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IN THE HIGH COURT OF DELHI AT NEW DELHI

+ **RFA 175/2018 and C.M. Appl. No. 5874/2018 (for stay)**

PREM EWING

..... Appellant

Through: Mr. Saurabh Munjal, Advocate
(Mobile No. 9818019562).

versus

AMRIT LAL

..... Respondent

Through: Mr. H.D. Aneja, Advocate (Mobile
No. 9810969982).

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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17.12.2018

1. When this appeal came up for admission for the first time on 16.2.2018, the following order was passed:-

“C.M. No.5875/2018 (exemption)

1. Exemption allowed subject to just exceptions.
C.M. stands disposed of.

C.M. No.5876/2018 (for condonation of delay)

2. For the reasons stated in the application, delay of 111 days in re-filing the appeal is condoned.

C.M. stands disposed of.

+RFA No.175/2018 and C.M. No.5874/2018 (stay)

3. This Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) impugns the judgment of the Trial Court dated 7.7.2017 by which trial court has dismissed the suit for specific performance. It is seen from the impugned judgment as also from the

record of the trial court, and as conceded on behalf of the appellant/plaintiff, that appellant/plaintiff did not file any documentary evidence whatsoever to show the financial capacity of the appellant/plaintiff to pay the balance sale consideration of US\$ 2,90,000. Once plaintiff has failed to prove her financial capacity, then, plaintiff has failed to prove her readiness and willingness which is required under Section 16(c) of Specific Relief Act, 1963.

4. At this stage, counsel for the appellant states that appellant does not seek the relief of specific performance but now only seeks refund of US\$ 10,000 which was paid by the appellant/plaintiff to the respondent/defendant under the subject agreement to sell dated 26.10.2007. It is pleaded that though such relief has not been specifically prayed but Court can grant such relief under Order 7 Rule 7 CPC, more so because the respondent/defendant had failed to lead any evidence.

5. Limited to the aforesaid aspect of return of US \$ 10,000 notice be issued to the respondent, on filing of process fee, in the ordinary method, registered post AD and approved courier, returnable on 23rd May, 2018.”

2. It is agreed and this appeal is disposed of with the consent order that the respondent will pay to the appellant a sum of US \$ 10,000/- within a period of three months from today, but subject to any adjustment for any payment already made/deposited by the respondent towards price of subject property in any other litigation in US Courts qua the subject property.

3. The appeal is accordingly disposed of in terms of the aforesaid consent order.

VALMIKI J. MEHTA, J

DECEMBER 17, 2018

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