



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

% *Reserved on: 10<sup>th</sup> January, 2024*  
*Pronounced on: 20<sup>th</sup> March, 2024*

+ **EXECUTION PETITION NO.54/2017 & Ex.Appl.(OS) 256/2017**

**SUBHASH ARORA**

S/o Sh. J.R. Arora  
R/o C-28, (Ground Floor),  
Pancsheel Enclave,  
New Delhi.

..... Decree Holder

Through: Mr. Raman Kapur, Sr. Advocate with  
Ms. Damini Chawla, Advocate.

versus

1. **KALVINDER SINGH SANDHU**  
S/o Late Sh. Kewal Singh Sandhu,  
B-28/A, Kailash Colony, New Delhi

And  
48, Hillcraft Crescent,  
Bailing, London W-5,  
United Kingdom

2. **MR. BALVINDER SINGH SANDHU**  
S/o Late Shri Kewal Singh Sandhu,  
R/o 43, Hillcroft Crescent Ealing London,  
WS 2SG, United Kingdom.

3. **MRS. TARANJIT KAUR**  
D/o Late Shri Kewal Singh Sandhu,  
13, Brook Field Avenue Ealing London,  
WS 1LA, United Kingdom.



4. **MRS. KULJIT KAUR KULLAR**  
D/o Late Shri Kewal Singh Sandhu,  
R/0 772, Bath Road, Cranford Middlesex,  
TW5 9SZ, United Kingdom.
  
5. **MRS. SURINDER KAUR SANDHU**  
Widow of Late Shri Kewal Singh Sandhu,  
R/o 43, Hillcroft Crescent Earling London,  
W52SG, United Kingdom.
  
6. **MR. SUKHVINDER SINGH GILL**  
S/o Mr. Jarnail Singh Gill,  
R/o Flat NO.901, Devashish,  
14A Road, Khar, Mumbai.

..... Judgment Debtors

Through: Mr. Anand Varma & Ms. Adyasha Nanda, Advocates for JDs. Mr. Venancio D' Costa, Ms. Astha Ojha & Ms. Gauri Goel, Advocates for Intervenor in EX.APPL.(OS) 42/2019.  
Mr. Hari Patel.

**CORAM:**  
**HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA**  
**J U D G M E N T**

**NEENA BANSAL KRISHNA, J.**

**EX. APPL.42/2019***(under Section 47 read with Section 151 CPC on behalf of the Proposed Intervenor seeking impleadment)*

1. An application on behalf of Trustee Mr. Michael T. Leeds has been filed under Section 47 read with Section 151 of the Code of Civil Procedure, 1906 (*hereinafter referred to as "CPC"*) raising objection and seeking impleadment in the present Execution proceedings.



2. It is submitted in the application that Grant Thornton UK LLP (*hereinafter referred to as "GTUK"*) is a limited liability Partnership constituted in accordance with Limited Liability Partnerships Act, 2000. It is submitted that Mr. Nicholas Wood and Mr. Michael Leeds of GTUK were appointed as Joint Trustees in Bankruptcy of Kalvinder Singh Sandhu, Judgment Debtor No.1, by the Secretary of State in England and Wales on 10.12.2015 following a *Bankruptcy Order* dated on 07.10.2015, made by the High Court of Justice in England and Wales in Petition No.2068 of 2015, filed against Judgment Debtor No.1 Mr. Kalvinder Singh Sandhu by the Bank of Baroda on 18.06.2015. The appointment of Joint Trustees was confirmed and communicated by the official Receivers office of U.K.

