



\$~23

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.P. 96/2018
PARESH DANDONA

.....Decree Holder

Through: Mr.Suhail Dutt, Sr. Adv. with
Mr.Azhar Alam, Mr.Sankalp
Goswami, Advs.

versus

JAHNAVI DUGAL

.....Judgement Debtor

Through: Mr.V.R.Datar, Sr. Adv. with
Mr.Sunil Chaudhary, Adv.
Mr.Keshav Sehgal, Mr.Niyas,
Advs. for objector in EA
138/2019.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

ORDER

% **23.08.2024**

Ex.Appl. (OS) 1324/2024

1. This application has been filed by the Judgment Debtor seeking recall of the order dated 01.08.2024 passed by this Court which had revived the present execution petition that had been adjourned *sine die* in terms of the order dated 23.11.2023.
2. The learned senior counsel for the Judgment Debtor/applicant submits that this Court, while reviving the present petition, has failed to appreciate that earlier by the order dated 13.03.2020, this Court had observed that for continuation of the present execution petition, the parties would have to seek appropriate clarification from the Division Bench which passed the order dated 16.01.2020 in RFA(OS) No.86/2019 titled ***Sukruti Dugal v. Jahnavi Dugal & Ors.***
3. The learned senior counsel for the Judgment Debtor has also



placed reliance on the order dated 30.11.2022, wherein again, it was noted that the Decree Holder is yet to seek clarification from the Division Bench.

4. It is admitted that the Decree Holder had not sought any clarification from the Division Bench of the said order nor sought permission of the Division Bench to continue with the present execution proceedings.
5. Finally, by the order dated 23.11.2023, the Execution Petition was adjourned *sine die* to be revived on moving of an application by either of the parties.
6. The learned senior counsel for the Judgment Debtor submits that admittedly, the Decree Holder has not yet sought clarification of the order dated 16.01.2020 passed in RFA(OS) No.86/2019, wherein the Division Bench had categorically observed that the effect of the consent decree passed, of which the execution is being prayed for in the present proceedings, shall have to await trial of the Suit filed by the daughter of the Judgment Debtor that is, Ms.Sukruti Dugal.
7. He submits that in case this Court finds that there is a conflict between the judgment dated 16.01.2020 and the judgment dated 22.05.2024 passed in FAO(OS) no. 35/2023 titled ***Paresh Dandona v. Sukruti Dugal & Ors.***, in terms of the judgment of the Supreme Court in ***State of U.P. and Ors. v. Ajay Kumar Sharma & Anr.*** (2016) 15 SCC 289, the Court should be guided by the earlier judgment and otherwise, issues should be referred to a Larger Bench to be constituted by the Chief Justice.



8. On the other hand, the learned senior counsel appearing for the Decree Holder submits that the present application is a gross abuse of the process of the Court. He submits that before the Division Bench, in FAO(OS) No.35/2023, the Judgment Debtor herself had taken a categorical stand that there is no impediment in the present execution proceedings continuing independently. She also did not dispute the validity of the consent decree dated 04.02.2015 of which execution is prayed for in the present petition. He submits that even otherwise, the effect of the order dated 16.01.2020 passed by the Division Bench of this Court in RFA(OS) No.86/2019 was also considered by the Division Bench in passing its order of 22.05.2024, and the Division Bench observed as under:

“39. However, the affidavit(s) dated 19th November, 2020, subsequently filed by Respondent Nos. 2 and 3 respectively, shows that they were both aware that Respondent No. 2's share in Vasant Vihar property and Kailash Hills stood sold in the year 2012 and 2015 respectively. The sale of the assets, which fell to the share of Respondent No.2 under the consent decree dated 04th February, 2015, showed that Respondent No.2 had implemented the said decree and received her share of the estate of parents. The said facts were material and were withheld/suppressed by Respondent Nos. 2 and 3 from the Division Bench which heard RFA (OS) No. 86/2019 and passed the order dated 16th January, 2020. Suppression of these material facts by Respondent Nos. 2 and 3 was intended to interfere with the administration of justice as it influenced the decision making by the Division Bench in RFA(OS) 86/2019; in addition to overreaching the execution proceedings in Ex. P. No. 96/2018.”



