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

+ **CS(OS) 2661/2012**

VINOD KUMAR & ANR

..... Plaintiffs

Through: Mr. Rohit Kumar Yadav and Mr.
Prashant Neal, Advs. along with
plaintiff.

versus

AJIT SINGH

..... Defendant

Through: Ms. Chandrani Prasad and Mr. Anuj
Jain, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.05.2018

1. This order is in continuation of yesterday's order.
2. The counsel for the plaintiff states that according to the plaintiffs, the plaintiffs have paid the entire sale consideration of Rs.4,57,00,000/- save for a cheque of Rs.20,00,000/- which was dishonoured and the plaintiffs on payment of the said sum of Rs.20,00,000/- are willing to purchase the property.
3. Needless to state the counsel for the defendant controverts.
4. The counsel for the defendant no.1, on enquiry as to whether the defendant has filed the copy of the Agreement to Sell dated 5th August, 2011 as was directed in the order dated 28th August, 2017, states that the defendant has no copy of the Agreement to Sell as none was given to the defendant.
5. Though vide order dated 28th August, 2017 personal presence of the defendant was also directed for recording his statement under Order X of the **CS(OS) 2661/2012**

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Code of Civil Procedure, 1908 (CPC) but in the facts and circumstances aforesaid, it is felt that no purpose will be served in so recording the statement.

6. Neither counsel has brought proposed issues today also.
7. On the pleadings of the parties, the following issues are framed:-
 - (i) Whether the plaintiffs, on the date of Agreement to Sell dated 5th August, 2011, paid a sum of Rs.82,00,000/- in cash to the defendant? OPP
 - (ii) Whether the cheque for Rs.20,00,000/- out of the cheques for Rs.65,00,000/- handed over by the plaintiffs to the defendant on the date of the Agreement to Sell dated 5th August, 2011 was to be encashed by the defendant only when the defendant executed the Sale Deed in favour of the plaintiffs and whether the defendant was in breach of his obligation to execute the Sale Deed? OPP
 - (iii) If the above issues are decided against the plaintiffs, what is the effect if any of the dishonour of the cheque for Rs.20,00,000/-? OPP
 - (iv) Whether the Agreement to Sell dated 5th August, 2011 is inadmissible in evidence and what is the effect if any of the subsequent registration of the Agreement to Sell under Section 17(1A) of the Registration Act, 1908? OPPr
 - (v) Whether the Agreement to Sell dated 5th August, 2011, at the time of signing thereof by the defendant, had a number of blanks and which have been subsequently filled up by the



plaintiffs and if so, effect thereof? OPD

(vi) Whether the suit, for the relief of specific performance, is not maintainable for the reason of the plaintiffs having not impugned the cancellation/determination of the Agreement to Sell effected by the defendant prior to the institution of the suit? OPD

(vii) Whether the defendant, at the time of execution of the Agreement to Sell dated 5th August, 2011, had delivered possession of the land agreed to be sold to the plaintiffs and if so, to what effect? OPP

(viii) Whether the plaintiffs were in breach of their obligations under the Agreement to Sell? OPD

(ix) Whether the obligation for obtaining permission for execution of the Sale Deed was on the defendant? OPP

(x) If the above issues are decided in favour of the plaintiffs, whether the discretion implicit in the grant of relief of specific performance is to be exercised in favour of the plaintiffs? OPP

(ix) Relief.

8. No other issue arises or is pressed.

9. The parties to file their list of witnesses within 15 days.

10. The plaintiffs to file affidavits by way of examination-in-chief of their witnesses within six weeks.

11. Option of having evidence recorded on commission has been accepted by the counsel for the plaintiffs who states that the plaintiffs will bear the entire cost of commission subject to final order as to costs in the suit.

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12. Accordingly, Mr. B.B. Choudhary, Addl. District Judge (Retd.), Mobile No. 9910384611, is appointed as the Court Commissioner for recording evidence in the suit.

13. The fee of the Court Commissioner is fixed at Rs.1 lac, besides out of pocket expenses, to be borne initially by the plaintiffs and subject to final order as to costs in the suit.

14. The Court Commissioner is requested to record evidence within the Court Complex and to complete the same within six months of the date of first appearance of the parties before him. He is granted liberty to have the matter placed before the Court if any of the parties are found delaying recording of evidence.

15. The Registry is directed to send the file of the suit at the place and time fixed by the Court Commissioner for recording of evidence.

16. The counsels for the appearing parties to, within eight weeks jointly approach the Court Commissioner for fixing the date/s for recording evidence.

17. To be listed after recording of evidence is completed.

RAJIV SAHAI ENDLAW, J

MAY 10, 2018

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