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

+ **CS(OS) 625/2010**

YAHOO EXPORTS PVT LTD

..... Plaintiff

Through: None.

Versus

MANJIT KAUR & ORS

..... Defendants

Through: Mr. A.K. Padhy & Ms. S.R. Padhy,
Advts.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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01.03.2018

IA No.3035/2018 (of the defendants for rejection of the plaint / dismissal of the suit as not maintainable)

1. The defendants, in this suit for specific performance in which issues have been framed and recording of evidence is underway, have filed this application for rejection of the plaint / dismissal of the suit, pleading, firstly, that the Agreement to Sell of immovable property of which specific performance is claimed by the plaintiff contains a clause that if the defendants as sellers are in breach of the Agreement, they shall be liable to pay double the amount of earnest money to the plaintiff as purchaser and the suit is thus barred by Section 14(1)(a) & (c) of the Specific Relief Act, 1963 and secondly, on the ground that the Agreement to Sell of which specific performance has been claimed is not registered and the suit is thus barred by Articles 23A and 48(f) of the Schedule to Indian Stamp Act, 1899 as applicable to Delhi.

2. The counsel for the defendants / applicants on enquiry whether he has filed the application after studying the law or the provisions of law has,



drawn

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attention to ***The Greater Bombay Co-operative Bank Ltd. Vs. Nagraj Ganeshmal Jain*** 2017 (8) SCALE 297, ***Yeshvir Singh Tomar Vs. Dr. O.P. Kohli*** 222 (2015) DLT 285 and ***Rameshwar Dass Vs. Hakim Javed*** 187 (2012) DLT 73 annexed to the application and on enquiry as to what do the said judgments hold, draws attention to para no.12 of ***The Greater Bombay Co-operative Bank Ltd.*** supra which, in the context of Section 53A of the Transfer of Property Act, 1882, holds that an Agreement to Sell which is not registered does not attract Section 53A of the Transfer of Property Act. The counsel for the defendants / applicants states that the other two judgments merely reiterate the said proposition.

3. The contention and the application is clearly in ignorance of the law. Though Supreme Court in ***Dadarao Vs. Ramrao*** (1999) 8 SCC 416 held that a suit for specific performance of an Agreement to Sell of immovable property, which contains a clause for payment the double of earnest money in the event of breach by the seller, is not maintainable but the said judgment was in ***P. D'souza Vs. Shondriilo Naidu*** (2004) 6 SCC 649 held to have been rendered *per incuriam*.

4. As far as the plea, of the suit being not maintainable for the reason of the Agreement to Sell being not registered is concerned, again the counsel for the applicants / defendants states that the applicants / defendants are in possession of the property and possession has not been parted with to the plaintiff. It has been held in ***Devinder Singh Vs. Hari Singh*** 2017 SCC OnLine Del 8036 and ***Vinod Kumar Vs. Ajit Singh*** 2013 (138) DRJ 234 that there is no bar in law to specific performance of an Agreement to Sell which



is unregistered.

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5. The application is thoroughly misconceived and intended to waste the time of the Court and is dismissed with conditional costs of Rs.20,000/- payable to the Delhi High Court Lawyers' Social Security & Welfare Fund, New Delhi before the next date of hearing before the Joint Registrar and if the costs are not paid, the applicants / defendants shall be precluded from participating in the suit.

6. The counsel for the applicants / defendants at this stage states that applicants / defendants do not admit having entered into the Agreement to Sell of which specific performance is sought and the Agreement to Sell is forged and fabricated.

7. Though this ground is not taken in the application but in any case an issue has been framed with respect thereto and the same cannot be a ground for rejection of the plaint. I refrain from imposing additional costs on the applicants / defendants.

RAJIV SAHAI ENDLAW, J

MARCH 01, 2018

'gsr'..

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