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

+ **FAO(OS) 75/2017**

% **Date of decision : 17<sup>th</sup> August, 2017**

NARENDER JAIN ..... Appellant

Through : Mr. Lalit Gupta, Adv.

versus

ANIS AHMED RUSHDIE (SINCE DECEASED THR LRS) & ORS

..... Respondents

Through : Mr. B.B. Gupta, Sr. Adv. with  
Mr. Sanjay Sharma, Adv. for  
R-1

**CORAM:**

**HON'BLE THE ACTING CHIEF JUSTICE**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

**GITA MITTAL, ACTING CHIEF JUSTICE**

1. This appeal assails the order dated 8<sup>th</sup> February, 2017 passed by the learned Single Judge in IA No.1707/2017 in CS(OS)No. 994/2017 whereby an application under Section 151 of the Code of Civil Procedure, 1908 made by the plaintiff seeking a direction to the Registry of this court to effect service of notice of the pendency of the proceedings to defendant nos. 1A to 1D and seeking compliance of orders dated 3<sup>rd</sup> April, 2013; 2<sup>nd</sup> August, 2013 and 7<sup>th</sup> October, 2013 was dismissed. The order is reasoned and fairly detailed.

2. The suit being CS(OS)No. 994/1977 which stood filed in the year 1977, sought specific performance of an agreement to sell dated 22<sup>nd</sup> December, 1970 of the immovable property bearing no. 4, Flag Staff Road, Civil Lines, Delhi-110054, was decreed on 5<sup>th</sup> October, 1983. This decree was finally upheld by the Supreme Court of India by the judgment dated 3<sup>rd</sup> December, 2012 in Civil Appeal No. 8653/2012 directing the execution of the sale deed by the defendants in favour of the plaintiff at the prevalent market price of the property. The position is that the matter is pending on the original side only for determination of the market value ever since, as directed by the Supreme Court.

3. We also note the objection with regard to maintainability of the appeal.

4. The impugned order notes the various efforts made by the appellant to prevent compliance with the orders of the Supreme Court and delaying determination of the market price. In view thereof, when the appeal was listed before us on 18<sup>th</sup> May, 2017, we had called upon learned Senior Counsel for the appellant to apprise this court of the market value of the property. This was not done. We had also put it to learned counsel for the appellant that the appellant ought to deposit at least the tentative amount towards the amount which, according to him, would be payable in terms of the judgment of the Supreme Court. On a submission made on behalf of the appellant, it was noted that as per the general power of attorney dated 4<sup>th</sup> November, 2010, the valuation on that date was to the tune of Rs.12.60 crores.

5. It was pointed out on behalf of the respondent no.1 that in terms of the Circle Rate of properties as on 3<sup>rd</sup> December, 2012, the valuation by the Sub-Divisional Magistrate, as filed shows that the property was valued at Rs.51.51 crores.

6. Therefore, as an interim direction and in order to test the *bonafides* of the appellant, on 23<sup>rd</sup> May, 2017, we had directed that the appellant ought to deposit a sum of Rs.15 crores in the Registry of this court. On specific request of the appellant to comply with this direction, time of eight weeks, as sought, was granted. The appellant's application for modification of the order being CM No. 27971/2017 was rejected on 4<sup>th</sup> August, 2017.

The order dated 23<sup>rd</sup> May, 2017 has not been complied with till date. No deposit stands effected.

7. Today, after some arguments, learned counsel prays for leave to withdraw this appeal. Given the time which has been spent on this appeal and the manner in which the matter has been proceeded, we are of the view that though we cannot reject the prayer for withdrawal of the appeal however, the respondent who has been represented by Senior Counsels even, must be burdened with costs.

8. In view of the above, the appeal is dismissed as withdrawn subject to payment of costs of Rs.20,000/- which shall be deposited with the Delhi High Court Legal Services Committee within a period of three weeks from today.

Proof of deposit of costs shall be filed before the learned Single Judge.

9. So far as the non-compliance with the direction to deposit the amount is concerned, it shall be open for the parties to place the same before the learned Single Judge who may consider the implications thereof in accordance with law.

10. We make it clear that in the present appeal, we have not expressed any opinion so far as the valuation or the market value of the subject property is concerned.

**ACTING CHIEF JUSTICE**

**C.HARI SHANKAR, J**

**AUGUST 17, 2017/kr**



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