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

\+ RFA(OS) 81/2019 and CM APPL. 42584-42587/2019

HANS KUMAR GUPTA ..... Appellant
Through: Mr. Vidit Gupta, Advocate

versus

LAL CHAND & ORS ..... Respondents
Through: None

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MS. JUSTICE ASHA MENON

O R D E R

% 23.01.2020

1. This order is in continuation of the order passed on 23.09.2019, which is reproduced hereinbelow for ease of reference:-

> *"1. The appellant/plaintiff is aggrieved by the order dated 24.09.2018, passed by the learned Single Judge in a suit for specific performance instituted by him (CS (OS) 3844/2014) in respect of an Agreement to Sell executed between the parties regarding an immovable property situated at Surajmal Vihar, Delhi-110092.*
> *2. The learned Single Judge has allowed an application moved by the appellant/plaintiff under Order XII Rule 6 C.P.C. (I.A. No. 24025/2015) and issued directions to the respondents/defendants to refund a sum of Rs.2,53,33,400/- to the appellant/plaintiff towards the earnest money paid by him in respect to the suit premises. The said amount was directed to be paid over to the appellant/plaintiff by 15.12.2018, failing which it was directed that the respondents/defendants would be liable to pay interest @ 8% per annum. It was also directed that*

immediately upon the respondents/defendants paying the entire amount to the appellant/plaintiff, the keys of the suit premises, lying in the Registry, shall be released in favour of the respondents/defendants.

3. At the outset, we have enquired from learned counsel for the appellant/plaintiff as to whether the respondents/defendants have paid back the entire amount as decreed in terms of the impugned order and if so, indicate the date on which the said amount was received by the appellant/plaintiff. He states that the entire amount has been paid by the respondents/defendants pursuant whereto the keys of the subject premises were released in their favour by the Registry. But he is not in a position to state the exact date when the said amount was released. It is stated that the entire amount had been received by the appellant/plaintiff tentatively by the month of March/April, 2019.

4. We have next enquired from learned counsel for the appellant/plaintiff as to whether the appellant/plaintiff had reserved his right to prefer an appeal, claiming interest on the principal amount, at the time of receiving the amount from the respondents/defendants, in terms of the impugned order. Learned counsel states that he shall have to obtain necessary instructions in that regard.

5. At the request of the learned counsel for the appellant/plaintiff, list on 23.01.2020."

2. Today, learned counsel for the appellant states that he has obtained instructions from his client which are to the effect that the respondents had paid a sum of Rs.2,53,33,400/- to the appellant/plaintiff, spread between December, 2018 to July, 2019, in different instalments.

3. Concededly, at no stage, did the appellant/plaintiff intimate the respondents/defendants that the said instalments were being received by him without prejudice to his right to challenge the impugned order dated 24.09.2018, passed by the learned Single Judge or that he was reserving his right to claim interest on the principal amount. In the above circumstances, we see no reason to entertain the present appeal. It is quite apparent from the conduct of the appellant that he had decided to abide by the order dated 24.09.2018 and having accepted the amount paid by the respondent on the basis of the said order, he is not entitled to challenge the same in appeal.

4. The appeal is dismissed as not maintainable alongwith the pending applications.

HIMA KOHLI, J

ASHA MENON, J

JANUARY 23, 2020
rkb/ap