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

+ **CM(M) 1334/2019**

HOUSING DEVELOPMENT FINANCE CORPORATION

LTD

..... Petitioner

Through Mr. Ajay Saroya, Advocate (M-9810510443)

versus

RAHUL MAHAJAN & ANR

..... Respondents

Through None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **06.09.2019**

CM APPL. 40246/2019 (for exemption)

1. Allowed, subject to all just exceptions. Application is disposed of.

CM(M) 1334/2019 & CM APPL. 40245/2019 (for stay)

2. The present petition has been filed challenging a part of order dated 14th January, 2019 deciding the application under Order II Rule 2 CPC. The observations in respect of this application are in paragraph 9 of the impugned order, which reads as under:

“9. Now, I shall take up the application filed by the plaintiff u/o 2 Rule 2/3/4 r/w. Section 151 CPC. This application was filed by the plaintiff alongwith suit at the time of filing of the present case, however, it appears that due to inadvertence, this application was not taken up earlier. This Court proposes to dispose off the application in this order itself. Briefly stated in this application, the Plaintiff has sought relief to initiate



separate proceedings against defendant no.2 for non-payment of the buy back amount agreed in terms of supplementary agreement dt. 08.08.2015. In the present suit, the plaintiff has sought the relief only against the defendant no.1 and in the present application, the plaintiff wants leave of the Court to initiate separate proceedings against defendant no.2. In view of the contents mentioned in the application and in the interest of justice, this application is allowed and disposed off accordingly. The plaintiff may initiate appropriate proceedings seeking relief against D-2, as per law.”

3. The submission of ld. counsel for the Petitioner is that the transaction is a comprehensive one involving four agreements i.e, one tripartite agreement, supplementary agreement, builder buyer agreement - all dated 8th August, 2015 and loan agreement dated 31st August, 2015. The manner in which the purchaser of the property Shri Rahul Mahajan i.e. Plaintiff/Respondent has sought leave to initiate separate proceedings against the builder, jeopardises the stand of the Petitioner which has financed the housing loan. Accordingly, the ld. counsel for the Petitioner submits that such leave for initiating separate proceedings ought not to have been permitted by the ld. Trial Court. Issue notice to the Respondents. The observations and findings contained in paragraph 9 of the order shall remain stayed. The suit proceedings shall however continue.

4. List on 16th December, 2019.

PRATHIBA M. SINGH, J.

SEPTEMBER 06, 2019

Rahul