

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

+ **EFA(OS) 23 and 24 of 2010**

Reserved on: 27th July, 2012
Date of decision: 3rd August, 2012

RAM GOPAL & ORS. Appellants
Through Mr. Aly Mirza & Mr. Sindhu Sinha,
Advocates.

versus

RAM CHARAN AGGARWAL Respondent
Through Mr. Sudhir Nandrajog, Sr. Advocate
with Mr. L.K. Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA
HON'BLE MR. JUSTICE S.P.GARG

SANJIV KHANNA, J. :

The present intra court appeal impugns order dated 30th August, 2010 passed by the learned single Judge in Execution Petition No. 227/2010. The impugned order allows the execution petition, which was filed by the respondent herein Ram Charan Aggarwal and directs the appellants herein Ram Gopal, Prem Lata and Ram Kishan to execute a conveyance deed in favour of the Respondents in respect of property bearing No.1375, Katra Lehswan, Chandni Chowk, Delhi. Some directions have also been given to ensure compliance of the said order.

2. Ram Gopal and Ram Charan Aggarwal are brothers being sons of late Ganeshi Lal and Kasturi Devi. The father and the two sons on or about in 1962 had commenced business in partnership under the name and style of Lalji Mal Tika Ram with all the three having equal share. Ganeshi Lal passed away in 1981. Disputes arose between the two sons and their families, resulting in multifarious litigation. Reference, for the purpose of decision of the present appeal, is required to be made to some of the litigations. Ram Gopal had filed a suit for dissolution of partnership and rendition of accounts being Suit No. 737/1984. Ram Charan had also filed a suit for partition and rendition of account being Suit No. 1867/1984. Ram Gopal had filed a suit for recovery of Rs.17 lacs against Shanti Devi wife of Ganeshi Lal. Prem Lata, Ram Kishan, Sangeeta and Kumud, the first being the wife and the others being the children of Ram Gopal had initiated arbitration proceedings. Interim awards were passed in their favour. Applications for making the said awards, the rule of the court were pending in the High Court in Suit Nos. 1983-A/1995 to 1986-A/1995.

3. During the pendency of the said suits, by the intervention of the Court, parties agreed to compromise. The terms of the compromise were recorded in the order dated 23rd October, 2007. The said order is relevant but we will be reproducing and examining the said order

subsequently. At this stage, we note that it was decided that the immovable properties were to be divided equally between Ram Gopal and Ram Charan. It was decided that the two brothers shall bid for immovable properties in three separate lots, i.e., properties at Mumbai, Delhi and Hathras. The higher bidder will take the property by paying 50% of the bid amount to the other side within three months. In case of failure to pay the bid amount, the other side would be entitled to the properties in the lot on payment of 50% of the lower bidder's bid.

4. Pursuant to the said order, bids were given by Ram Gopal and Ram Charan Aggarwal. The order dated 14th February, 2008 records and gives details of the said bids, which are as under:-

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Lots	Ram Gopal Aggarwal's bid (Rs)	Ram Charan Aggarwal's bid (Rs)
Delhi	4 crores	7.10 crores
Mumbai	3 crores	3.25 crores
Hathras	1 crore	1.5 crores

”

5. Ram Charan Aggarwal was, therefore, the highest bidder in respect of each of the three lots at Delhi, Mumbai and Hathras and his bids were accepted. Before passing the said order, the learned single Judge took care to record the statements of the Ram Bhakt Aggarwal, attorney and son of Ram Charan as well as statement of Ram Gopal

and his wife Prem Lata.

6. The total bid amount payable by Ram Charan was Rs.11.85 crores. 50% of the said amount came to Rs.5.925 crores. This payment was to be made within three months. Ram Charan made payment of the bid amount for Delhi and Mumbai lots but did not make payment for the immovable properties included in Hathras lot. In respect of Hathras properties, bid given by Ram Gopal became operative and binding by default.

7. We are not concerned with the properties at Hathras or Mumbai lots in the present appeal and are only concerned with one of the properties at Delhi, namely, 1375, Lheswan Katra, Chandni Chowk, Delhi (the property, for short).

8. The partnership firm Lalji Mal Tika Ram had tenancy rights in the property. In the two civil suits filed for partition and rendition of accounts being suit Nos. 737/1984, *Ram Gopal versus Ram Charan and Another* and Suit No. 1867/1984, *Ram Charan versus Ram Gopal and others*, the property was shown as one of the partnership properties but the partnership firm had the interest in the property not as the owner but as the tenant. Neither the partnership firm nor any of two brothers in the two cross suits had claimed that the partnership firm or otherwise the two brothers were joint owners.

