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

\+ EX.P. 17/2016, CCP(O) 10/2024, EX.APPL.(OS) 1637/2023, EX.APPL.(OS) 544/2024, EX.APPL.(OS) 1563/2024, EX.APPL.(OS) 1595/2024, EX. APPL. (OS) 1935/2024, EX. APPL. (OS) 1936/2024, EX. APPL. (OS) 1968/2024

MR VIVAN SOMDUTT & ANR .....Decree Holders

Through: Mr Munindra Dvivedi, Ms. Divya Bhalla and Mr. Abhishek Chauhan, Advocates.
Mr. B B Gupta, Sr Advocate, Ms Meghna Mishra, Mr Achal Gupta, Mr Ankit Rajgarhia, Ms Yashodhara Gupta, Advocates for DH-2.

versus

MR ARJUN SOMDUTT & ANR .....Judgement Debtors

Through: Mr. Ashok Kumar Chhabra , Mr. Om Prakash, Mr. Alok Prakash, Advocates
Mr. Danish Aftab Chowdhury, Mr. Saharul Alam Laskar and Md Aamir Shoaib, advocates for JD-2.
Mr. Samar Bansal, Mr. Vipul Kumar, Mr. Bhargav R Thali, Mr. Pranav Garg, Advs. for Applicant in EX. APPL. (OS) 1968/2024.
Mr. Keshav M Gulati, Ms. Ishita Kheria, Advocates for Applicant in EX. APPL. (OS) 1935/2024 and EX. APPL. (OS) 1936/2024.
Mr. Aruneshwar Gupta, Senior Advocate

CORAM:
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

<u>O R D E R</u>

% **10.12.2024**

1. The present Petition is for execution of the Decree dated 13.01.2012, passed by the Division Bench of this Court in FAO(OS) 701/2010 & 702/2010.

2. Material on record indicates that Decree Holder No.2 herein had filed a Suit, being CS (OS) 206/2007, for partition of the residential property bearing No.B-8, Maharani Bagh, New Delhi (*hereinafter referred to as 'the property in question/the suit property'*). This Court *vide* Order dated 10.11.2010 passed a preliminary decree, on the basis of the family settlement deed dated 31.12.1999, by observing as under:

> "*Since Family Settlement Deed of 31st December 1991 (Ex. P-1) is an admitted document and in terms thereof, half of the front portion of the suit property, as per site plan appended thereto, stands allotted to Smt. Roop Taiwan, i.e., Plaintiff herein, and the remaining half portion of the front portion is to be equally shared between Defendant No. 1 on one hand and Defendant No. 2 and 3 on the other hand, that is to say that 25% of the front portion of the suit property would go to Defendant No.1 and remaining 25% to Defendant No. 2 and 3.*
>
> *Undisputedly, there are two separate portions in the suit property, i.e., the front portion and back portion and the back portion of the suit property is to be equally divided between Defendant No.1 on one hand and Defendant No. 2 and 3 on the other. In the light of the aforesaid, a preliminary decree in terms of Deed of Family Settlement of 31st December 1991 (Ex. P-1) declaring the respective shares of the parties therein, is hereby passed.*

Now at the stage of passing of the final decree, it is considered just and equitable to make the interim order of 5th February 2007 absolute. At this stage Counsel for the Defendant No.2 and 3 has drawn attention of this Court to an interim order of 26th February, 2007, whereby Plaintiff had undertaken to restitute and compensate the Defendants No.2 and 3 to the extent of loss of rental suffered by them on account of the status-quo order. However, there is a rider to it, of Plaintiff not succeeding in this matter. Learned senior counsel for the Plaintiff states that without going into the question of determining as to whether the Plaintiff is liable to restitute and compensate Defendant No. 2 and 3 and to bring an end to this litigation. Plaintiff is ready to tender an amount of Rs.10 lakhs (Ten lacs) to Defendant No. 2 and 3. This offer made on behalf of the Plaintiff appears to be reasonable in view of the fact that after passing of the aforesaid order of 26th February, 2007, parties to this suit on 15th April, 2007 itself had admitted the Family Settlement Deed of 31st December 1991 (Ex. P-1), on the basis of which preliminary decree is passed today.

