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

DECIDED ON: 30.11.2010

+ CS (OS) 2097/2002, CS (OS) 744/2009 & EX.P. 40/2010

CS (OS) 2097/2002

KAMNI BALI	 Plaintiff
versus	
OM PARKASH VAID	 Defendant

CS (OS) 744/2009

SHRI OM PRAKASH VAID	 Plaintiff
versus	
MS. KAMINI BALI & OTHERS	 Defendants

EX.P. 40/2010

OM PRAKASH VAID	 Decree Holder
versus	
KAMINI BALI & OTHERS	 Judgment Debtor

Appearance: Mr. R.P. Sharma with Ms. Shreejata Dutta,
Advocates for Mr. Om Prakash Vaid.
Mr. Dinesh Goyal, Advocate for Mr. P.K. Vaid, Mr. V.K. Vaid,
Ms. Saroj Sarkar and Ms. Kamini Bali.

CORAM:
MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | YES |
| 2. | To be referred to Reporter or not? | YES |
| 3. | Whether the judgment should be
reported in the Digest? | YES |

MR. JUSTICE S.RAVINDRA BHAT (OPEN COURT)

% Heard counsel for the parties. This Court had on 26.10.2010 recorded a compromise whereby the parties mutually agreed to the respective shares in the suit property which is a 700 square yards plot located at Kirti Nagar. The plaintiff in the original suit subsequently filed

execution proceedings for giving effect to the compromise.

2. The Court had, in the applications, moved in the suit i.e. 744/2009, directed the parties to file affidavits indicating valuation of the property for the purpose of inter-se-bidding on 26.07.2009. Parties have apparently filed affidavits even though the plaintiff Om Prakash Vaid's affidavit was not on file, the court recorded the submissions made by his counsel in the case that the valuation of the property was ₹ 10.5 crores. The defendant/judgment debtor had valued the suit at ₹ 8.5 crores and filed affidavit. They also relied upon a valuation report which has been placed on the record. This Court on 30.08.2010, in the circumstances, fixed the valuation of the property at ₹ 10.5 crores, by a subsequent order, the terms for *inter se* bidding were spelt out.

3. On 15.11.2010 the matter was listed before the Registrar General in compliance with the previous directions. At this stage apparently the decree holder introduced a prospective buyer who was willing to purchase the property at ₹ 10.5 crores and an earnest money amount of ₹ 1.5 crores was sought to be tendered by him. The Registrar General determined that such a third party could not be permitted to bid through decree holder/original plaintiff. In these circumstances the cases were placed before this Court on 19.11.2010, when it was clarified that only parties or their authorized representative (s) could be present at the time of the bidding, in compliance with the previous order. Accordingly, the bidding was conducted by the Registrar General on 25.11.2010. The proceedings recorded by the Registrar General on that day reads as follows:-

“Learned counsel for the judgment debtor has filed a pay order bearing No.047386 dated 13.11.2010 for a sum of ₹ 1,05,00,000/- drawn on Punjab National Bank, Shivaji Marg, Kirti Nagar, New Delhi towards earnest money in terms of order dated 18.10.2010 passed by the Hon'ble Court.

Learned counsel for the decree holder states that the decree holder has not brought the pay order towards earnest money as he does not want to participate in the bid and the judgment debtor may be permitted to give the bid. The statement of the decree holder Mr. Om Prakash Vaid has been recorded separately in this regard. The

reserved price is ₹ 1,05,00,000/-.

The original sheet showing the inter-se-bidding has been exhibited as Ex.D-1 and is attached with the file. Learned counsel for both the parties who are present have signed the bidding sheet in token of its correctness.

The judgment debtor has deposited a sum of ₹ 1,05,00,000/- being 10% of the bid amount by means of a pay order bearing No.047386 dated 13.11.2010 in the name of the Registrar General of this Court. The judgment debtor are declared successful bidder at an amount of ₹ 1,05,00,000/-.

