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

\+ RFA(OS) 45/2019, CM APPL. 51775/2022-Cross obj. & CM APPL. 51777/2022-Stay

M/S VERSATILE COMMOTRADE PRIVATE LIMITED

.....Appellant

Through: Mr.Ratan Kumar Singh Sr. Adv. with Mr.Nikhilesh Krishan, Ms.Kaainat Pundir & Mr.Siddharth Singh, Advs.

versus

SATPAL YADAV .....Respondent

Through: Mr.Rajesh Yadav, Sr. Adv. with Mr.Sunil Chauhan, Ms.Vatsala Chauhan & Ms.Ruchira, Advs. alongwith the respondent in person.

CORAM:
HON'BLE MS. JUSTICE REKHA PALLI
HON'BLE MR. JUSTICE SAURABH BANERJEE

O R D E R

% 20.02.2025

1. The present appeal under Section 96 read with Order XLI of the Code of the Civil Procedure, 1908 (hereinafter "the CPC") seeks to assail the judgment and decree dated 13.12.2018 passed by the learned Single Judge in CS(OS) 3912/2014 insofar as it rejects the appellant's prayer for refund of the sum of Rs. 80 lakhs paid to the respondent by way of advance money at the time of entering into 'Agreement to Sell' dated 14.04.2013.
2. After some arguments, learned senior counsel for the parties on instructions submit that the impugned judgment be set aside and the

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suit be remanded back to the learned Single Judge for re-adjudication of the suit on merits, subject to the respondent depositing the principal decretal amount of Rs.1.20 crores with the Registrar General of this Court, within a period of four weeks and the order dated 15.03.2018 passed by the learned Single Judge attaching 1/9th share of the respondent in land admeasuring 53 *bigha* and 11 *biswas* in Village Ujwa, Najafgarh, Delhi, being revived.

3. In the light of this stand taken by the parties, we set aside the impugned judgment and remand back the suit for re-adjudication before the learned Single Judge. Even though the impugned judgment is being set aside with the consent of the parties itself, we may observe that even otherwise upon perusal of the impugned judgment, we are of the considered view that the same is unsustainable. The respondent having admittedly not complied with the condition for granting him leave to defend, it was not open for the learned Single Judge to examine the merits of the appellant's/ plaintiff's claim by overlooking the provisions of Order XXXVII Rule 3 (6) (b), CPC.

4. While remanding the matter for re-adjudication before the learned Single Judge and setting aside the impugned judgment, we direct that, subject to the respondent depositing, within a period of four weeks, a sum of Rs.1.20 crores with the Registrar General of this Court and continuing with the attachment, the order granting conditional leave to defend to the respondent will stand revived. It is, however, made clear that in case, the respondent fails to deposit the agreed sum of Rs.1.20 crores in terms of this order within a period of four weeks, the appellant would be entitled to move an application before the learned

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Single Judge with a prayer for passing a decree in terms of Order XXXVII Rule 3 (6) (b), CPC.

5. Further, we also grant liberty to the appellant to move an application before the learned Single Judge seeking release of the aforesaid amount which application, as and when moved by the appellant, will be considered by the learned Single Judge on its own merits.
6. Needless to state that this Court has not expressed any opinion on the rival submissions of the parties on merits.
7. The appeal alongwith the pending applications, stands disposed of in the aforesaid terms.

REKHA PALLI, J

SAURABH BANERJEE, J

FEBRUARY 20, 2025
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