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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**  
+ EX.P. 96/2018, Ex.Appl.(OS) 97/2019 & 138/2019  
PARESH DANDONA ..... Decree Holder

Through: Mr.Sohail Dutt, Sr. Adv. with  
Mr.Deepak Bashta, Mr.Shaurya  
Sharma, Ms.Ragini Vinaik and  
Ms.Vandini Dagar, Advs.

versus

JAHNAVI DUGAL ..... Judgement Debtor

Through: Mr.Sunil Choudhary, Adv.  
Mr.Atul T. N., Mr.Kamal Verma and  
Mr.Devendra Verma, Advs. for  
Objector

**CORAM:**

**HON'BLE MR. JUSTICE V. KAMESWAR RAO**

**ORDER**

% **13.03.2020**

During the course of hearing, the counsel appearing for the judgement debtor has referred to the judgement of the Division Bench in RFA(OS) 86/2019 passed on January 16, 2020 to contend that in view of the conclusion of the Division Bench in para 19, reproduced as under, the present execution petition has become infructuous and as such be disposed of.

*“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 Kumar 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 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.”*

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.

Renotify on July 06, 2020.

**V. KAMESWAR RAO, J**

**MARCH 13, 2020/bh**