of which shall form part of the decree sheet, leaving the parties to bear their own costs.

12. The plaintiff also seeks refund of the court fees paid.
13. A certificate entitling the plaintiff to refund of the court fees be issued and handed over to the counsel for the plaintiff.
14. IA No. 4007/2018 is disposed of.
15. A copy of this order be sent to the Mediation Cell of this Court for appropriate action.
16. The next date of 10th May, 2018 is cancelled.

RAJIV SAHAI ENDLAW, J

MARCH 22, 2018

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