9. It was observed that the order dated 16.01.2020 had been obtained by the Judgment Debtor by suppressing material facts from the Division Bench which had passed the said order.
10. I have considered the submissions made by the learned counsels for the parties.
11. In the present case, there is admittedly a consent decree passed in favour of the Decree Holder and against the Judgment Debtor, declaring the plaintiff to be the owner of the ground floor and basement of the building situated at 25, Vasant Marg, Vasant Vihar, New Delhi. The decree further directed in the consent terms as under:

“O. In case the Defendant is unable to pay the full amount within the stipulated period of time the Plaintiff will be within his right to either sell his share to a person of his choice, onto seek eviction of the defendant and persons claiming under her, from the property. In such event, the defendant, and all persons claiming through her, shall be obliged to promptly vacate the premises on demand being made by the plaintiff in writing.”

12. The present execution petition has been filed stating that as the Judgment Debtor has not paid the full amount within the stipulated period, the Decree Holder is entitled to seek eviction of the Judgment Debtor and persons claiming under her, from the property.
13. Once the execution petition was filed, a suit was filed by the



daughter of the Judgment Debtor, being CS(OS) No.649/2018 titled ***Sukruti Dugal vs. Jahnavi Dugal and Ors..***

14. A learned Single Judge of this Court *vide* its order dated 23.09.2019 passed in the said Suit, allowed an application filed by the Decree Holder under Order VII Rule 11 of the CPC and dismissed the said suit for want of cause of action.
15. Feeling aggrieved by the said order, the daughter of the Judgment Debtor filed an appeal, being RFA(OS) no.86/2019 titled ***Sukruti Dugal v. Jahnavi Dugal & Ors..*** The same was allowed by the Division Bench of this Court *vide* its judgment dated 16.01.2020, observing as under:

*“19. The course of action adopted in the impugned judgment of converting the application filed by the respondent No.3 for rejection of the plaint on the ground of want of cause of action, into an application under Order XII Rule 6 CPC and then dismissing the suit instituted by the appellant/plaintiff, is thus found to be untenable. The decisions relied on by learned counsel for the respondent no.3 in the cases of Surender Kumara vs. Dhani Ram and Ors. reported as **227 (2016) DLT 217** and Surender Kumar Khurana vs. Tilak Raj Khurana & Ors. reported as **2016 (155) DRJ 71 (DB)** can also not be of any assistance when the proceedings in the suit were at a nascent stage and at that stage, the court is only required to examine the averments made by the appellant/plaintiff in the amended plaint as it stands and coupled with that, go through the the documents filed with the plaint. We are of the firm view that at that point in time, no adverse inference could have been drawn against the*



appellant /plaintiff pertaining to the existence of the HUF or the description of the suit properties in the plaint as HUF properties, in the absence of any admissions on her part. The effect of the consent decree between the respondent No.1, mother of the appellant/plaintiff and her maternal uncle, shall have to await trial in the suit particularly, when the respondent no.3 does not deny the fact that the appellant/plaintiff was neither a party, nor was she a signatory to the Settlement Agreement executed by her mother and uncle qua the suit properties. In view of the averments made in the amended plaint read in conjunction with the documents referred to hereinabove, copies whereof were filed by the appellant/plaintiff with the amendment application, there was no occasion to allow the application filed by the respondent No.3 under Order VII Rule 11 CPC by treating the same as an application moved under Order XII Rule 6 CPC.”

(emphasis supplied)

16. In the above judgment, passing reference was made that the effect of the consent decree between the Judgment Debtor, that is, the mother of the plaintiff therein and the Decree Holder, who is the maternal Uncle of the plaintiff in the said Suit, shall have to await trial in the said Suit, particularly, when the Decree Holder does not deny the fact that the plaintiff therein was neither a party nor was the signatory to the settlement agreement executed by her mother and the Decree Holder qua the suit properties.
17. The above judgment was brought to the notice of the predecessor Bench in the present proceedings. As the parties were at variance



if the above order would preclude this Court from proceeding further with the present Execution Petition, accordingly, this Court granted liberty to the parties to seek appropriate clarification from the Division Bench if the present proceedings can still continue. I may quote from the order dated 13.03.2020 as under:

“Mr. Suhail Dutt, learned Senior Advocate appearing for the decree holder, disputes the said position. He states that the Division Bench vide the said order has only set aside the order dated. September 23, 2019 of this Court in CS(OS) 649/2018. The Division Bench was not considering an appeal against the consent decree, for it to set aside the same. Liberty is with the parties to seek appropriate clarification from the Division Bench.”

