

\$~15

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

+ **CS(OS) 7/2017**

AMIT KUMAR YADAV Plaintiff

Through: Mr. Tarun Singla and Mr. K.C. Joshi,
Adv.

Versus

RISHI PAL YADAV Defendant

Through: Mr. G.S. Chauhan, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **10.01.2018**

CS(OS) 7/2017 & IA No.12223/2017 (of defendant u/S 10 CPC)

1. The plaintiff has instituted this suit for cancellation of the Agreement to Sell, for specific performance whereof the defendant, prior to the institution of this suit, has instituted CS(OS) No.584/2016 and which is pending consideration.
2. The counsel for the plaintiff states that the two suits be consolidated.
3. I have enquired from the counsel for the plaintiff the need for the grant of relief of cancellation of the Agreement to Sell when specific performance thereof is a subject matter of previously instituted suit.
4. The counsel for the plaintiff states that the need for cancellation arises because in the event of the suit for specific performance filed by the defendant being dismissed, the Agreement to Sell, without cancellation thereof in this suit, would remain alive.
5. I have enquired from the counsel for the plaintiff that if the defendant is not found entitled to the relief of specific performance, how will the

Agreement to Sell remain alive and for what purpose. The remedy of the defendant against the dismissal of his suit for specific performance would only be of preferring an appeal against the decree of dismissal.

6. The counsel for the plaintiff has no answer but vaguely states that the Courts have been consolidating such suits.

7. Merely because in some other cases consolidation may have been affected, without considering the said scenario, would not entitle the plaintiff herein also, to keep the present suit alive.

8. The counsel for the defendant volunteers, that in the event of the suit for specific performance filed by the defendant being dismissed, the defendant, save for preferring an appeal against the judgment and decree, will otherwise not act under the Agreement to Sell of which specific performance is claimed.

9. Accepting the undertaking aforesaid of the defendant and binding the defendant thereto and without prejudice to the rights and contentions of the plaintiff herein in the suit for specific performance, this suit is disposed of as infructuous.

10. The date of 19th February, 2018 before the Joint Registrar is cancelled.

No costs.

RAJIV SAHAI ENDLAW, J.

JANUARY 10, 2018

Bs..