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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(COMM) 433/2017, IA No.1605/2018 (u/O XXIII R-3 CPC), IA
No.7304/2017 (u/O XXXIX R-1&2 CPC) & IA No.524/2018 (u/S
151 CPC)

SHASHIBIR SINGH SARANG

..... Plaintiff

Through: Mr. Ashim Vachher, Mr. Pawash
Piyush & Mr. Vaibhav Dabas, Advs.

Versus

GROUND ZEERO DEVELOPERS & ORS

..... Defendants

Through: Mr. Sandeep Singh, Adv. for D-1.
Mr. Shahzad Zafar Ali, defendant
no.5 in person.
Mr. Mobin Akhtar, Adv. for D-6.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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08.02.2018

1. This order is in continuation of the earlier order dated 6th February, 2018.
2. Mr. Ashim Vachher, Advocate for the plaintiff states that the plaintiff, though a resident of India has gone to United States for medical check up and owing to his engagement there, is unable to return earlier but he has personally spoken to the plaintiff and the wife of the plaintiff is also present in Court.
3. Mr. Ashim Vachher, Advocate for the plaintiff further states that his colleague could not correctly explain the position on 6th February, 2018. It is clarified that the plaintiff has no intention to withdraw IA No.1605/2018 (under Order XXXIII Rule 3 CPC) as was represented by his colleague on 6th February, 2018 and the plaintiff is bound by the compromise as contained therein and in the Memorandum of Understanding (MoU) dated 5th January, 2018 annexed thereto. He however states that the defendants no.5 and 6 viz. Shahzad Zafar Ali and Nikhat

Shahzad Zafar Ali have already, in contravention of the compromise, encroached upon portions of the property which under the compromise belong to the plaintiff.

4. I have enquired from the counsel for the plaintiff, whether not the portions are clearly demarcated in the compromise and whether not the remedy if any of the plaintiff for contravention of the compromise would be either by way of execution or by way of separate legal proceedings.

5. The counsel for the plaintiff states that the encroachment averred by the plaintiff is clearly contrary to the compromise but otherwise agrees that the plaintiff will take appropriate proceedings with respect to the encroachment.

6. Notwithstanding the above, attempt has been made to settle the controversy at this stage only but the defendant no.5 present in person controverts that he and his wife have encroached, in any manner whatsoever, over any portion which under the compromise is of the plaintiff.

7. In this view of the matter, IA No.1605/2018 is allowed and a decree is passed in the suit in terms of IA No.1605/2018 and MoU dated 5th January, 2018 and orders dated 6th February, 2018 and today's order, which shall all form part of the decree sheet.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J

FEBRUARY 08, 2018

‘gsr’..