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

+ RFA 105/2019

RAJBIR SINGH

..... Appellant

Through: Mr. Uchit Bhandari and Mr.
M.K.Sinha, Advocates (9999602980)

versus

RAKESH KUMAR & ANR

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

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05.02.2019

CM No.5420/2019 (Exemption)

1. Exemption allowed subject to just exceptions.

CM stands disposed of.

RFA No. 105/2019 & CM No. 5419/2019 (stay)

2. The impugned judgment decrees the suit filed by the respondent no.1/plaintiff for an amount of Rs.6 lacs being double the amount paid under the Agreement to Sell/Bayana Receipt dated 25.12.2011. It is seen from the trial court record filed along with the appeal that the respondent no.1/plaintiff has failed to plead and prove any loss caused to him as a buyer of the suit property on account of the property prices rising to the extent of

Rs.3 lacs, and therefore, this amount of Rs.3 lacs with the original amount paid of Rs.3 lacs, totalling to Rs.6 lacs becomes the entitlement of the respondent no.1/plaintiff. In a contract being an agreement to sell, damages can be proved, and if damages are not proved, liquidated damages of Rs.3 lacs cannot be granted under Section 74 of the Contract Act, 1872.

3. In view of the aforesaid arguments urged on behalf of the appellant, till further orders unless varied by the Court, there shall be stay of operation of the impugned judgment and decree dated 24.9.2018 passed by the Court of Sh.Sunil Chaudhary, ADJ-03(N/W) Rohini Courts, Delhi in CS No. 575925/2016 titled as ***Rakesh Kumar Vs. Rajbir Singh & Anr.***, subject to the appellant/defendant no.1 depositing in this Court within a period of six weeks from today an amount of Rs.3 lacs along with interest at 12% per annum simple from 25.12.2011 till the date of deposit in this court.

4. Notices be issued to the respondents, on filing of process fee both in the ordinary method as well as by registered AD post, returnable on 29th April, 2019.

Dasti.

VALMIKI J. MEHTA, J

FEBRUARY 05, 2019

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