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

+ RFA 433/2023

BALLABH SINGH

..... Appellant

Through: Mr. Vibhas Tunkikar, Advocate.

versus

SANJAY KUMAR

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

ORDER

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25.05.2023

The hearing has been conducted through hybrid mode (physical and virtual hearing).

CM APPL. 28695/2023

1. Exemption allowed, subject to all just exceptions.
2. The application stands disposed of.

RFA 433/2023 and CM APPL 28696/2023 (stay)

3. The appellant (original defendant) in the present appeal is assailing the impugned judgment and decree dated 10.02.2023 passed by the learned Additional District Judge-02, South West District, Dwarka Courts, New Delhi in CS DJ AD.J No.16635/16 titled as *Sanjay Kumar Versus Ballabh Singh*.



4. Learned Trial Court, vide the impugned judgment, was pleased to partly allow the suit for recovery filed by the respondent (original plaintiff) against the appellant.

5. The appellant is claiming himself to be owner of the suit property. He entered into a *bayana* (agreement) dated 15.03.2013 with the respondent for sale of the suit property. The sale consideration was fixed as Rs. 32 lakhs, out of which the respondent paid Rs. 3 lakhs towards the earnest money. The balance sale consideration was to be paid at the time of execution of the sale deed, i.e. 15.06.2013. The respondent came to know that there are two cases bearing No. CS No. 445/2012 and M-5/2012 titled as *Suresh Kumar Malhotra versus Ashok Kumar Malhotra*, are pending before the Dwarka Courts, New Delhi. In view of the same, the respondent issued legal notice dated 18.05.2013 and 18.06.2013 demanding Rs. 6 lakhs, double the amount of *bayana* with interest thereon. On failure of the appellant to refund the said amount, the respondent filed the suit for recovery. Learned Trial Court, vide the impugned judgment, partly decreed the suit.

6. Learned counsel for the appellant submits that the appellant was not aware of the pendency of the pending litigation, the appellant came to know about these pending litigations only thereby legal notice sent by the respondent. It is the case of the appellant that the respondent breached the terms of *bayana* agreement and thus, he is entitled to double the refund of the earnest money.

7. This matter requires consideration.

8. Issue notice to the respondent through all permissible modes including electronic mode as well as *dasti*, returnable on 19.10.2023.



9. Subject to the appellant depositing the principal decretal amount with the Registrar General of this Court within 4 weeks, the operation of the impugned judgment shall remain stayed.
10. Upon depositing the said amount, Registry is directed to keep the said same in an interest bearing FDR with auto renewal facility.
11. In the meantime, digital copy of the Trial Court record shall be requisitioned.

GAURANG KANTH, J

MAY 25, 2023

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