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

+ **EX.P. 18/2019**

INDRA SINGH & SONS PVT. LTD.

..... Decree Holder

Through: Mr. Amitabh Chaturvedi, Advocate
with Mr. Sangeeth Mohan K and
Ms.Nimisha Nat Narayan, Advocates.

versus

ROOP INDER KAUR & ORS.

..... Judgement Debtors

Through: Mr. Kirti Uppal, Senior Advocate
with Ms. Aastha Dhawan, Advocate
for JD-1 with Ms. Roopinder Kaur,
JD No. 1.

Mr. Gurmehar S. Sistani, Advocate
for JD-7 to JD-10.

Mr. Amit Sibal, Senior Advocate with
Mr. Hardeep Sachdeva, Mr. Abhishek
Awasthi, Mr. Parag Maini and Mr.
Abhimanyu Chopra, Advocates for
Buyers/ARG Trust.

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

% **21.10.2019**

EX.APPL. 686/2019 (Directions) and EX. APPL. 687/2019 (Stay)

1. The present application i.e. Ex. Appl. No. 686/2019 has been filed by Judgment Debtor-No.1 - Mrs. Roopinder Kaur seeking the following prayers:

“ a. Direct the Decree Holder to set aside the Agreement to Sell which has been executed by the Decree Holder on 25.07.2019 with the prospective buyer, ARG Family Trust contrary to the terms of the Settlement Agreement dated



16.08.2011;

b. direct the Decree Holder to comply with the terms of the Settlement Agreement dated 16.08.2011;”

2. She has also filed Ex. Appl. No. 687/2019 seeking stay of the execution of the Sale Deed in furtherance of the Agreement to Sell dated 26th July 2019.

3. The brief facts necessary for deciding the present applications are discussed hereinafter.

4. The Decree Holder has filed the present execution petition seeking execution of the Decree dated 7th February 2019, drawn up pursuant to the judgment dated 20th December 2011. The decree records the terms of the Family Settlement Agreement dated 16th August 2011 executed between the parties whereby they finally settled all their disputes and agreed to sell the property bearing No. 17, Tughlak Road, New Delhi (hereinafter as “subject property”). In order to execute the decree, the Decree Holder sought the sale of the subject property which led to passing of several detailed orders, pursuant whereunto, the Decree Holder and Judgment Debtor Nos. 7 to 10 negotiated and jointly agreed to sell the subject property to ‘ARG Family Trust’ for a total sale consideration of Rs. 520 crores. In furtherance thereof, a draft Agreement to Sell alongwith the schedules was circulated amongst all the Judgment Debtors and the same was also recorded in the order dated 25th July 2019, the relevant portion whereof reads as under:-

“1. In terms of the Settlement Agreement dated 16th August



2011, the Decree Holder and Judgment Debtors No. 7 to 10 have negotiated to sell the property bearing No. 17, Tughlak Road, New Delhi with the prospective buyer i.e. ARG Family Trust (earlier noted as Mr. Anil Rai Gupta in the order dated 23rd July, 2019) for a consideration of Rs.520 crores. The draft Agreement to Sell with schedules was circulated amongst the parties. On the last date of hearing, Judgment Debtor No. 1 expressed certain reservations relating to certain clauses contained therein. Mr. Chaturvedi learned counsel for the Decree Holder sought time to look into the same. Today, learned counsels for the Judgment Debtors confirm that the fresh Draft Agreement to Sell, a copy whereof is handed over across the bar in the Court, is acceptable to them. The said draft along with the relevant schedules is taken on record.

2. In terms of Clause 1 of the Settlement agreement, the consent of all the Judgment Debtors has to be accorded with regard to the price and terms including payment details and payment schedules set out in the said Agreement to Sell. The draft of the consent letter has been handed over to the learned counsel for the Judgment Debtors who confirm that by today evening, the same shall be signed and executed and handed over to the Decree Holder.

3. The Court is further informed that the Extraordinary General Meeting (EGM) of the Decree Holder is also scheduled to be held today and all the stake holders will participate in the EGM. Judgment Debtors, shall give their consent as required in order to enable the company to pass the necessary resolution to give effect to the execution of the Agreement to Sell. Further, the Judgment Debtors shall also execute and sign Affidavit cum Undertaking as per draft in Schedule V accompanying the Agreement to sell by tomorrow and also execute and sign the compliance affidavit as per draft of the Schedule XII of the said Agreement to Sell within 3 days from handing over possession of the portions in their respective occupation in terms of the said Agreement to Sell.



