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

+ **RSA 69/2020 & CM APPLs. 28712-13/2020**

RAJAN KUMAR ANAND Appellant

Through: Mr. Tanmay Mehta, Advocate.

versus

HARDEEP SINGH SETHI Respondent

Through: Mr. Shekhar, Advocate (M-8595976154)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **11.11.2020**

1. This hearing has been held through video conferencing.
2. The present regular second appeal has been filed challenging the order dated 23rd January, 2020 passed by the Id. Appellate Court dismissing the appeal against the order dated 5th April, 2019.
3. The original suit for possession, permanent injunction, arrears of rent and mesne profits was filed by the Respondent/Plaintiff (*hereinafter*, "*Plaintiff*") against the Appellant/Defendant (*hereinafter*, "*Defendant*") relying upon a lease deed dated 27th July, 2016. The suit was decreed under Order XII Rule 6 CPC on 5th April, 2019 on the ground that the lease deed is not disputed between the parties. The case of the Defendant, however, is that the parties have entered into an agreement to sell dated 9th June, 2018 for the sale of the shop concerned i.e., Shop no. WZ-256A, Front side, Inderpuri, New Delhi-12, Ground floor, for a total consideration of Rs.22,50,000/- out of which Rs.7,50,000/- already stands paid to the Plaintiff. The Defendant has filed a suit for specific performance in respect of this transaction which is stated to be pending.



4. A perusal of the impugned judgment shows that there is a clear question of law that arises in respect of the operation of Section 53A of the Transfer of Property Act, 1882 and whether in a suit for possession the defence of specific performance would be liable to be upheld on the basis of an un-registered document which is a bayana receipt.

5. The execution petition has already been filed by the Plaintiff, seeking execution of the decree for possession. Advance copy of this appeal was served upon the Plaintiff. One Mr. Shekar also requested the Court Master to share a link of this video-conference hearing, which was provided. Mr. Shekar has, in fact, joined the hearing, however, he has chosen not to make any submission in the matter, despite repeatedly being asked to unmute himself.

6. The execution petition has already been filed and the suit for specific performance is still pending and there is a likelihood that the Defendant may be dispossessed from the property. Accordingly, the execution proceedings arising out of judgment dated 5th April, 2019 shall remain stayed subject to the Defendant depositing a sum of Rs.5,00,000/- with the Id. Registrar General of this Court within four weeks. The said amount, upon being deposited, shall be kept in an FDR on auto-renewal mode.

7. Issue notice to the Respondent/Plaintiff once again. Registry shall also serve the Respondent/Plaintiff on his Mobile No. 8595976154, 9313650017

8. List on 15th January, 2021.

PRATHIBA M. SINGH, J.

NOVEMBER 11, 2020

dj/T