9. By a sale deed dated 25th May, 1998, Prem Lata and Ram Kishan, wife and son of Ram Gopal purchased the property from the erstwhile owner Shree Mahalakshmi Investment and Property Company Limited. The sale deed is duly registered and the consideration mentioned therein is Rs.4,50,000/-. It is also stated that ground floor of the property is in occupation of Lalji Mal Tika Ram on a monthly rent of Rs.372/- and they had been accordingly advised to attorn to the new owners. Symbolic and proprietary possession was handed over/delivered to the new owners.

10. In 1999 Ram Charan had filed a civil suit for prohibitory injunction against Ram Gopal, Prem Lata and Ram Kishan praying, inter alia, that the said persons should be restrained from making additions/alterations or structural changes to the ground floor. The plea taken was that the tenancy rights in the property on the ground floor belong to Lalji Mal Tika Ram and even if Prem Lata and Ram Kishan had become owners, they had no right to make additions/alterations in connivance with Ram Gopal, partner of Lalji Mal Tika Ram.

11. Thus, the parties were aware and knew the fact that wife and one son of Ram Gopal, namely, Prem Lata and Ram Kishan had acquired ownership of the property while the tenancy was in the name of the

partnership firm.

12. The question and issue raised is whether as per the compromise terms between the parties and the compromise decree passed the ownership rights in the property stand transferred to the highest bidder, i.e., the respondent herein. The learned single Judge has accepted the contention of the respondent and has directed the appellants, namely, Ram Gopal, Prem Lata and Ram Kishan to execute a conveyance deed in favour of the respondent.

13. In order to decide the said issue, we will have to examine and interpret the compromise order, statements made by the parties and the decree. For the sake of completeness, we are reproducing the relevant orders:

“23.10.2007

Present: Plaintiff-in-person.

Mr. Aly Mirza for the Defendant.

**CS(OS) 737/1984, 1723/1984, 1724/1984,
1983A/1995, 1984A/1995, 1985A/1995,
1986A/1995, 1867/1984 & OMP 177/1998**

The parties have agreed that the immovable properties have to be divided half and half between Ram Gopal and Ram charan. The immovable properties are at Mumbai, Delhi and Hathras, U.P. It has been decided that the parties shall bid for the immovable properties in three separate lots. The lots being the properties at Mumbai, the properties at Delhi and the properties at Hathras. The party having the highest bid shall take the properties and pay the other party 50% of the bid amount. The

payments shall be made within three months. In case the party making the highest bid is unable to pay the entire sum in respect of any lot within the said period of three months, then the other party would be entitled to the properties in question on payment of 50% of that party's (the lower bidder's) bid. This amount shall also be paid within three months.

As regards the amounts awarded under four interim Awards made by Justice N.N. Goswami (Retd.) in 1995, Sh. Ram Charan shall despoit a sum of Rs.1.75 crores in this Court and shall await further orders from this Court with regard to its payment to the parties. In addition, a further sum of Rs.17 lacs shall also be deposited by Mr. Ram Charan in this Court to await further orders. This amount of Rs.17 lacs is in respect of Mr. Ram Gopal's claim against late Smt. Shanti Devi for Rs.99,704.97 along with 15% compound interest from 14.10.1985. Insofar as the tenancy rights in respect of 1375, Lhtswa Katra, Chandni Chowk, Delhi-6 are concerned, they are also the subject matter of the bid in respect of the Delhi properties. It is stated by the parties that the ownership of the said property belongs to the wife of Ram Gopal and his son. It is made clear that whoever succeeds to this property consequent to the bid would not be hindered in the enjoyment of the same.

The bids would be submitted by the parties in a sealed cover by the parties on or before 26.11.2007. Three separate bids would be made for the Mumbai properties, Delhi properties and Hathras properties by each party.

Dasti to both the parties.

14.02.2008

Present: Mr. Dheeraj Malhotra with Mr. Mritunjay Kumar Singh for the Plaintiff.
Mr Aly Mirza for the Defendant.