4. It is further noted that the Agreement to Sell provides that at the time of signing, the entire sale consideration of Rs.520 crores shall be placed in two separate Escrow accounts of Rs.60 Crores and Rs.460 Crores, so as to ensure compliance of the Settlement Agreement, particularly clauses, 2, 3 and 4 thereof. The same shall be done within a period of two days from opening of the said escrow accounts. It is also noted that in terms of Clause 2.1.5 the prospective buyer / ARG Family Trust shall after the completion of the condition precedent set forth at Clause 3.1 (ii) shall advance an amount of Rs.5 Crores to Mrs. Roopinder Kaur, (Judgment Debtor No. 1) and such amount shall be paid directly from the Escrow account. Such amount shall be deducted from her share mentioned in Clause 4.7 of the Agreement to Sell. It is also agreed that in terms of Clause 4.6 (noted in handwriting), the sale deed shall not be executed before 93 days from the execution date, specified in the agreement to sell.

5. The counsel for the parties, upon instructions from their respective clients, state that the parties undertake to this Court to implement the Settlement Agreement by way of the transaction under the said Agreement to Sell and shall abide by the terms thereof that have been consented to by all parties.

6. In order to maintain confidentiality of the transaction, it is directed that the order shall not be uploaded, till the execution of the sale deed.

7. Relist on 24th October 2019.

8. Copy of the order be given dasti to the parties under signature of the Court Master.”

5. Thereafter, the parties endeavoured to complete the transactions and on 25th July 2019, the final version of the consented Agreement to Sell and its schedules that were proposed to be executed between Decree Holder and the proposed buyer-ARG Family Trust were handed over in Court and were



made part of the Court record. On the same date, an EGM of the Decree Holder was held, which was also attended by Judgement Debtors including JD No.1, who signed the attendance slip. Thereafter, the parties unanimously resolved to sell the subject property to ARG Family Trust in terms of the Agreement to Sell. The proceedings are stated to have been videographed. A Consent letter was also signed by the Applicant/JD No.1 in terms of Clause 1 of the Settlement Agreement dated 16th August 2011, consenting to the sale of the subject property to ARG Family Trust for a consideration of Rs. 520 Crores. Each page of the Agreement to Sell and the accompanying schedules has been signed by the Applicant. The Court is informed that the entire process has also been videographed.

6. On 26th July 2019, the Agreement to Sell along with its schedules was signed and executed by the Decree Holder in favour of ARG Family Trust. Simultaneously, Escrow Agreements were also signed with Yes Bank and Standard Chartered Bank in terms of Clauses 2.1.1 and 2.1.2 of the Agreement to Sell and an amount of Rs. 60 Crores and Rs. 460 Crores were deposited in the said accounts respectively. In terms of the Agreement to Sell, the amounts have to be disbursed in the following manner:-

1. Rs. 60 Crore has to be released for the purposes of fulfilling the condition precedents as set out in Clause 2.1.1.1 to 2.1.1.3 of the Agreement to Sell.
2. Rs. 460 Crores has to be released in terms of the Agreement to Sell to the Decree Holder and the Judgement Debtors at the time



of execution of sale deed and taking over physical possession.

7. Judgment Debtor No.1 along with all other JDs also signed and executed an affidavit-cum-undertaking confirming that they have consented to the sale of the subject property and inter alia, have undertaken to comply with the terms of the Agreement to Sell and also undertaken that no disputes or claims shall be raised before any court/forum or any other authority, whether statutory or non-statutory, in respect of the subject property or the Agreement to Sell. They also undertook that they shall not raise any dispute before any statutory authority (like L&DO) and shall co-operate with L&DO in the conversion process. The relevant portion of the affidavit of JD No.1 reads as under:-

“3. That the Company/Decree Holder has, in consultation and with my consent, and also in consultation with and with the consent of all the other judgment Debtors to the present proceedings agreed to sell, transfer, convey, grant, assign and assure the property with all the rights, title and interest, easements, privileges, and appurtenances whatsoever attached thereto and/or pertaining thereto on the terms and conditions as agreed to under Agreement to Sell dated July 26, 2019 executed by the Company/Decree Holder in favour of the Buyer viz. **ARG FAMILY TRUST**, represented through its managing trustee Mr. Anil Rai Gupta, (the “**Agreement to Sell**”)

4. That I have read and clearly understood all the terms and conditions as laid down and agreed in the Agreement to Sell and agree to cooperate and do all acts, deeds and things as may be required to give effect to the Agreement to Sell and/or transfer the Property in the manner as set out in the Agreement to Sell.



