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

+ **CS(OS) 14/2018**

ROMI GARG

..... Plaintiff

Through: Mr. Rajiv Nayyar, Sr. Adv. with Ms.
Nandni Sahni, Adv.

Versus

BDR BUILDERS & DEVELOPERS PVT. LTD. & ORS.. Defendants

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **16.01.2018**

IA No.651/2018 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CS(OS) 14/2018 & IA No.650/2018 (under Order XXXIX Rules 1&2 CPC)

3. The plaintiff has sued for A] declaration that i) the Agreement to Sell and Receipts dated 24th June, 2014 purportedly executed by defendant no.2 Lalit Modi; ii) the award dated 12th January, 2017 of the defendant no.3 Naresh Gupta; iii) the General Power of Attorney and Will dated 10th February, 2016 of the defendant no.2 Lalit Modi in favour of defendant no.1 BDR Builders & Developers Pvt. Ltd., all in respect of property bearing No.32. Paschimi Marg, Vasant Vihar, New Delhi are *non est*, sham, fabricated, null and void, inoperative, unenforceable and fraudulent documents and have been executed by the defendants by playing a fraud on the plaintiff; and that the plaintiff continues to have rights under the Agreements to Sell dated 9th July, 2012 and 14th July, 2016 executed by the



defendant no.2 Lalit Modi in favour of the plaintiff and remains unaffected by the Agreement to Sell dated 24th June, 2014 and Will and GPA dated 10th February, 2016 executed by the defendant no.2 Lalit Modi in favour of defendant no.3; and, B] for cancellation of Agreements to Sell, Receipts, GPA and Will aforesaid.

4. The gravamen of the case of the plaintiff is that the defendant no.2 Lalit Modi having entered into a prior Agreement to Sell with the plaintiff, the aforesaid documents are null and void.

5. The senior counsel for the plaintiff states that the plaintiff has already instituted CS(OS) No.109/2017 for specific performance of the Agreement to Sell by the defendant no.2 Lalit Modi in favour of the plaintiff for sale of the property aforesaid.

6. I have enquired from the senior counsel for the plaintiff as to how this suit is maintainable in view of Section 19(b) of the Specific Relief Act, 1963.

7. Supreme Court, as far back as in **Lala Durga Prasad Vs. Lala Deep Chand** AIR 1954 SC 75 has resolved the conflict of opinion existing between the High Courts prior thereto by holding that the remedy of a person claiming prior to Agreement to Sell is under Section 19(b) of the Act only and not for declaration as null and void of the document of title executed by the agreement seller in favour of another person. Though the said judgment is with respect to Specific Relief Act, 1877 but the relevant provisions are *pari materia* to 1963 Act.

8. The senior counsel for the plaintiff, under instructions, withdraws this suit.

9. Dismissed as withdrawn.



10. The senior counsel for the plaintiff seeks refund of the court fees.
11. A certificate entitling the plaintiff to refund of 50% of the court fees paid on the plaint be issued and handed over to the counsel for the plaintiff.

RAJIV SAHAI ENDLAW, J

JANUARY 16, 2018

‘gsr’..

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