

\$~4

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

+ CS(COMM) 1136/2018

MR.TOSHIAKI AIBA AS THE BAKRUPTCY TRUSTEE OF THE
ESTATE OF VIPAN KUMAR SHARMA & ANR. Plaintiff

Represented by: Mr. Uttam Dutt, Ms. Savita Sarna,
Advocates.

versus

VIPAN KUMAR SHARMA & ANR Defendant

Represented by: Mr. Shashank Garg, Ms. Divyanshi
Agrawal, Advs. for D-1.
Mr. Divyakant Lahoti, Adv. for D-2.

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **29.07.2020**

The hearing has been conducted through Video Conferencing.

I.A. 6243/2020 (exemption from filing notarised affidavit)

1. By this application defendant No.2 seeks exemption from filing the affidavit in support of the application.
2. In view of the COVID-19 situation defendant No.2 is exempted from filing the affidavit at this stage and the same be filed within one week of the resumption of the normal Court functioning.
3. Application is disposed of.

I.A. 6242/2020 (under Order VII Rule 11 CPC-by defendant No.2)

1. Learned counsel for the plaintiff and defendant No.1 accepts notice.
2. Learned counsel for the defendant No.1 states that though defendant No.1 has not individually filed any similar application but defendant No.1 is

supporting the stand of defendant No.2 in the present application.

3. By this application the defendant No.2 seeks rejection of the plaint on the ground that there is no cause of action in the suit. The plaintiff is neither a creditor nor a bankruptcy trustee of defendant No.1 in India. Further the plaintiff has framed the suit as a commercial suit, though the prayer in the suit is for a decree of declaration for a gift deed dated 23rd November, 2015 and relinquishment deed dated 8th January, 2016 to the extent of one-fourth undivided share in the suit property as void and not enforceable. Thus, the suit is barred both under the Indian law as well as the Japanese law.

4. Reply affidavit if any be filed within four weeks. Rejoinder affidavit in three weeks thereafter.

5. List on 5th October, 2020.

6. Order be uploaded on the website of this Court.

MUKTA GUPTA, J.

JULY 29, 2020

‘ga’