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

+ **CS(OS) 2536/2013**

SATINDER SINGH & ORS

..... Plaintiffs

Through: Mr. K.K.Sharma, Sr. Adv. with
Mr. D.K. Sharma, Mr. Ram Pravesh
Rai & Ms. Supriti Roy, Advs.

Versus

RAJINDER KUMAR (DECEASED)

THROUGH LRs. & ANR.

..... Defendants

Through: Mr. Jitender Chaudhary, Adv.
for D-2.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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16.10.2019

IA No.14356/2019(filed by the defendant no.2 u/S.151 CPC)

1. The defendant no.2, though seeking vacation of the orders dated 17th December, 2013 and 23rd September, 2016, instead of invoking the appropriate provision i.e. Order XXXIX Rule 4, has invoked Section 151 CPC, as is found to be the case in most of the applications coming up before this Court.
2. It seems that all the other provisions of CPC need not be there, as Section 151 appears to suffice, as far as advocates are concerned.
3. The counsel for the defendant no.2 / applicant states that upon the plaintiff, on 9th August, 2019, giving up the relief of specific performance and confining the suit only to recovery of monies paid, the interim order restraining the defendants from dealing with property ought to be vacated.
4. On enquiry, as to how much advance sale consideration has been received by the defendants from the plaintiff, the counsel for the defendant

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no.2/applicant states that a sum of Rs.2 crores has been received from the plaintiff but out of which the defendant no.2 has received only Rs.45 lakhs. However, now the counsel for the defendant no.2/applicant states that the defendant no.1 has given only Rs.45 lakhs to the defendant no.2 and this aspect is not pressed at this stage.

5. On further enquiry as to how the defendants intend to repay the amounts admittedly received from the plaintiff, the counsel for the applicant/defendant no.2 states that the money is not refundable since the plaintiff is in breach and the defendants have forfeited the monies.

6. On enquiry, whether any counter claim has been filed against the plaintiff, the answer is in the negative.

7. Attention of the counsel for the applicant/defendant no.2 is drawn to the line of judgments of this Court commencing from the dicta of the Supreme Court in ***Kailash Nath Associates Vs. Delhi Development Authority & Anr.*** (2015) 4 SCC 136 and which lay down that without a counter claim being filed, forfeiture also cannot be made.

8. It thus appears that once the receipt of Rs.2 crores is admitted, decree therefor has to follow and the plea if any of the applicant/defendant no.2, of breach by the plaintiff, is not to be adjudicated. There is no merit in the application.

Dismissed.

RAJIV SAHAI ENDLAW, J.

OCTOBER 16, 2019

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