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

+ C.R.P. 145/2019

LALIT KUMAR

..... Petitioner

Through: Mr Joginder Sukhija, Advocate.

versus

RAJ KUMAR & ANR

..... Respondents

Through: Mr Avanish Kumar, Advocate.

CORAM:

HON'BLE MR. JUSTICE VIBHU BAKHRU

ORDER

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22.08.2019

CM APPL. 31142/2019

1. Exemption is allowed, subject to all just exceptions
2. The application is disposed of.

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3. The petitioner (plaintiff in suit Suit numbered as civil/dj/936/2017 captioned "*Lalit Kumar v. Raj Kumar and Anr.*") has filed the present petition impugning an order dated 10.04.2019 passed by ADJ-05/ West, Tis Hazari Court, Delhi, rejecting the petitioner's application filed under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC)
4. The parties had entered into an Agreement to Sell whereby the respondents had agreed to sell their share of the Suit Property (Janta Flat, Bearing No. 172-A, Ground Floor, Paschim Vihar Extension, New Delhi-110063) for a consideration of ₹2,00,000/- each.
5. In terms of the said agreement, the petitioner had paid a sum of ₹1,00,000/- each to the respondents and was further required to pay the

balance amount of ₹1,00,000/- each in November, 2016 or as mutually decided by the parties. Admittedly, the petitioner did not pay the balance amount in November, 2016. There is also no written agreement on record indicating that the parties had decided to mutually extend the time period. Since the petitioner did not pay the balance amount, the respondents caused a legal notice dated 29.05.2017 to be served on the petitioner, calling upon the petitioner to pay an amount of ₹2,00,000/- each, as damages in view of the delay in payment and on account of increase in the price of property.

6. Subsequently, the petitioner filed a suit for specific performance. In the written statement, the defendants (respondents herein) stated that the plaintiff (petitioner herein) had offered a sum of ₹2,00,000/- to each of the defendants for relinquishment of the share out of which ₹1,00,000/- each, had been paid at the time of the execution of the agreement. The defendants also took certain other objections including non-inclusion of the heirs in the mutual agreement.

7. Clearly, in the aforesaid circumstances, the suit could not be decreed merely on the said admissions. Although the defendants had acknowledged that they had not received a sum of ₹1,00,000/- each, there was no admission as to the other averments made in the petition. There was no unequivocal admission on the part of the defendants as to the plaintiff's case.

8. The Trial Court had also noted that the plaintiff (petitioner herein) had not indicated its readiness and willingness to perform the agreement with material particulars inasmuch as, the plaintiff (petitioner herein) had not indicated whether the plaintiff had the funds at the material time.

9. In view of the above, this Court finds no fault with the decision of the Trial Court in rejecting the petitioner's application under Order XII Rule 6 of the CPC.

10. The petition is, accordingly, dismissed.

11. The amount deposited by the petitioner before this Court will be refunded to the petitioner.

VIBHU BAKHRU, J

AUGUST 22, 2019
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