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

+ **CS(OS) 61/2016**

MOHD ASHHAR Plaintiff

Through: Ms. Preeti Gupta, Adv.

Versus

ZEESHAN ZAMA KHAN & ANR Defendants

Through: Mr. Misbah Bin Tariq, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **23.10.2018**

IA No.9633/2017 (of the plaintiff under Order I Rule 10 CPC)

1. Ms. Preeti Gupta, Advocate appears for the plaintiff / applicant but is of no assistance and does not know anything about this application.
2. The application has been perused and the counsel for both the defendants has been heard.
3. The plaintiff, in this suit for specific performance of an Agreement of Sale of immovable property, seeks to implead Ravinder Singh, Abdul Aziz and Mohd. Sualeh as defendants to the present suit.
4. Ms. Preeti Gupta only refers to the order dated 23rd March, 2017 to justify the application. However, a perusal of the said order shows that the counsel for the plaintiff, on that date took an adjournment to file an application for impleadment of the said persons. Merely because the hearing was so adjourned, would not entitle the plaintiff to have the said persons impleaded as defendants to the suit, if otherwise not found to be necessary or proper parties inasmuch as addition of such defendants, if not necessary or proper parties, will only delay the disposal of the suit.



5. The action of the plaintiff of filing an application for impleadment without being able to justify the impleadment reeks of the plaintiff being not ready and willing to perform its part of the agreement.

6. The counsel for the defendants states that the persons sought to be impleaded are erstwhile owners of the property. On enquiry, as to how the defendants have acquired title from the said erstwhile owners, it is stated that though there is only a Power of Attorney and Agreement to Sell in favour of the defendants but the defendants had filed CS(OS) No.1873/2012 for specific performance of the said Agreement to Sell and in which suit a decree has been passed on 8th September, 2014, copy of which is at page no.80 of Part-II file.

7. I have perused the copy of the order dated 8th September, 2014 in CS(OS) No.1873/2012.

8. In view of the same, the persons sought to be impleaded are not found to be necessary and proper parties.

9. I must state that Mr. Anil Kumar Chandel, Advocate for the plaintiff has chosen not to appear and argue the matter and sent Ms. Preeti Gupta, Advocate who is unable to argue.

10. The application is dismissed.

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11. The counsel for the parties state that admission / denial of documents has not taken place as yet.

12. If the parties have not admitted / denied each other's documents till now, the progress of the suit cannot be stalled for the said reason.



13. On perusal of the pleadings of the parties, the following issues are framed in the suit:

- (i) Whether the defendants executed Agreement to Sell dated 7th November, 2012 in favour of the plaintiff? OPP
- (ii) Whether the plaintiff deposited Rs.2,85,00,000/- in CS(OS) no.1873/2012 in part payment of the consideration agreed under the Agreement to Sell dated 7th November, 2012, and if so, to what effect? OPP
- (iii) Whether the plaintiff paid a sum of Rs.50,00,000/- to the defendants in part payment of the consideration agreed under the agreement dated 7th November, 2012? OPP
- (iv) Whether the plaintiff paid another amount of Rs.20,00,000/- to the defendants no.6,8&9 in CS(OS) No.1873/2012 in discharge of his obligations under the Agreement dated 7th November, 2012 with the defendants herein? OPP
- (v) Whether the plaintiff, in discharge of obligation under agreement dated 7th November, 2012, paid a sum of Rs.5,00,000/- to the defendant no.2 on 10th September, 2014? OPP
- (vi) Whether the plaintiff, from acting as attorney of the defendant no.2 in CS(OS) No.1873/2012, is disentitled from claiming any relief in this suit? OPP
- (vii) Whether the plaintiff has been ready and willing to perform his part of the Agreement to Sell, if any? OPP
- (viii) Whether the discretion implicit in the grant of relief of specific performance is to be exercised in favour of the plaintiff? OPP



- (ix) Whether the plaintiff is entitled to recover Rs.2,04,83,000/- from the defendants? OPP
 - (x) If the plaintiff is found entitled to any money, whether the plaintiff is entitled to any interest thereon and if so at what rate and for what period? OPP
 - (xi) Whether the plaintiff is disentitled from seeking the reliefs claimed in the suit owing to having earlier filed CS(OS) No.1873/2012? OPP
 - (xii) Relief.
- 14. No other issue arises or is pressed.
 - 15. The parties to file their list of witnesses within 15 days.
 - 16. Option of having the evidence recorded on commission has been declined.
 - 17. The plaintiff to file affidavits by way of examination-in-chief of its witnesses within six weeks of today.
 - 18. List before the Joint Registrar on 12th December, 2018 for scheduling the dates of trial.

RAJIV SAHAI ENDLAW, J

OCTOBER 23, 2018

‘gsr’..

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