The judgment debtor shall deposit a further amount of 10% within seven days in terms of the order dated 18.10.2010 passed by the Hon'ble Court.

The judgment debtor shall further deposit the balance amount i.e. the balance 0% of the bid amount within four months from today in terms of the order dated 18.10.2010 passed by the Hon'ble Court. The parties shall be bound by the terms mentioned in the order dated 18.10.2010 passed by the Hon'ble Court.

The bid process has been completed. The report be placed before the Hon'ble Court on 30.11.2010, the date already fixed."

4. It is argued by the counsel for the plaintiff/decree holder that the parties had in their compromise agreement-which is embodied in the Court order-agreed to put the suit property to public sale and the procedure adopted for inter-se-bidding is not in consonance with the decree. The defendant/judgment debtor points out that the sale had to be undertaken by process of inter-se-bidding, which also fulfills the objective of the Partition Act, which is to ensure that if the parties are in a position to buy out the share or shares of either of them, that opportunity should be first explored and thereafter only family property be put to auction.

5. This Court is of the opinion that the plaintiff's objection to the procedure adopted at this stage is belated and groundless. The plaintiff had valued the property at 10.5 crores, the defendant/J.D. on the contrary had valued at Rs.8.5 crores. The valuation of the suit property by the plaintiff was Rs. 50 lacs at the time of filing the suit. If the plaintiff had any reservation about the procedure adopted the same should have been spelt out at the earliest. On the other hand, successive orders of the Court dated 20.07.2010, 30.08.2010 and 18.10.2010 clarified that

the plaintiff had no reservation about the procedure of *inter se* bidding. Besides the execution, proceedings impliedly are premised on the Court having to take steps to draw a final decree. Furthermore the Court cannot be oblivious of the mandate of Section-3 of the Partition Act which obliges it to first value the suit property and grant liberty to the parties to submit inter-se bids with a view to ensure that the asset is retained within the family. In these circumstances, the plaintiff/decreed holder's objections have to be and are rejected.

6. Having regard to the above discussion, the bid is confirmed in favour of JD Nos. 1 to 4 Ms.Kamini Bali, Ms. Saroj Sarkar, Mr. P.K.Vaid and Mr. V.K. Vaid in conformity with the court's previous orders dated 30.08.2010 and 18.10.2010. Learned counsel for the said parties state that pay order issued by Punjab National Bank, Kirti Nagar dated 30.11.2001 for the balance amount of Rs. 1.05 Crores is with him and would be tendered in the Court during the course of the day. In these circumstances, the Court hereby confirms the bids of the said judgment debtor, as recorded by the Registrar General on 19.11.2010.

7. The parties shall be present before the Sub-Registrar (West District) for execution of conveyance/sale deed for the 1/5th share of the plaintiff in favour of the successful bidding parties i.e. JD Nos. 1 to 4 (whose names are mentioned above) on 7th December, 2010 at 11 AM. The plaintiff/decreed holder Sh. Om Prakash Vaid shall execute the said document and ensure that all necessary formalities in that regard are completed by him at his end so that his right, title and interest is conveyed absolutely to the other parties. It is open to the plaintiff/decreed holder Sh. Om Prakash Vaid to approach the court and withdraw the amounts of Rs.2.10 crores, after the said date. Execution No.40/2010 and IA Nos. 5277-78/2010 are disposed of in terms of the above directions.

8. It is submitted by the parties that in view of the confirmation of the bid, the observation

of the Registrar General that the successful bidders are to deposit 80% of the total value is erroneous and redundant. Clarified accordingly. Mr. Om Prakash Vaid shall on or before he executes the sale deed, hand over the title deed of the suit property as well as the originals/copies of the documents creating any encumbrance in respect of the suit property or in respect of any loan or advance secured by him in this regard.

9. Execution Petition No.40/2010 and all pending applications in the disposed of suits are disposed of in terms of the above directions.

Order dasti under the signatures of Court Master.

**S. RAVINDRA BHAT
(JUDGE)**

**NOVEMBER 30, 2010
mr**