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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 693/2017 & IA 11835/2017 (u/O XXXIX R 1 & 2 CPC)**
SATINDER PAL MALHOTRA Plaintiff
Through : **Mr. Arun Khosla, Ms. Shreeanka**
Kakkar, Adv.

versus

R.P. WALIA & ANR Defendants
Through : **Mr. Rajiv Bajaj, Adv. with D-1.**

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **08.03.2018**

1. The plaintiff has instituted this suit for specific performance of an agreement of sale of immovable property and for permanent injunction.
2. The suit was entertained and pleadings were completed.
3. The suit was listed last before this Bench on 6th March, 2018 when owing to paucity of time, issues proposed by the counsel for the plaintiff as well as by the counsel for both the defendants were permitted to be handed over in the Court and the file sent to the Chamber for framing of issues after studying the file.
4. On studying the file, it is found that the total sale consideration of the agreement to sell, of which specific performance is sought, was Rs.1.27 crores and the suit, for the purposes of court fees and jurisdiction, is also valued at Rs.1.27 crores on the relief of specific performance and at Rs.200/-for the relief of permanent injunction, with the total valuation of the CS(COMM) 693/2017

suit being Rs.1,27,00,200/-.

5. The suit, on the date of institution thereof, was below the minimum pecuniary jurisdiction of this Court of above Rs. 2 crores and ought not to have been entertained by the Registry and/or admitted. Perhaps, the same was overlooked owing to the plaintiff having labelled the same as a commercial suit.

6. Thus, issues were not framed and the matter directed to be listed for today.

7. The counsel for the plaintiff states that the suit is a commercial suit owing to the property, subject matter of agreement to sell of which specific performance is sought, being a commercial property. On enquiry as to how the property is commercial, the counsel for the plaintiff draws attention to page 7 of Part-III file being the agreement of which specific performance is sought.

8. However, a perusal of the said document shows the same to be describing the building as comprising of “2 BHK flats”.

9. The expression ‘BHK’ is well recognized in the trade and stands for Bedroom, Hall and Kitchen. The question of bedrooms, in a commercial property, does not arise. Thus, as per the agreement also, the property is residential.

10. The counsel for the plaintiff, however, states that since it has been recorded that “buyer must earn income from the new flats”, it qualifies as commercial property.

11. I have enquired from the counsel for the plaintiff, whether it is not possible to earn income from residential flats.

12. No answer is forthcoming.

13. It is thus quite obvious that the averment in the plaint, of the property being commercial, to somehow or the other file the suit as a commercial suit and entertained by this Court, is false.

14. Otherwise also, even if the property were to be commercial, the same would not entitle the plaintiff to label the suit for specific performance of an agreement of sale of such immovable property for a sale consideration less than the minimum pecuniary jurisdiction of this Court, as a commercial suit, as held by this Court in *Soni Dave Vs. Trans Asian Industries Expositions Pvt. Ltd.* AIR 2016 Del 186.

15. The counsel for the defendants ought to have pointed out the said fact on 6th March, 2018, instead of allowing this Court to proceed with framing of issues in the suit.

16. The counsels, for their own convenience, cannot be permitted to lead this Court into entertaining suits below its minimum pecuniary jurisdiction.

17. The plaint is thus ordered to be returned to the plaintiff along with court fees and original documents, in accordance with rules in that regard, for presentation in the Court of appropriate jurisdiction.

18. On request of the counsel for the plaintiff, the ex parte interim order dated 13th October, 2017 in force in this suit directing maintenance of status quo qua title and possession in respect of property No. 9950 Sarai Rohilla, Maharaja Niwas, Delhi admeasuring 306 sq. yds. is continued till 6th April, CS(COMM) 693/2017

2018. If there is no such interim order thereafter in any other proceeding, the above interim order shall lapse automatically.

RAJIV SAHAI ENDLAW, J

MARCH 08, 2018

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