Aforesaid statement made by learned senior counsel on behalf of the Plaintiff is taken on record as an undertaking by the Plaintiff, which be complied with, forthwith. In terms, as aforesaid, I.A. No. 1224/2007 & I.A.No. 2015/2007 stand disposed of. Learned counsel for the parties seek time to take instructions for passing of consent order to obtain the final decree in this matter.”

3. The said Order was challenged by the Defendant therein (Judgment Debtor No.1 herein) by filing FAO(OS) 701/2010 & 702/2010. In the said Appeal a joint application, being CM No.664/2012, was filed by the parties under Order XXIII Rule 3 CPC on the basis of a settlement entered into

between the parties. Paragraph No.16 of the said Application, which culls out the terms of the family settlement, reads as under:

> "*16. That the terms of the agreement and the understanding between the parties to the said suit and Instant Appeal, on the basis of which a compromise has been arrived at, are set out as under:- I*
>
> > ***a. All the parties hereto hereby undertake and declare to remain bound by the terms and conditions of the said preliminary decree dated 10.11.2010, read in conjunction with order dated 22.11.2010 passed in the said suit, and 1 thejr, shares as defined in terms thereof read with the said Deed of Family Settlement dated 31.12.1991 and undertake not to challenge and/or dispute the same in future;***
> >
> > ***b. All the parties have agreed to sell the suit property 16 a 147 purchaser in a private sale;***
> >
> > *c. The sale consideration would be received by the parties as per their respective shares in terms of the deed of settlement dated 31.12.1991 and as mentioned in paragraph 13 above;*
> >
> > *d. In keeping with the spirit of the order dated November 15, 2010 in the instant appeal, Mr. Arjun Som Dutt the Defendant no. 2 (Appellant herein) and Ms. Pritha Som Dutt, Defendant No. 3 (Respondent No.3 herein) shall pay out of the salè consideration to be received, an amount of Rs. 50 lakhs each to their mother, Mrs. Meera Som Dutt, l.e. Defendant no. 4 (Respondent No. 4 herein) and also undertake to bear all medical expenses which may be incurred by her. The Defendant no. 4 has already relinquished all her rights, title and interest in the suit property in favour of the said*

Defendant nos. 2 and 3; and Defendant no. 4 has declared that she has no subsisting claims on any part of the sale consideration.;

***e. In the event that the final sale deed cannot be executed in favour of the purchase, for any reason whatsoever, not attributable to the parties to the said suit, then the parties undertake that the property would still be sold to a subsequent purchaser offering the best market price**.*

However, the parties undertake to make all their best efforts to sell the property within 3 months in such an eventuality.

f. That all expenses for mutation and conversion of the suit Property from lease hold to free hold, including the house tax payable to the Municipal Corporation of Delhi shall be shared by the parties hereto in proportion to their respective shares in the suit Property." (emphasis supplied)

4. On the basis of the said family settlement, the Division Bench of this Court disposed of FAO(OS) 701/2010 & 702/2010 & CM No.664/2012 *vide* Order dated 13.01.2012 by holding as under:

"*There is a joint application filed by the parties compromising the present appeal directed against the impugned order dated 10.11.2010 qua the issue of interim relief. The preliminary decree has been passed vide the same order and the share of the parties were not disputes. In the proceedings of22.03.2004, the parties had agreed to sell the property so that the shares could be distributed. The parties had been taking time to locate a buyer and it is stated that the buyer has been located and an agreement to sell has been entered into in terms of the order dated 15.11.2011 and the process of carrying out mutation* *and the final execution of the sale deed is in progress.*

We may also record that R-4 had executed a relinquishment deed in favour of her son and daughter (appellant and R-3 respectively) and the court had expressed its concern in the order dated 15.11.2011 that though she was stated to be the staying in an Ashram, necessary arrangements must be made to take care of her expenses. R-4 was present in the Court on that date and stated that she would discuss the matter with her children. Learned counsel for the parties point out that the said concern has been addressed as per clause 16(d) at page 8 as a sum of Rs.50 lakhs each would be paid to her by the son and daughter and they also undertake to this Court to bear all medical expenses which would be incurred by her. The said undertaking is accepted. The said son and daughter will be bound by the undertaking.