3. The *factual background* is that a Decree dated 08.04.2011 was passed by High Court of Hong Kong against Judgment Debtor No.1 Mr. Kalvinder Singh Sandhu herein, in favour of Bank of Baroda, Hong Kong Branch. The H.H. Judge Mackie QC of High Court of Justice, Queen's Bench Division, Commercial Court vide its Order dated 24.11.2014 recognized the aforesaid order of the High Court of Hong Kong. However, on an undertaking given by the Bank, it was decided that the Bank shall not enforce the final US \$42,012.50 of the debt owed to it by Judgment Debtor No.1 without appropriate permission. It was ordered that Judgment Debtor No.1 shall pay the judgment debt of US \$1,927,217.40 and HK \$11,045 to the Bank along with interest @ 8% per annum from the date of judgment till the date of payment along with cost. However, no payments have been made by Judgment Debtor No.1 till date. Aggrieved, the Bank on 18.06.2015 filed a *Petition bearing No.2068/2015 in Re: Kalvinder Singh Sandhu* before High Court of Justice in England and Wales. The Notice was issued to Judgment



Debtor No.1, but he failed to appear. The High Court of Justice in England and Wales adjudged Mr. Kalvinder Singh Sandhu as Bankrupt vide its Order dated 07.10.2015.

4. The applicant investigated into the financial affairs of the Judgment Debtor No.1 and it was established that he had a financial interest in property No.B-8/A, Kailash Colony, New Delhi, India and that he along with his father Sh. Kewal Singh Sandhu, had entered into a Agreement to Sell dated 20.07.2010 with Sh. Subhash Arora, the Decree Holder herein, for sale of property for a total consideration of INR 13,25,00,000.00 (13.25 crores). It is understood that Judgment Debtor No.1 had received INR 2,60,00,000.00 in part consideration for the purchase of property in 2010. The disputes arose between the Judgment Debtor and Decree Holder in respect of the ownership of the suit property pursuant to which the Decree Holder filed a suit bearing No.CS(OS) No.734/2011 before this Court seeking Specific Performance of the Agreement dated 20.07.2010, which was decreed in favour of Decree Holder *vide* Judgment dated 26.11.2016 with the directions that the Judgment Debtor shall specifically perform the Agreement dated 20.07.2010 by paying the balance consideration of INR 10,65,00,000.00 (10.65 cr) to the Decree Holder.

5. Thereafter, the Decree Holder had filed the present Execution Petition for execution of Decree dated 26.11.2016.

6. It is submitted that Judgment Debtor No.1 as per the Decree dated 26.11.2016 is entitled to receive INR 10,65,00,000.00 (10.65 cr) in the present Execution proceedings. The applicant *vide* its letter dated 29.11.2017 informed the Decree Holder herein Mr. Subhash Arora about the Bankruptcy Order dated 07.10.2015 passed by the High Court of Justice in



England and Wales. The intervener also informed the Decree Holder that the entire sale proceeds (or at least 50% of the sale proceeds) arising from the sale of property necessarily form an asset of the Bankruptcy estate. Further, the Decree Holder has also been informed that balance sale proceeds which are payable to Judgment Debtor No.1, in fact should legally be paid to the intervener. However, the Decree Holder failed to respond to the letter dated 29.11.2017 and the subsequent letter dated 15.01.2018 wherein the demand was reiterated.

7. It is asserted that some time in firstweek of February, 2018 counsel for the Decree Holder telephonically informed the counsel for the applicant that Judgment Debtor No.1, has died. However, it was subsequently clarified that it is Mr. Kewal Singh Sandhu/Judgment Debtor No.2 father of Judgment Debtor No.1 who had expired. It is claimed that despite the Decree Holder being aware of the Insolvency proceedings pending against Judgment Debtor No.1, he intentionally violated the provisions of Order XXI Rule 22 Sub rule (1)(c) of the CPC and has neither issued any Notice nor has he impleaded the Intervener in the present Execution Proceedings.

8. The Intervener submits that the Bankruptcy Order dated 07.10.2015 has been passed by a Competent Court of a Reciprocating Territory and has full effect and is executable in India under *Section 44A of the Code of Civil Procedure*. Furthermore, only one person can represent an Insolvent's estate who is the Official Receiver appointed by the Competent Authority or a subsequently appointed Trustee in bankruptcy.