8. That I, do hereby undertake that I shall strictly and scrupulously comply with all the terms of the Agreement to Sell and also the Settlement Agreement dated 16.08.2011 and that with effect from the date of execution of the Agreement to Sell, I shall not, either directly or indirectly, by myself or through any person acting under my authority or instructions or claiming through me, raise any dispute or pursue any claim or action against the other party (ies) before any court, forum, tribunal or any other authority, whether statutory or non-statutory, in respect of any subject matter of the Property or the Agreement to Sell (and also the said Settlement Agreement).

9. That I hereby undertake to, co-operate with the Company as well as representative of the Land and Development Office (“**L&DO**”) in respect of the freehold conversion process including but not limited to a physical site inspection of the Property of which the Portion A forms a part. I further undertake to rectify/remove any unauthorized construction in the Portion A, if any, if so observed by L&DO.

10. That I hereby undertake not to pursue or initiate any further litigation or bring forth any further claims or disputes against the Company/Decree Holder or its shareholders, directors, employees, associate companies and companies owned and/or controlled by such shareholders and directors and also any other party to the present proceedings or even against any third party with respect to the subject matter of the present proceedings or anything incidental or ancillary thereto provided that the amounts payable to me against handing over/delivery of the possession of the Portion A is paid to me in terms of the Agreement to Sell and the differential amount of 2.23% of the sale consideration defined in clause 2 & 3 of the Settlement Agreement is deposited before the Hon’ble High Court of Delhi by the Decree Holder company in terms of



order dated 20.03.2019 passed in the present execution proceedings, I shall, for all times to come, remain personally bound by such undertaking.

11. That I hereby undertake before this Hon'ble Court to always remain bound by the terms of the Agreement to Sell and to fully abide by the terms and conditions contained therein and not to dispute/agitate upon the same hereinafter in future in any manner whatsoever.

I am executing this Affidavit-cum-Undertaking voluntarily with my own free will and consent, without any force, coercion, fraud, inducement, allurement, compulsion or influence from any quarters whatsoever and persons whosoever and in my good health and sound mind, in my full senses and without any kind of pressure or intimidation and after understanding its full import and effect and the legal implications thereof and after obtaining all the necessary advice in this regard.”

(emphasis supplied)

8. In terms of the undertaking of the Judgement Debtors and the Clauses of the Agreement to Sell, ARG Family Trust deposited the amounts into the two Escrow accounts referred above.

9. On 30th July 2019, the Decree Holder applied for conversion of the subject property from Leasehold to Freehold and paid Rs. 5.51 Crores to L&DO out of the Yes Bank Escrow Account. On 9th August 2019, an inspection was carried out by L&DO at the property for the purpose of processing the application for conversion of the subject property from leasehold to freehold. On 9th August 2019, the Decree Holder received an email from Judgement Debtor No. 1, through her counsel, seeking true copy



of the duly signed Agreement to Sell and also for filing of the Agreement to Sell in Court. Thereafter, contrary to the aforementioned undertaking, on 20th September 2019, the Applicant wrote a letter to L&DO requesting to place on hold, the conversion application with respect to the subject property. The Applicant thus attempted to create hurdles in conversion of the subject property from Leasehold to Freehold. Be that as it may, the letter written by the applicant did not have any effect and on 23rd September, 2019, the L&DO issued Freehold Conveyance Deed in favour of the Decree Holder, duly stamped and registered, whereby the subject property was converted from Leasehold to Freehold.

10. In the meantime, a payment of Rs. 20 crores was defrayed from Yes Bank Escrow account to Indian Steel & Wire Products Ltd., a subsidiary of Tata Steel Ltd., in terms of the Agreement to Sell. On 25th September 2019, ARG Family Trust wrote a letter to the Decree Holder with a copy marked to all the JDs stating that, as the condition precedent with respect to L&DO has been completed by Decree Holder, ARG Family Trust was ready to advance the amount of Rs. 5 Crore to Judgment Debtor No. 1 for purchase of House Property in terms of Clause 2.1.5 of the Agreement to Sell. Subsequently, on 7th October 2019, the Decree Holder issued an inspection notice to all the JD's scheduling the inspection of the subject property for 22nd October 2019, in terms of Clause 4.2 of the Agreement to Sell.

