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

+ RFA 548/2015

MANISHA BHAGAT

..... Appellant

Through: Mr. D.K. Rustagi & Mr. Mayank
Rustagi, Advs.

Versus

SUBHASH CHAND PALIWAL & ANR

..... Respondents

Through: Mr. Sanjay Agnihotri, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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20.01.2017

CM No.29287/2016 (of the appellant for modification of the order dated 27th January, 2016)

1. This application has been ordered to be placed before me by the Roster Bench owing to the order dated 27th January, 2016 being of the undersigned.
2. The counsel for the appellant / applicant seeks the appellant / applicant to be relieved from the direction contained in para 3 of the order dated 27th January, 2016, to deposit in this Court the documents which the appellant / applicant by the impugned decree has been directed to return to the respondents.
3. I have put it to the counsel for the appellant / applicant that even if the said direction were to be deleted from the order, the result thereof would be that the appellant / applicant would have no stay of execution of the decree appealed against and the respondents shall be entitled to recover the said documents from the appellant / applicant by execution of the decree.



4. The counsel for the appellant / applicant then says that the stay be also granted.
5. However that is not the relief sought in the application.
6. I have enquired from the counsels, whether the documents which the appellant / applicant has been ordered to return are listed in the impugned judgment.
7. The counsel for the respondents draws attention to para 11 of the impugned judgment which contains reference to Ex.PW1/2, being copy of the perpetual lease of the suit property in favour of the defendants no.1&2 and the original whereof was “seen and returned” to the appellant / applicant. The counsel for the respondents states that the appellant / applicant has been directed to return the original of the said perpetual lease deed only.
8. On enquiry, whether the documents executed by the respondents in favour of the appellant / applicant with respect to the suit property have also been ordered to be returned, the counsel for the respondents states that since by the impugned judgment the said documents have been cancelled, there is no need for return thereof.
9. On enquiry, the counsel for the appellant / applicant states that the original of the said perpetual lease deed is in possession and custody of the appellant / applicant till this moment and has not been misplaced or lost.
10. Subject to the appellant / applicant and her husband:
 - (i) Retaining custody of the original of the said perpetual lease deed and ensuring that the same is not destroyed, lost or misplaced; and



- (ii) Undertaking to this Court not to part with the custody of the said perpetual lease deed for any purpose whatsoever; and
- (iii) Undertaking to this Court not to deal with the suit property on the basis of the said original perpetual lease deed, or otherwise; and
- (iv) Undertaking to this Court that in the event of the appeal being dismissed they will within 60 days thereof, unless there is a stay from any Court, hand over the said document to the respondents by depositing the same in the Trial Court.

the order dated 27th January, 2016 is modified staying the direction therein for return of the document and by deleting therefrom the direction to the appellant / applicant to deposit the said document in this Court.

11. The counsel for the appellant / applicant states that he will file the undertakings in this Court within 10 days with advance copy to the counsel for the respondents.

12. If the undertakings are not so filed, the appellant / applicant shall remain bound by the order dated 27th January, 2016.

13. The application is disposed of.

RAJIV SAHAI ENDLAW, J

JANUARY 20, 2017

‘gsr’..