18. By the subsequent order dated 30.11.2022, this Court found that the parties had still not taken appropriate clarification from the Division Bench, and again left it to them to do the needful. I may quote from the order as under:

“5. In view of the aforesaid, while the Court in light of the order of 13 March 2020 would have to necessarily await the outcome of proceedings which have been initiated in CS(OS) 649/2018, it leaves it open to the Execution Petitioner, if so chosen and advised, to obtain requisite clarifications.”

19. In spite of the above, the Decree Holder did not file an application before the Division Bench for seeking a clarification,



leaving this Court with no other option but to adjourn the present petition *sine die* to be revived on either of the parties moving an appropriate application in this regard. I may quote the order dated 23.11.2023 passed by this Court as under:

“1. Learned counsel on behalf of the Judgment Debtor submits that in view of the Order dated 16.01.2020 by the Division Bench of this Court, the proceedings in the present Execution Petition has to be stayed.

2. In view of the submissions made, the present matter is consigned sine die to be revived on moving the application by either party.

3. Learned counsel for the Decree Holder submits that he has filed his vakalatnama but the same is not on record.

4. Learned counsel for the Decree Holder is directed to get the objections removed, if any, and bring the vakalatnama on record.”

20. In the meantime, in the Suit filed by the daughter of the Judgment Debtor namely, Sukruti Dugal, the application filed by the Decree Holder under Order XXXIX Rule 4 of the CPC seeking vacation of an *ex parte* ad interim order dated 21.12.2018 granted therein, being IA No.8363/2020, was dismissed by the learned Single Judge of this Court *vide* order dated 09.01.2023. The said order was carried in an appeal by the Decree Holder, in form of FAO(OS) No.35/2023. The said appeal was allowed by the Division Bench of this Court *vide* its judgment dated 22.05.2024. Some of the observations in the said judgment and the final direction passed therein would have a vital bearing in deciding this application and therefore, are reproduced



hereinunder (for sake of clarity, in the quoted portion, respondent no. 2 is the Judgment Debtor, while the respondent no. 1 is her daughter, the plaintiff in CS(OS) 649/2018, and the appellant is the Decree Holder):

“4.1. He stated that Respondent No. 2 is estranged from Respondent No.1/Plaintiff. He stated that Respondent No.2 is opposed to the suit itself and has in her written statement prayed for dismissal of the suit. He stated that it's the stand of Respondent No.2 that the suit filed by Respondent No.1 is frivolous and not maintainable. He stated that, therefore, this Court may not entertain the impression that the underlying civil suit filed by Respondent No.1 is collusive between Respondent Nos. 1 to 3.

4.2. He stated that the execution proceedings initiated by the Appellant i.e., Ex. P. No. 96/2018, can be independently continued. He stated that Respondent No.2 admitted to the validity of the consent decree dated 4th February, 2015 and did not dispute that she is bound by it.

xxxxx

20. Therefore, in view of the aforesaid statements made by the counsels for Respondent Nos. 1 to 3 and the findings above, the impugned judgment dated 9th January, 2023 is set aside and consequently, the ad-interim order dated 2nd December, 2018, is hereby vacated. The Appellant is, however, bound down to his statement that on recovering possession he will not create any third-party rights in his portion till the pendency of the underlying suit.

21. The Appellant is consequentially at liberty to forthwith proceed with the proceedings in Ex. P. 96/2018, to recover the possession of his portion and the license fee in terms of the consent decree and it is clarified that the pendency of the underlying suit will not be relied upon by Respondents to impede



the said execution.

xxxxxx

25. To sum up, we have issued the following directions to the parties, in this judgment:

25.1. The impugned judgment dated 09th January, 2023 passed in CS(OS) 649/2018 is set aside and consequently, the ad-interim order dated 21st December, 2018, stands vacated.

25.2. The Appellant is at liberty to proceed with the execution proceedings in Ex. P. 96/2018 to recover the possession of his portion and license fees as per consent decree dated 04th February, 2015. The Appellant is, however, bound down to his statement that on recovering possession he will not create any third-party rights in his portion till the pendency of the underlying suit.

