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

+ **CS(OS) 659/2011**

ANAND PRAKASH BANSAL Plaintiff

Through Mr. Manish Vats, Advocate with
plaintiff in person

versus

NARESH BATRA Defendant

Through Mr. Aviral Tiwari, Advocate

CORAM:

SH. RAJESH KUMAR SINGH (DHJS), JOINT REGISTRAR

ORDER

% **02.09.2016**

IA No. 10765/2016

Notice is accepted by learned counsel for defendant. Reply be
filed within two weeks with copy to learned counsel for plaintiff.
Rejoinder, if any, within two weeks thereafter.

Adjourned to 3rd October, 2016 for completion of pleadings.

**IA No. 6450/2016 (under Order XI r/w Section 151 CPC filed by
plaintiff)**

Arguments of learned counsel for the parties heard. Put up for
order after lunch.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

SEPTEMBER 02, 2016/ms

**IA No. 6450/2016 (under Order XI r/w Section 151 CPC filed by
plaintiff)**

1. This is a suit for specific performance filed by the plaintiff in
respect of property No. 169, Pocket H-19, Sector-7, Rohini owned
by the defendant. Issues were framed vide order dated 29.07.2013.
Evidence of the plaintiff has been recorded. The matter is now at
the stage of DE and the defendant /DW1 is under cross



examination.

2. It is stated in the IA that DW1 has avoided answering some questions put to him in the cross examination which are material and therefore he should be asked to answer the interrogatories mentioned in paragraph 7(a) to (f) of the IA. Defendant has opposed the IA. Learned counsel for plaintiff took objection regarding the reply of the defendant. The reply was signed and filed on 30.08.2016 whereas the supporting affidavit is dated 28.08.2016. Learned counsel for defendant explains that the reply was ready, therefore, the affidavit was got attested on 26.08.2016. I do not consider it a significant discrepancy.
3. The interrogatories should be relevant for deciding the controversy in the suit. The controversy has been crystallized in the form of issues. During cross examination of DW1, learned counsel for plaintiff has asked questions pertaining to loan taken by the defendant by deposit of title documents of the suit property. Defendant has not answered those questions completely. When objection was raised by learned counsel for defendant regarding relevance of those questions, learned counsel for plaintiff submitted that he wanted to demonstrate that defendant entered into the agreement only to raise money to repay the loan taken by him and he did not have the intention to sell the property to the plaintiff. Questions in the cross examination were allowed considering the averments made in the written statement but questions appear to have gone beyond the issues. Plaintiff has to prove that he was ready and willing to perform his part of the



agreement. There is no issue regarding intention of the defendant. Therefore, the interrogatory in respect of the loan taken by the defendant are not relevant. Whether the defendant reflected the amount received by him in his ITR is also not relevant for decision of any of the issues. Plaintiff has not mentioned the number on which he allegedly made call and sent sms to the defendant on 31.01.2011. Therefore, the questions pertaining to the service provider of the second mobile number of the defendant are also not relevant. It is stated in the IA that the interrogatories are also relevant in view of the claim made by the defendant that he entered into an agreement to purchase another property for Rs.1,42,00,000/- for which he paid advance of Rs.20,00,000/-. Defendant has made this statement in the written statement but there is no counterclaim. The reason for forfeiture of the earnest money according to the defendant is non-payment by the plaintiff on time. This has nothing to do with the alleged agreement made by the defendant to purchase another property. Therefore, this aspect is also not relevant.

4. In view of the above discussion, it is held that the interrogatories proposed by the plaintiff cannot be delivered to the defendant for answering the same on oath. IA is dismissed.

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Put up on 3rd October, 2016 for further cross examination of DW1.

**RAJESH KUMAR SINGH (DHJS)
JOINT REGISTRAR**

SEPTEMBER 02, 2016/ms