9. The Intervener has already filed an Execution Petition bearing Exp. No.70/2018 for executing the Bankruptcy Order dated 07.10.2015 passed by High Court of Justice of England and Wales. An application has also been



moved in the said Execution Petition under Order XXI Rule 46, CPC, for *Garnishee Orders* on which Notice has already been issued to Judgment Debtor No.1. Vide Order dated 19.11.2018, this Court directed the Garnishee i.e. the Decree Holder to deposit the share of Judgment Debtor No.1 in the Court which is found due to be payable to Judgment Debtor No.1.

10. On the request of the parties, the matter was referred to Delhi High Court Mediation and Conciliation Centre on 19.11.2018. It is claimed by the Intervener that any settlement arrived at between the parties in the absence of the Intervener, would have a direct bearing to the share in the estate of Judgment Debtor No.1 thereby causing serious prejudice to the Intervener.

11. The Intervener submits that he has to recover US \$ 1,927,217.40 equivalent to INR 113,537,780.71, HK \$11,045 equivalent to INR 86,34.40 along with interest and cost, from Judgment Debtor No.1. The Intervener has submitted that it has strong apprehension that Judgment Debtor No.1 or his legal heirs may transfer or reduce the share of the Judgment Debtor to be received pursuant to the sale of property, which would result in great prejudice and loss to the Trustees of Bankruptcy estate of Judgment Debtor No.1. *A prayer is, therefore, made that the Intervener be permitted to be impleaded as a party.*

12. **The Decree Holder in his Reply** has submitted that the appointment of the applicants as Joint Trustee in respect of the outstanding liability of Judgment Debtor No.1 is not in their knowledge and that the applicant is a stranger to the proceedings.

13. It is further submitted that the parties have already arrived at an amicable settlement which was signed on 09.01.2019, much before the filing



of the present application, before the Delhi high Court Mediation Centre. Pursuant to the Settlement arrived at inter se the parties on 09.01.2019, it has been agreed that the Sale Deed would be executed in favour of Decree Holder on payment of reduced consideration of Rs.7,60,00,000/-, without handing over the physical possession since it is in the occupancy of trespassers and Judgment Debtor is not in a position to get them evicted. The parties have already filed an application bearing E.A No.35/2019 for taking the Settlement between the parties, on record and to dispose of the present Execution Petition.

14. It is submitted that the allegations made by the applicant against the Judgment Debtor and Decree Holder, are baseless and vexatious. The Judgment Debtors have admitted in the Reply to the Execution Petition dated 09.11.2017 that they had requested the Decree Holder to reduce the price of the suit property on account of presence of trespassers in the suit property. One Dr.Sukvender Kaur till date is occupying the suit property and the criminal proceedings are pending against her.

15. The Settlement *inter se* the parties was arrived at much prior to 19.11.2018 on which date the Decree Holder was directed to deposit the amount due to Mr. Kalvinder Singh Sandhu in the Court. As per the knowledge of the Decree Holder, no payment has been made to Judgment Debtor No.1. after the passing of Order dated 19.11.2018, the Settlement Agreement dated 09.01.2019 is nor collusive or it cause any prejudice to the applicants.

16. It is, therefore, submitted that there is no merit in the present application which deserves outright dismissal.

17. **Submissions heard.**



18. From the facts as narrated in the application it emerges that the Judgment Debtor No.1 owed money to Bank of Baroda, Hong Kong Branch and on default, Bank of Baroda had a decree against Mr. Kalvinder Singh Sandhu in Hong Kong. Upon non-payment of the money owed, a petition was filed before the Hon'ble High Court of Justice in England and Wales against Mr. Kalvinder Singh as he was residing in U.K., and the Decree was recognized in England and Wales. Mr. Kalvinder Singh Sandhu did not appear and was declared as bankrupt vide Order dated 07.10.2015.