25.3. The Respondent No. 2 is directed to deposit 2/3rd of the sale consideration (received by her by the sale of the first and second floor of Vasant Vihar property as well as Kailash Hills property), with the Registrar General within four weeks along with interest thereon at 10% per annum from the date of respective sale to secure the interest of Respondent Nos. 1 and 3.

xxxxxx

39. However, the affidavit(s) dated 19th November, 2020, subsequently filed by Respondent Nos. 2 and 3 respectively, shows that they were both aware that Respondent No. 2's share in Vasant Vihar property and Kailash Hills stood sold in the year 2012 and 2015 respectively. The sale of the assets, which fell to the share of Respondent No.2 under the consent decree dated 04th February, 2015, showed that Respondent No.2 had implemented the said decree and received her share of the estate of parents. The said facts were material and were withheld/suppressed by Respondent Nos. 2 and 3 from the Division Bench which heard RFA (OS) No. 86/2019 and passed the order dated 16th January, 2020. Suppression of these material facts by



Respondent Nos. 2 and 3 was intended to interfere with the administration of justice as it influenced the decision making by the Division Bench in RFA(OS) 86/2019; in addition to overreaching the execution proceedings in Ex. P. No. 96/2018.”

(Emphasis supplied)

21. A reading of the above finding and the observations of the Court would clearly show that the present proceedings were allowed to be continued by the Division Bench of this Court. In fact, it was the own submission of the Judgment Debtor that the present proceedings can continue.
22. By the above judgment, the Division Bench of this Court had also been pleased to initiate the *suo moto* notice of contempt against the Judgment Debtor. I may quote from the judgment as under:

“45. In the findings recorded above, the Respondent No.1/Plaintiff, Respondent No.2 and Respondent No.3 are thus prima facie guilty of Criminal Contempt for filing false pleadings and affidavits as well as suppression of material facts. Respondent No. 1 has filed false pleadings in the underlying suit CS(OS) 649/2018 and in RFA (OS) 86/2019. Respondent No.2 has filed false pleadings in CS(OS) No. 1175/2010 and CS(OS) 649/2018 as her stand in the pleadings in both the suits are inconsistent and mutually destructive. Respondent No. 3 is guilty of suppression of material facts from the Division Bench in RFA (OS) 86/2019 as the facts disclosed in affidavit dated 19th November, 2020 were not disclosed to the Division



Bench. Accordingly, issue notice to Respondent Nos. 1 to 3 to show-cause as to why proceedings for criminal contempt under Section 2(c) read with Section 12 of the Contempt of Courts Act, 1971 be not initiated against them for filing of false affidavits, false pleadings, and suppression of material facts. The Registry is directed to register Suo Moto Criminal Contempt Case and proceed accordingly.”

23. Aggrieved by the above judgment, Ms.Sukruti Dugal preferred a Special Leave Petition under Article 136 of the Constitution of India before the Supreme Court, being SLP(C) No.16533/2024 (later converted into Civil Appeal No.8532/2024). The Supreme Court *vide* its order dated 05.08.2024 disposed of the said Appeal by observing and directing as under:

“Leave granted.

Upon hearing learned counsel for the parties, we are not inclined to interfere with the reasoning adopted by the High Court insofar as dealing with the interlocutory application is concerned.

However, on the facts of the case, we are of the view that there is no need for initiation of suo moto contempt as the appellant is the daughter of the defendant who is alleged to have sold the property.

In such view of the matter, the appeal stands disposed of with the observation that the High Court need not proceed with the suo moto contempt proceedings initiated.

Resultantly, the order vacating the earlier order of status quo does not warrant any interference.

We make it clear that the observations in



the impugned judgment being prima facie, will not have any bearing on the suit.”

