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

+ **CS(OS) 4/2018**

M.P.S. EXIM PVT. LTD. & ORS Plaintiffs

Through: **Mr. Daksh Arora, Adv.**

versus

DHARMENDER YADAV & ORS Defendants

Through: **Mr Gaurav Mitra with Mr.Kartik Nagarkutty
& Mr. Adit Singh, Advs. for D-1-4.**

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **02.12.2019**

1. The suit is listed for framing of issues.
2. The counsel for the defendants no.1 to 4 informs that since the last order dated 9th July, 2019, in pursuance to an action under Sections 13 and 14 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act), possession of the property has already been taken and thus the relief of possession claimed in this suit does not survive. It is also informed that though the defendants no. 1 to 4 had taken proceedings under Section 17 of the SARFAESI Act, but the said proceedings also failed. On specific enquiry, whether the defendants no. 1 to 4 claim any right to possession now, it is stated that the defendants no. 1 to 4 will now only claim the relief of specific performance of the Agreement to Sell claimed by them and claim possession in pursuance thereto only and not otherwise.
3. The counsel for the plaintiffs, on enquiry, states that the plaintiffs would like to pursue the claim for recovery of mesne profits from the

CS(OS) 4/2018

Page 1 of 3



defendants no. 1 to 4.

4. None appears for the defendant no.5, which even otherwise does not have any role, after taking over possession.

5. The counsel for the defendants no. 1 to 4 has handed over proposed issues which are taken on record. The counsel for plaintiffs has not proposed any issues and states, will take one week's time to prepare the issues.

6. The defendants no. 1 to 4, in their issues have also proposed an issue qua possession under an oral Agreement to Sell. The counsel for the defendants no. 1 to 4, to avoid any observations in this suit on the said claim, at this stage states that the said defendants do not claim the said relief and will not lead any evidence on the oral Agreement to Sell even in defence to the issue no.1 being framed hereunder.

7. The defendants no. 1 to 4 are bound with the aforesaid statement.

8. On the pleadings of the parties, the following issues are framed:-

(I) Whether the plaintiffs had inducted the defendants or any of the defendants into possession of the second floor of B-6, Pamposh Enclave, New Delhi as a tenant under the plaintiffs and if so, with effect from which date and at what rent? OPP.

(II) Whether the defendants or any of the defendant paid any rent to the plaintiffs and if so, at what rate and for what period? OPP.

(III) If the plaintiffs fail on the above issues, whether the plaintiffs still as owners of the aforesaid property, are entitled to any mesne profits/damages for use and occupation from the defendants and/or from any of the defendants and if so, at what rate and for what period? OPP.

CS(OS) 4/2018

Page 2 of 3



(IV) Whether the plaintiffs have loaned a sum of Rs.79,61,018/- to the defendants or any of the defendants and if so, whether the plaintiffs are entitled to refund of the same? OPP.

(V) If any monies are found due to the plaintiffs against any of the defendants, whether the plaintiffs are entitled to any interest thereon and if so, at what rate and for what period? OPP.

(VI) Relief.

9. No other issue arises or pressed.

10. The parties to file list of witnesses within 15 days.

11. The plaintiffs to file affidavits by way of examination-in-chief on or before 10th January, 2020.

12. Option given of having evidence recorded on commission has been declined.

13. List before the Joint Registrar on 22nd January, 2020, for scheduling the date(s) of trial.

RAJIV SAHAI ENDLAW, J

DECEMBER 02, 2019

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CS(OS) 4/2018

Page 3 of 3