The application has been signed by all the parties and their counsels and is duly supported by affidavits. We, however, find that insofar as Ms.Roop Talwar is concerned, she is acting through her stated power of attorney holder Mr.Gurvirendra Singh Talwar who is her ex-husband.

Learned counsel for the parties state that the power of attorney of Ms.Roop Talwar is executed in London which has been duly authenticated and presented for registration and a copy of the same will be filed before this Court within a week.

The compromise application is accordingly taken on record and the appeal stands disposed of in terms of the compromise application."

5. It is stated that in pursuance of the said Order, attempts were made to partition the property. However, when the parties failed to partition the suit

property by metes and bounds, the present Petition was filed for execution of the Decree dated 13.01.2012. It is stated that two attempts were made to sell the suit property through Court auction wherein the price of the suit property was fixed at Rs.65 crores. The first of such attempt was made *vide* Order dated 14.08.2023, where a co-ordinate Bench of this Court drew up the terms of the auction which read as under:

> "*14. The parties have handed over the proposed terms for auction of the subject property, which read as under:*
>
>> *"1. The Court Commissioner shall take all necessary and appropriate steps for auctioning the aforesaid suit property by way of a public auction.*
>>
>> *2. The party(ies) in possession of the original documents of title of the suit property shall hand over the same to the Court Commissioner within two weeks from today.*
>>
>> *3. All the outgoings relating to, concerning with and/or connected to the aforementioned suit property, whether on account of electricity, water, maintenance or property tax etc. upto the date of the sale, shall be borne by the parties to the suit in proportion of their respective shares therein and for the period/s thereafter, it shall be the responsibility and liability of the successful bidder/ purchaser to bear the same.*
>>
>> *4. The draft sale proclamation shall be settled by the Court Commissioner in consultation with the parties and shall be finally approved by the learned Joint Registrar concerned.*
>>
>> *5. The Court Commissioner shall issue final*

proclamation of sale in the local newspapers having wide circulations, at least one in Hindi language and one in English language.

6. The final proclamation of sale shall be prominently displayed on the notice boards of the High Court of Delhi, all the District Courts in Delhi as also in the offices of concerned Sub-Registrar within whose jurisdiction the suit property is situated and Sub-Divisional Magistrate of the concerned district. Besides, the final proclamation of sale shall also be affixed at the conspicuous place of the property in suit.

7. The Court Commissioner shall consider publication of final proclamation of sale in at least one of the websites; such as https://education.gov.in, https://www.bankeauction.com and https://www.ucobankauctiontiger.net.

8. The reserve price of the suit property in auction shall be fixed at Rs. 65.00 crores.

9. The parties to the suit shall be entitled to participate in the public auction.

10. The bids may be submitted by a participating bidder even jointly with another person including a lender/ financial supporter to the said participating bidder. If a bid is submitted jointly, the obligation of the successful joint bidder/ auction purchaser to pay the final bid price shall be joint and several.

11. Each bidder! participant in the open auction will be required to deposit with the Court Commissioner before the commencement of the *auction, a bank draft/banker's cheque of Rs.55.00 lakhs in favour of the "Registrar General, Delhi High Court".*

12. The names of the highest bidder and second higher bidder for the suit property shall be declared by the Court Commissioner after conclusion of the public auction for the said property. The deposits made by other participant bidders shall be returned.

13. Upon the finalization of the highest bid in the public auction, the highest successful bidder shall deposit with the Registrar General, Delhi High Court, 15% of the total final bid amount, after adjusting already deposited amount as afore noted, by way of bank draft/ banker's cheque/RTGS/NEFT, within seven working days from the date of the said auction.