19. The present applicant is one of the Trustees appointed for execution of the Decree given by the High Court of Hong Kong against Judgment Debtor No.1. The Insolvency proceedings essentially were in respect of the debt owed by Judgment Debtor to Bank of Baroda.

20. During the course of arguments, learned counsel for Bank of Baroda submitted they are already pursuing for recovery of their outstanding dues in the matter in execution, before DRT. The proceedings for bankruptcy apparently were initiated in U.K for an on behalf of recovery of the amounts due to Bank of Baroda, but the Bank of Baroda itself is pursuing its independent remedies by way of Execution before DRT.

21. The Intervenor also wants to secure the money from Judgment Debtor No.1 in terms of the Insolvency Order passed by the High Court of Justice in England and Wales. As mentioned by the Intervener, it has already filed an independent Execution proceedings bearing Execution No.70/2018 against Judgment Debtor. As per the submissions of the Intervener, a Garnishee Order dated 19.11.2018 has also been made directing the Decree Holder to deposit the balance sale consideration in the Court.



22. Since the Intervener has already initiated its own remedy by way of independent Execution Petition No.70/2018 in which Garnishee Orders have also been made on 19.11.2018 and also considering that Bank of Baroda is pursuing its own remedy against Judgment Debtor No.1, the Intervener is neither a necessary nor a proper party to the present proceedings. The only interest of the Intervener is to secure its money from Judgment Debtor No.1 which may come in his hands through Decree Holder. However, as per the submissions, the Garnishee Order has already been made on 19.11.2018. The Intervener has already taken its own independent steps and therefore, is neither a necessary nor a proper party to the present proceedings.

23. The application is, therefore, dismissed.

*EX.APPL.505/2023 (under Section 151 CPC on behalf of the Intervener for issuing Directions)*

*EX.APPL.198/2019 (under Section 151 CPC on behalf of the Intervener for Cancellation of Settlement Agreement dated 19.01.2019)*

24. **An application bearing No. 505/2023** has been filed on behalf of the Intervener for issuing directions to the Decree Holder and the Judgment Debtors, not to act upon the Settlement Agreement dated 19.01.2019.

25. **The Intervener has filed an application bearing No. 198/2019 seeking cancellation of Settlement Agreement dated 19.01.2019.**

26. It is stated in the application that in Execution Petition No.70/2018 filed by the Intervener, a Garnishee Order had been made on 19.11.2018 of which there was due service to the Decree Holder as well as the Judgment Debtor, with the direction to the Decree Holder to deposit the balance sale consideration due to Judgment Debtor No.1 in the Court. Despite the Orders and the pendency of the Execution Petition, the parties have entered into a



Settlement, wherein not only has the sale consideration been reduced, but even the parties have gone ahead to execute the Sale Deed about the which the Intervener has come to know in the Court on 24.03.2023. It is, therefore, submitted that the Mediation Settlement arrived at *inter se* the parties be not accepted.

27. **The Decree Holders in their Reply** have denied that they had knowledge of the bankruptcy proceedings against the Judgment Debtor.

28. It is stated that the due to the illegal occupation of the Suit Property by the a trespasser and inability of the Judgment Debtors to handover physical vacant possession of the same to the Decree Holder in terms of the decree dated 26.09.2016, the total sale consideration of the Suit Property has been reduced by the parties. It is also denied that there is any collusion between the Decree Holders and the Judgment Debtor.

29. Therefore, the application is liable to be dismissed.

30. **The Judgment Debtor No.1 in its Reply** has stated that the applicant has no locus to file the present application till the bankruptcy Order of the High Court of England and Wales, is recognized by this Court. It is further denied that the garnishee Order was violated by them.