11. In this backdrop, now that the entire process of sale is culminating and the Judgment Debtors are required to vacate the subject property and handover the possession, as per the Agreement to Sell, the Applicant/



Judgment Debtor No. 1 has approached this Court with the prayers as noted above.

12. On 18th October 2019, after hearing arguments for some time, Mr. Kirti Uppal, learned Senior Counsel for Judgment Debtor No. 1 sought time to take instructions from his client. Today, Mrs. Roopinder Kaur- Applicant, is present in person and on her instructions, Mr. Uppal has addressed this Court. He submits that his client is under the apprehension that she would not receive her share of the sale consideration in terms of the Agreement dated 16th August 2011. There is no basis for this apprehension expressed by the Applicant. To say the least, the application is misconceived and frivolous. Mr. Uppal has attempted to argue that the terms of the Agreement to Sell are contrary to the decree and parties could not have modified the same. However nothing in particular has been shown except a reference to a table in the present application. There is no merit in the submissions advanced by Mr. Uppal and this is nothing but a deceitful and dishonest attempt to wriggle out of the settlement.

13. Mrs. Roopinder Kaur has also been heard. She states that the copy of the Agreement to Sell which was signed in presence of her previous counsel was not provided to her till the stage of signing it. However, she asserts to have been deceived by her lawyer. The purported deception as claimed by her has not been explained to the Court. On a pointed query of the Court, Mrs. Roopinder Kaur confirms that she has not taken any legal action against her previous counsel as of now, but she intends to do so. These submissions are irresponsible and unsubstantiated. Thus it clearly emerges



that the application is a complete abuse of the process of the Court. Issues relating to execution of the sale deed were discussed threadbare with the counsels present in the Court. Besides, during the hearings, the Applicant was being represented through Mr. Avtar Sandhu, her husband and the orders were passed in his presence and also in presence of the counsel for the Applicant.

14. In order to ensure that the sale process goes through smoothly, sufficient safeguards had been put in place in the Agreement to Sell and also by virtue of the orders of this Court whereby they were directed to give undertakings to ensure that none of them wriggle out of the agreed terms. However, it seems that the same did not yield the desired result. The Applicant has shown scant regard to the statements made on oath, the averments made in the application are completely contrary to what she has stated in the affidavit-cum-undertaking given to this Court. On strength of the Agreement to Sell, affidavits and undertakings and in hope that the transaction would sail through smoothly, ARG Family Trust has deposited the entire sale consideration amount in the Escrow accounts. The aforesaid amount has been utilised for making payments to the L&DO, Tata Steel and for also for other expenses, as noted in the foregoing paragraphs.

15. The direction sought is untenable and is in breach the affidavit-cum-undertaking. Her contention of having been deceived by the counsel is unfounded, specious and is intended to derail the entire sale transaction. The declarations made in the affidavit have to be given due meaning and weightage, failing which, the same would have no sanctity. The affidavits



sworn on oath are solemn statements made by parties that amount to a promise to the Court that they shall comply with the terms stated therein. I would be failing in my duty, if I were to allow the applicant to retract and withdraw from the assurance given to this Court, on completely baseless and augmented pleas.

16. Though the action of the Applicant clearly amounts to contempt of the Court, however, considering the fact that the Applicant is an old lady aged about 80 years and she is present in the Court on a wheel chair, I am taking a lenient approach in the matter and no coercive action is being taken at this stage and notice of contempt is not being issued. However, in case, the Applicant is found to be, in any manner, acting in breach of the undertaking given to this Court, I would not hesitate to take the matter to its logical conclusion.

17. For the foregoing reasons, there is no merit in these applications, and accordingly, the same are dismissed, with cost of Rs. 5 lacs to be divided equally and deposited with:

- a. Delhi High Court Advocates Welfare Trust
- b. Delhi High Court Staff Welfare Fund
- c. High Court of Delhi (Middle Income Group) Legal Aid Society

18. The above direction be complied within two weeks. List the matter before the Roster Bench on the date already fixed i.e. 24th October 2019.



19. *Dasti.*

OCTOBER 21, 2019

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SANJEEV NARULA, J