24. The Supreme Court, therefore, has not interdicted the further continuation of the present execution proceedings which was expressly allowed to be continued by the Division Bench of this Court.
25. The learned counsel for the Judgment Debtor has submitted that the Judgment Debtor has also filed a Special Leave Petition against the judgment dated 22.05.2024 passed by the Division Bench of this Court in FAO(OS) No.35/2023, and the same is likely to be listed in near future.
26. I do not find the above to be a valid reason to recall the order dated 01.08.2024. In fact, as noted herein above, it was the own case of the Judgment Debtor that this execution proceeding can continue notwithstanding the pendency of the Suit filed by the daughter of the Judgment Debtor. The Judgment Debtor cannot hold hot and cold in the same breath; she cannot be allowed to approbate and reprobate in the proceedings. I find that the objection of the Judgment Debtor on the revival of the present execution petition and its continuation, is clearly *mala fide* and an abuse of the process of the Court. The Judgment Debtor is guilty of taking different stands before different Courts as would suit her convenience. The same cannot be allowed.
27. I therefore, find no merit in the present application. The same is dismissed with costs quantified at Rs.1 lac, to be deposited with



the Delhi High Court Clerks Welfare Association.

EA(OS) 138/2019

28. These objections under Order XXI Rule 58 of the CPC have been filed on behalf of Ms.Sukruti Dugal.
29. The learned counsel for the Objector submits that the decree dated 04.02.2015 was based on the purported settlement between the Decree Holder and the Judgment Debtor, obtained by concealing various facts from this Court. The objector not being a party to the settlement agreement, the same is not binding on the objector and the decree cannot be enforced against her.
30. He submits that the objector has already filed a suit *inter alia* seeking partition of the properties, which also includes the subject property, that is in CS(OS) No.649/2018. He submits that the Supreme Court in its order dated 05.08.2024 passed in Civil Appeal No.8532/2024, referred hereinabove, has stated that any observation made in the order dated 22.05.2024 of the Division Bench in FAO(OS) No.35/2023 shall not have any bearing on the adjudication of the suit filed by the objector. He submits that as the objector has share in the property and is in possession, the decree cannot be executed against her.
31. The learned senior counsel for the Decree Holder, on the other hand, has drawn my attention to paragraphs 5, 22 to 24 of the judgment dated 22.05.2024 passed by the Division Bench in FAO(OS) No.35/2023, and submits that the only claim of the objector against the Judgment Debtor is in the other properties of the Judgment Debtor. There is no claim left of the objector



against the property in question that is, ground floor and the basement floor of the property bearing no.25, Vasant Marg, Vasant Vihar, New Delhi.

32. I have considered the submissions made by the learned counsels for the parties.
33. As noted hereinabove, the Division Bench of this Court has specifically allowed the present execution proceedings to be continued and has vacated the interim order that was passed in favour of the objector in the suit filed by her, that is, CS(OS) No.649/2018.
34. The Division Bench of this Court, in its order dated 22.05.2024, has further observed and directed as under:

“5. In reply, Mr. Saurabh Kirpal, learned Senior Counsel for Respondent No.1/Plaintiff was heard on 19th February, 2024 and 13th March, 2024. He stated, on instructions, that the Respondent No.1/Plaintiff had no objection if the interim order dated 2nd December, 2018, is set aside. He stated that Respondent No.1 's concern is limited to the extent that Respondent No.2 should secure the interests of Respondent No. 1 in the properties inherited by Respondent No.2 from her parents i.e., Plaintiffs grandparents. He stated that, therefore, this Court while vacating the order dated 21st December, 2018, may issue appropriate directions to secure the potential 1/6th share of the Respondent No. 1 in the estate of her grand-parents.

5.1. He stated that the Respondent No.1 is married and is residing at her matrimonial home Lajpat Nagar.

5.2. He stated that sale of the first floor



of the Vasant Vihar property by Respondent No.2 on 14th December, 2012, is admitted. He stated that the Respondent No.1/Plaintiff admitted that the assertion made by her in the affidavit dated 18th February, 2019, that she is residing or using a portion of the first floor is incorrect. He fairly stated that the averments with respect to physical possession made in the plaint [at paragraph nos. 10 and 13] were pleaded for justifying the payment of fixed court fees.

5.3. The Respondent No. 1 was directed to file a fresh affidavit with respect to her stand on the physical possession of Vasant Vihar property. The Senior Counsel for Respondent No. 1/Plaintiff has handed over a fresh affidavit dated 14th March, 2024 wherein, it is stated that the Respondent No.1 is residing at her matrimonial home in Lajpat Nagar and she also uses one room for residence at the ground floor and the portion in the basement of the Vasant Vihar property as work space for her consultancy work. Mr. Saurabh Kirpal, the learned Senior Counsel for Respondent No.1 fairly admitted that the contents of this application were contrary to his submissions recorded on 13th March, 2024, wherein it was admitted that Respondent Nos.2 and 3 were in exclusive possession of the Vasant Vihar property.

