

Neelam Misra vs.r.k. Sharma

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Court : Delhi

Decided On : Feb-14-2019

Appellant : Neelam Misra

Respondent : r.k. Sharma

Judgement :

* IN THE HIGH COURT OF DELHI AT NEW DELHI + % NEELAM MISRA RFA No.277/2017 14th February, 2019 Through: Mr. Rishi Appellant Manchanda, Advocate with Mr. Arun Kumar, (M. No.9911681178). Advocate R.K. SHARMA versus Through: Respondent CORAM: HONBLE MR. JUSTICE VALMIKI J.

MEHTA To be referred to the Reporter or not?. VALMIKI J.

MEHTA, J (ORAL) 1. This Regular First Appeal under Section 96 of the Code of Civil Procedure, 1908 (CPC) is filed by the plaintiff in the suit impugning the Judgment of the trial court dated 19.08.2016 by which the trial court has dismissed the suit for recovery of Rs. 19,50,000/- filed by the appellant/plaintiff/buyer and this amount was claimed on account of the appellant/plaintiff/buyer having paid a sum of Rs. RFA No.277/2017 Page 1 of 3 13,0,000/- to the respondent/defendant/seller under the Agreement to Sell dated 28.08.2009.

2. I may note that the respondent/defendant despite service did not appear in the trial court and was proceeded ex parte. Even in this Court, the respondent/defendant has been served by publication but the

respondent/defendant does not appear and therefore the respondent/defendant is proceeded ex parte.

3. The trial court has committed a clear illegality in dismissing the suit on the ground that the affidavit by way of evidence filed on behalf of the appellant/plaintiff had to be proved by the appellant/plaintiff by personally coming and deposing in the court. It is now settled law by virtue of the judgment of the Hon'ble Supreme Court in the case of Rasiklal Manikchand Dhariwal and Another. v. M.S.S. Food Products, (2012) 2 SCC196 that there is no need of tendering an affidavit by way of evidence and affidavit of evidence filed need not be exhibited as a document. It is noted that the appellant/plaintiff had filed her affidavit by way of evidence and proved the documents being the agreement to sell and the receipt RFA No.277/2017 Page 2 of 3 which showed that a total sum of Rs. 13,00,000/- stood paid by the appellant/plaintiff to the respondent/defendant.

4. In view of the aforesaid discussion, the impugned Judgment of the trial court dated 19.08.2016 is set aside. The suit of the appellant/plaintiff will be decreed for a sum of Rs. 13,00,000/- alongwith interest @ 12% per annum simple payable from 13.10.2009 till the date of filing of the suit and at the same rate of 12% per annum simple pendente lite and future till payment. The appellant/plaintiff will also be entitled to costs of the suit as also the appeal. FEBRUARY14 2019 VALMIKI J.

MEHTA, J Ne RFA No.277/2017 Page 3 of 3

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