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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS(COMM) 227/2019**
INDERPREET SINGH BHATIA Plaintiff
Through: Mr. Gaurav Bahl, Adv.
Versus

ASHOK KUMAR MEHTANI & ANR. Defendants
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **01.05.2019**

IA No.6313/2019 & 6314/2019 (both for exemption)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CS(COMM) 227/2019 & IA No.6312/2019 (u/O XXXIX R-1&2 CPC)

3. The plaintiff has sued for specific performance of an Agreement to Sell dated 25th August, 2016 by the defendant No.1 Ashok Kumar Mehtani of property No.M-19, Lajpat Nagar-III, New Delhi in favour of the plaintiff.
4. For the plaintiff to be entitled to the relief of specific performance, Section 16(c) requires the plaintiff to plead and prove that the plaintiff has always been ready and willing and is ready and willing to perform his part of the agreement. Further, it has been held in (i) ***Kumar Dhirendra Mullick Vs. Tivoli Park Apartments (P) Ltd.*** (2005) 9 SCC 262, (ii) ***Kishan Lal Chabra Vs. Anil Arora*** (2009) 156 DLT 779 and (iii) ***Ansal Properties and Industries Pvt. Ltd. Vs. Ratnu*** 2013 SCC OnLine Del 4532 that such readiness and willingness has to continue not only till the institution of the suit but even thereafter, even after the decree for specific performance is

passed and till the Conveyance Deed in pursuance thereto is executed.

5. A perusal of the plaint shows the averments made by the plaintiff in relation to his readiness and willingness to be contrary and inconsistent with the Agreement to Sell, copy of which has been filed by the plaintiff before this Court. Under the Agreement to Sell, several obligations were to be performed by the plaintiff and which the plaintiff, as per the pleadings in the plaint, is imposing upon the defendant No.1 and pleading non-performance thereof by the defendant No.1. Not only so, the plaintiff in the plaint is making averments contrary to the Agreement to Sell. It is pleaded that it was the defendant No.1 who was to get the property vacated from defendant No.2 Rashtriya Virjanand and Kanya Vidhalaya Society (Regd.), who is in occupation of the property. However, a perusal of the Agreement to Sell shows that it was the plaintiff who had been put in constructive possession of the property and was authorised to get the property vacated from the defendant No.2.

6. All this shows that the plaintiff was not ready and willing to perform his part of the Agreement to Sell, of which specific performance is sought.

7. The counsel for the plaintiff faced therewith seeks an opportunity to seek amendment of the plaint.

8. However, it is not the duty of the Court to tell the plaintiff or his counsel, what shows and what does not show readiness and willingness. Moreover, the averments in the plaint as filed admit of lack of readiness and willingness on the part of the plaintiff and the plaintiff cannot now be permitted to amend the plaint to withdraw the said admissions, to the prejudice of the defendant No.1.

9. When dictation of the order of rejection of the plaint had been commenced, the counsel for the plaintiff states that he be permitted to withdraw the suit, insofar as for specific performance of the Agreement to Sell dated 25th August, 2016, with liberty to sue for refund of the amount of Rs.11 lacs claimed to have been paid to the defendant No.1.

10. I may notice that though in this suit, in alternative to the claim for specific performance, a claim for refund of double the amount of advance paid i.e. of Rs.22 lacs has been claimed, but the plaintiff having been found to be in breach of the agreement and having withdrawn the suit for specific performance, cannot be permitted to claim double the amount paid. The entitlement, if any of the plaintiff would only be to refund of the amount paid with interest.

11. The counsel for the plaintiff however states that he has claimed Rs.22 lacs in addition to the relief of specific performance.

12. Not only is the said argument contrary to what is pleaded and claimed in the plaint but the said argument also is in negation of entitlement, if any to the relief of specific performance. The claim of the plaintiff, for what is paid under an agreement to sell, also shows unwillingness of the plaintiff to perform his part.

13. Thus, the suit for the relief of specific performance of the Agreement to Sell dated 25th August, 2016 with respect to property No.M-19, Lajpat Nagar-III, New Delhi is dismissed as withdrawn. It is emphasized that the plaintiff shall not have any right to sue afresh for specific performance.

14. Liberty is however granted to the plaintiff to, in accordance with law, sue for recovery of the amount of Rs.11 lacs claimed to have been paid, with interest, if found to be payable.

15. I am refraining from imposing costs on the plaintiff.

RAJIV SAHAI ENDLAW, J.

MAY 01, 2019

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