5.4. He also fairly admitted that the contents of the affidavit dated 14th March, 2024, are contrary to the contents of the earlier affidavit dated 18th February, 2019, filed by Respondent No. 1.

xxxx

22. Under the consent decree dated 4th February, 2015, the Respondent No.2 received the first floor and second floor



of the Vasant Vihar property and the entire share in the Kailash Hills property. In contrast, the Appellant was entitled to receive only the basement and the ground floor of the Vasant Vihar property.

23. The Respondent Nos. 1 is claiming her share in the estate of her grandfather on the plea of HUF through Respondent No. 2's branch of family and not through the Appellant's branch. Respondent No.3 is also admitting the alleged claims of Respondent No.1. Assuming, the Respondent Nos. 1 and 3 are entitled to their claim of succession on the plea of HUF, they will be entitled to succeed on partition of the HUF estate on per stripes basis; consequently, the alleged HUF estate would be divided equally between the family branch of the Appellant and Respondent No.2 respectively. And, between Respondent Nos. 1 to 3, they would not be entitled to more than 50% of the HUF estate.

24. The Respondent No.2 has admittedly sold the properties, which fell to her share under the consent decree dated 04th February, 2015 and received sale consideration(s). As noted above, the Respondent No.2 ex-facie received a larger share in the estate than Appellant i.e., far in excess of 50%. Thus, in order to secure the interests of the Respondent Nos. 1 and 3 herein, the Respondent No. 2 is directed to disclose on affidavit the details of the entire sale consideration(s) received by her during the sale of the first floor and second floor of Vasant Vihar property and Kailash Hills property; and she is further directed to deposit 2/3rd of the said sale consideration with the Registrar General within four weeks along with interest thereon at 10% per annum from the date of respective sale. The said 2/3rd deposit



is towards the shares of Respondent No.1 and Respondent No.3 since ostensibly they are alleging that the subject properties were HUF properties and pressing for the relief of partition. Since, Respondent No.2 has already realised more than 50% of the estate, she is liable to secure the alleged claims of Respondent Nos.1 and 3.”

35. The Division Bench has also protected the interest of the Objector in the subject property by holding the Decree Holder to be bound by his statement that he shall not create any third party interest therein during the pendency of the Suit filed by the Objector. The Special Leave Petition filed by the Objector against the above order also stands disposed of by the Supreme Court, with the directions issued by the Division Bench not being interfered with.
36. In view of the above observation and direction, there is absolutely no merit left in the objections filed by the objector. Her only claim now is against the Judgment Debtor for which the Division Bench has issued appropriate directions. Her remedy would now be to enforce this direction against the Judgment Debtor, however, presently cannot claim any right to the possession of the subject property as against the Decree Holder or a right to object to the execution of the consent decree.
37. I, therefore, find no merit in the present objections/application. The same is, accordingly, dismissed.

EX.P. 96/2018 & Ex.Appl. (OS) 941/2024

38. I see no impediment in directing the issuance of warrants of



possession in favour of the Decree Holder and against the Judgment Debtor for handing over the vacant physical possession of the ground floor and the basement floor of the property bearing no.25, Vasant Marg, Vasant Vihar, New Delhi.

39. The warrants of possession be prepared and transmitted to the Administrative Civil Judge, District:South-West, Patiala House Courts, for appointment of a Bailiff. The Decree Holder shall appear before the Administrative Civil Judge, Distt. (South-West), Patiala House Courts on 9th September, 2024.
40. In case of any difficulty in the execution, the Administrative Civil Judge will be empowered to pass appropriate orders in accordance with law, including for police protection.
41. The learned counsel for the Judgment Debtor submits that the insolvency proceedings have been initiated against the Judgment Debtor. The Judgment Debtor shall file an affidavit disclosing the particulars of the said proceedings and the orders passed therein, within a period of two weeks.
42. List on 15th October, 2024.

NAVIN CHAWLA, J

AUGUST 23, 2024

RN/as

Click here to check corrigendum, if any