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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CS (OS) 659/2011**

ANAND PRAKASH BANSAL Plaintiff
Through: None.
versus

NARESH BATRA Defendant
Through: Mr. Aviral Tiwari, Advocate

CORAM:
SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR
ORDER
% **02.12.2016**

1. Matter is listed today for order on the issue whether DW1 (defendant) should be allowed to rely on all averments made by him in his affidavit of evidence towards his examination in chief and whether plaintiff should be allowed to cross-examine him on all such averments. This issue arose during cross examination of DW1 on 29-11-2016 when question was put by learned counsel for the plaintiff to DW1 in reference to para 12 of his affidavit where he has stated that he paid Rs.20 lacs as advance to purchase a property where he would shift after selling the suit property to the plaintiff. Learned counsel for plaintiff also asked the defendant about his income tax return for the relevant period and whether he had reflected the amount of Rs.20 lacs in the ITR. Learned counsel for defendant objected on the ground that the question was beyond the scope of the issues framed in the suit. Learned counsel for defendant further submitted that the affidavit of DW1 is according to his pleadings. Defendant is not ready to confine



his deposition to the issues framed in the suit and at the same time he has objection if questions are put in reference to the averments made by him in his affidavit. Learned counsel for defendant is not willing to himself admit the portions of the affidavit which are not relevant to the issues framed in the suit. Learned counsel for plaintiff also insists that he would ask questions even if certain portions of the affidavit are declared not relevant. In this process valuable time of the court is lost. Evidence is to be led on the issues. Defendant has reproduced entire written statement in his affidavit of evidence. Therefore, it has become necessary to consider whether any portions of the affidavit of the defendant (DW1) are irrelevant.

2. Plaintiff moved I.A. 6450/2016 under Order XI r.w. Section 151 CPC. Plaintiff wanted the defendant to answer interrogatories as he gave evasive answers to many questions in his cross examination. The I.A. was opposed by the defendant and it was dismissed by this court vide order dated 02-09-2016. In the said order, it was observed by this court that the averments of the defendant regarding his entering into another agreement to purchase a property for Rs.1,42,00,000/- for which an advance of Rs.20 lacs was paid, were not relevant to the issues framed in the suit. The terms and conditions regarding the date and time of payment are mentioned in the agreements Ex.P1 and Ex.P4. No evidence can be led to the contrary in view of Section 91 and 92 of the Indian Evidence Act, 1872. It is an admitted position that the agreement Ex.P1 was followed by the agreement Ex.P4. Under the agreement Ex.P4, the last date for the balance payment and for execution of the sale deed was 31-01-2011. Defendant claims that



plaintiff was supposed to make the balance payment much before 31-01-2011, however, he has himself stated in paragraph 20 of his affidavit that he informed the plaintiff about his obligation to pay the balance sale consideration amount on or before 31-01-2011 and he also appeared at the office of Sub-Registrar on 31-01-2011 at 10.00 a.m. If the defendant was ready to accept the balance consideration on the last date mentioned in Ex.P4 i.e. 31-01-2011, the story regarding his entering into separate agreements to purchase property for himself and the alleged understanding that plaintiff would pay the entire balance consideration before the last date, becomes irrelevant. It is also pertinent to mention that defendant admits that as per terms of Ex. P4, a sum of Rs. 40,00,000/- was to be retained by the plaintiff and it had to be paid within one week on handing over the possession by the defendant to him.

3. In view of the above discussion, paragraphs 12, 13, 14, 15, 17, 18 & 33 are irrelevant though they may be according to the pleadings of the defendant. Plaintiff should not cross-examine the defendant/DW1 in respect of the averments made in the aforesaid paragraphs.
4. Matter be listed for further cross-examination of DW1 on 17.01.2017.

RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR

DECEMBER 02, 2016/cl