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

+ EX.P. 17/2016

VIVAN SOMDUTT & ANR

..... Decree Holders

Through: Mr. Munindra Dvivedi, Ms. Divya
Bhalla and Ms. Tanya Chanda, Advs.

versus

ARJUN SOMDUTT & ORS

..... Judgement Debtors

Through: Mr. Rajan Narain and Ms. Jayati
Parasher, Advs. for JD-1.
Mr. Dhruv Mohan and Mr. Birender
Bikram, Advs. for JD-2.

AND

EX.P. 61/2018, EA No.272/2018 (u/S 36 read with O/XXI R-54 CPC)
and EA No.306/2018 (u/S 151 CPC).

KRISHAN KUMAR WADHWA & ORS.

..... Decree Holders

Through: Mr. Jayant K. Mehta and Mr. Samar
Bansal, Advs.

versus

ARJUN SOM DUTT & ORS.

..... Judgement Debtors

Through: Mr. Rajan Narain and
Ms. Jayati Parasher, Advs. for JD-1.
Mr. Munindra Dvivedi, Ms. Divya
Bhalla and Ms. Tanya Chanda, Advs.
for JD-2&4.
Mr. Dhruv Mohan and Mr. Birender
Bikram, Advs. for JD-3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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12.11.2018

EX.P. No.17/2016.

1. The counsel for the decree holder states that he has a buyer for the property no.B-8, Maharani Bagh, New Delhi – 110 065 for a total value of Rs.45.5 crores.

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2. The counsel for the judgment debtor no.2 states that the value of the property as per circle rates is over Rs.74 crores.
3. The counsel for the judgment debtor no.1 has nothing to say in this regard.
4. Though I had in order dated 17th April, 2018 referred to judgments holding that the court fees/stamp duty is not payable on a decree for partition by sale but since then, the Full Bench of this Court in **Indu Singh Vs. Prem Chaudhary** 2018 SCC OnLine 8951 has held that court fees/stamp duty is payable on such a decree also. No court fee has been paid.
5. Though technically speaking there is no executable decree till the said court fees is paid but the counsels for all the parties state that they are not in a position to pay the court fee/stamp duty and all are agreeable that the court fees/stamp duty be made first charge on the sale proceeds.
6. Since the circle rate of the property is not disputed to be over Rs.74 crores and the buyer brought by the decree holder is for Rs.45.5 crores only, there is no option but to put the property to be auctioned by the Court Auctioneer. The parties have been cautioned of the charges of the Court Auctioneer.
7. The Court Auctioneer is directed to put the property no.B-8, Maharani Bagh, New Delhi – 110 065 to auction in accordance with law. A copy of this order be forwarded to the Court Auctioneer.
8. On enquiry, it is stated that all the three parties are in possession of the different parts of the property.
9. It is made clear that the sale of the property will be with vacant possession of the property and if any of the parties at the appropriate stage

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fail to deliver vacant peaceful physical possession of the property, they shall be liable to be evicted therefrom as if in pursuance to a decree for possession.

10. The Court Auctioneer to also within one month of today submit the proposed sale proclamation along with reserve price, for approval by the Court.

11. List on 11th January, 2019.

EX.P. 61/2018, EA No.272/2018 (u/S 36 read with O/XXI R-54 CPC) and EA No.306/2018 (u/S 151 CPC).

12. The counsel for the decree holders states that the affidavits of assets directed to be filed have not been filed.

13. The counsel for the judgment debtor no.3 Pritha Som Dutt states that he has filed affidavit today.

14. The counsel for the judgment debtor no.1 also states that affidavit has been filed.

15. The counsel for the decree holders states that the affidavits are not in terms of order dated 20th July, 2018.

16. The counsel for the judgment debtors no.2 & 4 also, though has filed affidavit but not in the prescribed form and in terms of order dated 20th July, 2018.

17. It is stated that judgment debtor no.5 Gurvirendra Singh Talwar has since been dropped.

18. Last opportunity is given to the judgment debtors to file the affidavits within two weeks failing which the judgment debtors no.1 to 4 to remain present in person on the next date of hearing.

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19. List on 11th January, 2019.

NOVEMBER 12, 2018
'pp'

RAJIV SAHAI ENDLAW, J.

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