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

+ **EFA(COMM) 10/2024**

SANJAY

.....APPELLANT

Through: Mr Ashwani Kumar Mishra, Adv.

versus

DALJEET KAUR PANDEY

.....RESPONDENT

Through: Mr Varun Mehlaat, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

HON'BLE MR. JUSTICE AMIT BANSAL

O R D E R

08.08.2024

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[Physical Hearing/Hybrid Hearing (as per request)]

CM Appl.45535/2024

1. Allowed, subject to just exceptions.

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2. This appeal is directed against the judgment and order dated 22.05.2024 passed by Mr Deepak Garg, learned District Judge (Commercial Court) -09, Central District, Tis Hazari Court, Delhi, in Execution Petition no.7/2024, titled *Mrs. Daljit Kaur Pandey vs. Shri Sanjay*.

3. Via the impugned judgment and order, the appellant's/judgment debtor's objections *qua* the judgment and decree dated 07.12.2023 passed in CS (Comm) 447/21, titled *Mrs. Daljeet Kaur Pandey vs. Sh. Sanjay* stand rejected.

4. The respondent/decree holder obtained a judgment and decree dated

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07.12.2023 in the aforementioned suit concerning the ground floor of the property described as: 5616, Basant Road, Paharganj, New Delhi [in short, “Paharganj Property”].

5. It is not in dispute that the appellant/judgment debtor has filed a suit for specific performance based on an oral agreement dated 15.08.2017.

5.1 We are told that a civil suit which is numbered CS (COMM) 766/2023, titled *Sanjay Kumar Sonker vs Keshav Raj Pandey & Anr.*, is pending adjudication in the Court of Sh Deepak Garg, learned District Judge, Tis Hazari Court, Delhi.

6. The record also discloses that against the judgment and decree dated 07.12.2023, the appellant/judgment debtor had preferred an appeal, i.e., RFA (COMM) 38/2024, which was dismissed by this Court *via* judgment dated 08.02.2024.

7. Mr Ashwani Kumar Mishra, learned counsel, who appears on behalf of the appellant/judgment debtor, says that the respondent/decreed holder has incorrectly portrayed that the two “counters” rented out to the appellant/judgment debtor are located on the ground floor of the Paharganj property.

8. This very stand was taken by the appellant/judgment debtor at the time when arguments were advanced on the application moved under Order XII Rule 6 read with Section 151 of the Code of Civil Procedure, 1908 [in short, “CPC”], and consequently, dealt with by the trial court in the judgment and decree dated 07.12.2023.



9. Having regard to this backdrop, Mr Mishra says that he would like to withdraw the appeal with liberty to progress his contentions in the suit for specific performance preferred by the appellant/judgment debtor which is pending adjudication.

10. The appeal is dismissed as withdrawn.

11. However, the appellant/judgment debtor would be at liberty to pursue the suit for specific performance.

12. We no have doubt that the concerned trial court will adjudicate the matter as per law.

RAJIV SHAKDHER, J

AMIT BANSAL, J

AUGUST 8, 2024/pmc

Click here to check corrigendum, if any

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