31. **Submissions heard.**

32. At the outset, it must be noted that the present Execution Proceedings have been initiated in execution of the Judgment dated 26.11.2016 wherein a Decree for Specific Performance of the Agreement to Sell dated 20.07.2010 was granted to the Decree Holder. As per the Settlement arrived at, the parties have agreed upon the amount of Rs.7,60,00,000/- as consideration for the Property. The present applications have been filed by the Intervener to realise the amount due from Judgment Debtor No.1, which



may come in his hand through the Decree Holder in execution of a Decree of Specific Performance of an Agreement to Sell, in the present Execution Petition.

33. As per the submissions of the Intervener, he has already filed independent Execution proceedings to recover the money from Judgment Debtor No.1 and even a Garnishee Order dated 19.11.2018 has been made in the proceedings. The Intervener cannot prevent the Judgment Debtor of its obligations arising from Decree of this Court, of executing a Sale Deed in favour of the Decree Holder on receiving the amount. As the steps have already been taken by the Intervener by filing an independent Execution Petition and his interest is only to secure the money, therefore, he has no locus to challenge the mediated Agreement *inter se* the parties to deny the fruits of Decree in his favour and for execution of the Sale Deed in satisfaction of the Execution Petition.

34. Further, the parties have validly entered into an Mediation Settlement and reduced the sale consideration to Rs.7,60,00,000/- for which the explanation given is that the Judgment Debtor is that since he is unable to evict the trespasser who is occupying the premises, he has been constrained to reduce the consideration amount.

35. The parties may have *inter se* decided to reduce this consideration amount, but the Intervener cannot take any objection to the settlement of the parties on this ground. This is more so because an independent Execution Petition has already been filed by the Intervener wherein he is at liberty to seek the recovery of the balance amount from either Judgment Debtor or the Decree Holder, as the case may be. Moreover, the Bank of Baroda, whose



Debt is intended to be secured by the Intervener, is already pursuing its independent remedy in DRT.

36. The above two applications are therefore, without merit and are hereby dismissed.

**EX.APPL.35/2019***(under Section 151 CPC on behalf of the Decree Holder seeking Disposal of the Execution Petition)*

37. An application has been filed on behalf of the Decree Holder seeking disposal of the Execution Petition.

38. It is submitted that on 19.01.2018 the parties made a request for being referred to Mediation to explore the possibility of settlement and accordingly the parties were directed to appear in the Mediation Centre on 10.12.2018. They have mutually arrived at a Settlement on 09.01.2019. The parties agreed that they shall abide by the settlement and was arrived at voluntarily. It was submitted that in view of the Settlement dated 09.01.2019, the present Execution Petition may be disposed of.

39. The learned counsel appearing on behalf of the Intervener has taken a serious objection to this Settlement which is claimed to be malafide. It is claimed that the amount due under the Agreement to Sell was Rs. 10,65,00,000.00, but the matter has been settled on payment of Rs.7,60,00,000/- which is nothing but a malafide settlement entered into between the parties for defeating the bona fide rights of the Intervener.

40. **Submissions heard.**

41. The application of the Intervener under Order I Rule 10, CPC has already been dismissed. Furthermore, the present Execution Petition was in respect of a Decree for Specific Performance of Contract dated 26.09.2016, in respect of an Agreement To Sell entered into between the parties on



20.07.2010. The parties have validly entered into an Mediation Settlement and reduced the sale consideration to Rs.7,60,00,000/- for which the explanation given is that the Judgment Debtor is unable to evict the trespasser who is occupying the premises and has been constraint to reduce the consideration amount.

42. The present Execution pertains to execution of the Agreement to Sell dated 20.07.2010 between the parties which has now been settled by them. There is no merit in the objection taken on behalf of the Intervener to stall or to keep this Execution pending. There is no plea that mediation settlement is entered due to any pressure or coercion. The Sale Deed already stands executed. Nothing more survives in the present Execution Petition, which is hereby disposed of in terms of the Mediation Settlement dated 09.01.2019.

43. Accordingly, the application is allowed.

44. The Execution petition is disposed of along with pending applications, if any.

**(NEENA BANSAL KRISHNA)**  
**JUDGE**

**MARCH 20, 2024/Va**