14. The sale in favour of the highest bidder shall become final only after the approval of the bid by this Court.

15. After the approval of the bid by this Court, the successful bidder/ purchaser shall deposit the balance bid amount (after deducting TDS and depositing the same with the income-tax department in the names of the parties to this petition in proportionate to their respective shares in the suit property) with the Registrar General, Delhi High Court within 60 days of the approval of the highest bid by this Court.

16. In the event of failure of the highest bidder/ purchaser not depositing the entire amounts as noted above within the time so prescribed, the amounts deposited till that date, whether original *amount of Rs.55.00 lakhs and/or any other shall stand forfeited, and the suit property shall be then offered to the second highest bidder at the bid price quoted by the said second highest bidder, the other terms of the deposits and time therefor etc. remaining the same as noted above.*

17. On the deposit of the entire final bid amount by the .highest bidder / purchaser or the second highest bidder/ purchaser, as the case may be, the physical vacant possession of the suit property with all the documents, original and/or otherwise, relating to and concerning with the said property shall be handed over to him/her/them, as the case may be within 2 weeks thereafter.

18. The appropriate documents conveying the title of the suit property in favour of the successful purchaser shall be executed and registered within four weeks from the date of deposit of the entire bid amount and upon the successful purchaser completing all necessary formalities for it, at the costs and expense of the successful purchaser. "”

6. Material on record indicates that a day before the auction, a publication was made by the Judgment Debtor No.1 herein stating that the property in question is under dispute. It is stated that because of the publication there were no participants in the auction which resulted in a substantial loss to the Decree Holder as the Decree Holder had to spend considerable amount of money on the arrangements made for the auction process. It is stated that contempt petition was filed against Judgment Debtor No.1 Mr. Arjun Somdutt being CCP(O) 10/2024.

7. It is stated that *vide* Order dated 29.04.2024, a second attempt was made to sell the property in question. The Judgment Debtor No.1, who had

obstructed the auction in the first attempt, was warned not to take any steps to thwart the auction. The matter was listed before the Joint Registrar on 17.05.2024 for finalization of proclamation and fixation of the date of auction. The date of auction was fixed for 17.08.2024. It is stated that in the auction which was conducted on 17.08.2024, there were no takers for the property in question at the reserve price of Rs.65 crores. The report of the Local Commissioner conducting the auction mentions about the non-cooperation of Judgment Debtor No.1.

8. Certain bidders have approached this Court showing interest in buying the property in question. The Highest bidder, which is KTG Software Pvt. Ltd., has made an offer of Rs.58 crores in EX. APPL. (OS) 1936/2024.

9. It is stated by the learned Counsel for the Judgment Debtors No.1 & 2 that the property in question can fetch a higher amount.

10. In view of the facts and circumstances, this Court is inclined to make one more attempt to sell the property in question through an auction to ensure that maximum price is received for the property.

11. Though there are three proposed bidders in Court who have shown their interest in buying the property in question, instead of appointing a Court Auctioneer this Court deems it fit to direct the Registrar General of this Court to conduct the auction in the Court by giving one more advertisement inviting bids for the property in question at the cost of the Decree Holders.

12. The Registrar General is directed to conduct the bidding in the Court and decide the price at which the property is to be sold, on the basis of bidding. The bidders who are interested in participating in the bidding process are directed to deposit Rs.5.5 crores as earnest money to show their

bona fides. It is made clear that no bid shall be accepted without the deposit of earnest money. It is also made clear that the base price of the property in question shall be not less than Rs.58 crores as KTG Software Pvt. Ltd. has already shown interest in buying the property for Rs.58 crores. It is also made clear that after the auction, the vacant and peaceful possession of the property will be handed-over to the successful bidder within one month from the deposit of the sales consideration by the successful bidder.

13. List before the Registrar General on 08.01.2025.

14. It is also made clear that the Judgment Debtor No.1 has yet not purged the contempt.

15. List before the Court on 14.02.2025.

SUBRAMONIUM PRASAD, J

DECEMBER 10, 2024
Rahul