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

% ***Date of decision: 28.07.2021***

+ **CS(OS) 430/2020 & I.A. 12152/2020 & I.A. 12153/2020**

AYESHA CHENOY ALIAS AYESHA MITRA CHENOY

..... Plaintiff

Through: Mr. Sumit Kumar Shukla, Advocate

Versus

**KAMAL MITRA CHENOY ALIAS KAMAL ARON MITRA
CHENOY & ORS.**

.....Defendants

**Through: Mr.Amitabh Chaturvedi &
Ms.Sangeeth Mohan, Advocates**

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

The hearing has been conducted through video conferencing.

I.A. No. 9092/2021 (u/O 23 R 1 CPC r/w Section 151 CPC)

1. The present suit for partition, declaration and mandatory and permanent injunction filed by the plaintiff with respect to property bearing No. 19, Sunder Nagar, New Delhi-110003 admeasuring 867 sq. yds. or 0.179 acres (equivalent to 724.92 sq. mtrs.) and three storey building constructed thereupon, stands amicably resolved with the defendants, which has led to filing of the joint application in hand, which is signed by plaintiff,

defendants as well as their respective counsels and is also accompanied by the affidavit of the parties.

2. Pertinently, vide order dated 27.01.2021 this Court had referred the matter to Delhi High Court Mediation and Conciliation Centre, where parties have voluntarily arrived at an amicable resolution of the disputes which is subject matter of the suit. The terms of settlement have been incorporated in Settlement Agreement dated 23.07.2021, which is duly signed by both the sides/parties. The aforesaid Settlement Agreement dated 23.07.2021 has come on record.

3. At this stage, Mr. Sumit Kumar Shukla, learned counsel for the plaintiff submits that though this application has been filed by the parties under the provisions of Order XXIII Rule (1) CPC, however, it be treated as the one under Order XXIII Rule (3) CPC and the suit be decreed in terms of Settlement Agreement dated 23.07.2021.

4. Keeping in view that the present application is signed by both the sides and is accompanied by the affidavit of the parties and also that the settlement has been arrived at Delhi High Court Mediation and Conciliation Centre, in terms of which parties have prayed for decretal of the suit, this application is treated as the one filed under Order XXIII Rule (3) CPC.

5. This Court has gone through the contents of Settlement Agreement dated 23.07.2021 and finds that the terms of settlement are incorporated in Para-6(I) to 6(XX) and the parties have agreed that they shall remain bound by the aforesaid settlement. The settlement/agreement arrived at between the parties is valid and lawful.

6. For the reasons stated hereinabove, the present application is allowed. Decree sheet be accordingly drawn in terms mentioned in Para-6(I) to 6(XX) of the Settlement Agreement dated 23.07.2021.

7. The application is disposed of.

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8. For the reasons stated in IA No. 9092/2021, the suit of plaintiff is decreed in terms mentioned in Para-6(I) to 6(XX) of the Settlement Agreement dated 23.07.2021, which shall form part of the decree. Decree sheet be accordingly drawn.

9. Learned counsel for plaintiff has prayed for refund of court fees in terms of Section 89 CPC r/w Section 16 of the Court Fees Act.

10. A Division Bench of this Court in *Nutan Batra Vs. M/s. Buniyaad Associates* 2018 SCC OnLine Del 12916, relying upon decision of Hon'ble Supreme Court in *Afcons Infrastructure Limited v. Cherian Varkey Construction Company Private Limited* (2010) 8 SCC 24, had allowed an

appeal against the order of refusal of refund of entire court fee in a suit. Further, a Coordinate Bench of this Court in *Munish Kalra Vs. Kiran Madan and Others* 2019 SCC OnLine Del 8021 taking into account the fact that the dispute stands amicably settled between the parties, had relied upon decisions in *Afcons Infrastructure Limited (Supra)* and *Nutan Batra (Supra)* and directed refund of the entire court fees.

11. Concurring with afore-noted decisions, the plaintiff is entitled to refund of entire court fees. Registry is directed to issue necessary certificate/ authorization in favour of the plaintiff to seek refund before the appropriate authorities.

12. With aforesaid directions, the present suit and pending application are accordingly disposed of.

(SURESH KUMAR KAIT)
JUDGE

JULY 28, 2021

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