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CS(OS) 737/1984, 1723/1984, 1724/1984, 1983A/1995, 1984A/1995, 1985A/1995, 1986A/1995, 1867/1984 & OMP 177/1998

The statement of Shri Ram Bhakt Aggarwal who is the attorney of Shri Ram Charan as well as the Statements of Shri Ram Gopal Aggarwal and his wife Smt. Prem Lata have also been recorded. As per the agreement between the parties and the bids made pursuant to the agreement and as recorded in the order dated 23.10.2007, the sealed bids were opened in court. The bid made by Mr. Ram Charan has been marked as Exhibit C-2 and it has been signed by his son Mr. Ram Bhakt Aggarwal as his constituted attorney. The bid furnished by Mr. Ram Gopal has been marked as Exhibit C-3 and the same is signed by him. On considering the bids, the following picture emerges:

Lots	Ram Gopal Aggarwal's bid (Rs)	Ram Charan Aggarwal's bid (Rs)
Delhi	4 crores	7.10 crores
Mumbai	3 crores	3.25 crores
Hathras	1 crore	1.5 crores

The aforesaid table clearly indicates that Shri Ram Charan is the highest bidder in respect of each of the three lots i.e. Delhi, Mumbai and Hathras. Therefore, his bids are accepted. As per the agreement between the parties, as indicated in their statements and the order dated 23.10.2007, the highest bidder would be required to make payment of 50% of the bid amount. The total of the bid amounts comes to Rs.11.85 crores. Consequently, 50% of this amount comes to Rs.5.925 crores in respect of all the three lots. Additionally, he shall make a payment of Rs.90 lacs as per the statements recorded in court today as well as a sum of Rs.17 lacs totaling Rs.6.995 crores. The said sum of Rs.6.995 crores shall be paid within three months

in terms of the order dated 23.10.2007 and as per the agreement between the parties. Simultaneously, upon making the payments, the possession of the properties comprised in the said lots will either be retained by Mr. Ram Charan or where he is not in possession would be handed over by Mr. Ram Gopal and/or his family members.

It has also been agreed between the parties, as indicated in the order dated 23.10.2007, that, in case, the party making the highest bid is unable to pay the entire sum in respect of any lot within the said period of three months, then the other party would be entitled to the properties in the lot in question on payment of 50% of that party's (the lower bidder's bid. This amount shall also be paid within three months. In this eventuality, the stamp duty would be payable on the lower bid and not on the higher bid as per law.

The parties have arrived at a settlement of all their disputes. Essentially, the disputes were between the two brothers. Mr. Ram Gopal and Mr. Ram Charan. Their family members have also filed suits against each other. The parties have settled all the disputes not only between the said two brothers but also between the family members of the said two brothers. Even the disputes pertaining to the said two branches in respect of their individual HUFs stand settled. The present batch comprises of ten matters. However, it is clearly understood and agreed between the parties that the other matters not included in the present batch also stand settled. The matter pending before the Supreme Court has also been agreed to be withdrawn by Mr. Ram Gopal Aggarwal on a joint statement being made by Mr. Ram Gopal Aggarwal and by Mr. Ram Bhakt Aggarwal before the Supreme Court. The parties agree that the matters pending before other courts also stand settled and shall be withdrawn by the respective

plaintiffs/appellants /petitioner. It has also been agreed by and between the parties that they shall cooperate with each other in effectuating the settlement and they shall execute all documents which are necessary. All the suits mentioned in this batch stand decreed accordingly. The OMP stands disposed of. The formal decree be drawn up. The statements and the Exhibits C-1, C-2 and C-3 shall form part of the decree.

The cheque of Rs.17 lacs mentioned in the order dated 13.02.2008 shall be retained in the file. Mr. Ram Bhakt states that he shall replace the said cheque by a cheque issued by him within a week. On the said cheque being submitted by Mr. Ram Bhakt Aggarwal, this cheque which has been issued by the learned counsel for Mr. Ram Bhakt, shall be returned to the learned counsel.

All the suits, the OMP and pending applications stand disposed of.

Dasti under signatures of the Court Master.

14.02.2008

CS(OS) 737/1984, 1723/1984, 1724/1984, 1983A/1995, 1984A/1995, 1985A/1995, 1986A/1995, 1867/1984 & OMP 177/1998

Statement of MR. Ram Bhakt Aggarwal S/o Shri Ram Charan, Age 35 years, R/o Flat No. 19, Neelam, 80, Marine Drive, Bombay-400002

On oath.

My father Mr. Ram Charan Aggarwal has authorized me to represent him in these proceedings. I have brought the special power of attorney with me which is notarized at Mumbai. (The special power of attorney has been handed over to the court. The same is marked as Exhibit C-1). The figure of Rs.1.75 crores, mentioned in

the order of this court on 23.10.2007, has now become Rs.1.80 crores due to accrual of interest between that date and today. I have instructions to state on behalf of my father that my father's liabilities would be to the extent of 50% of the said sum of Rs.1.80 crores which would amount to Rs.90 lacs. This is due to the fact that my father has a 50% share in the partnership firm and this is the liability of the firm. It has also been agreed between me (representing my father) and my uncle Mr. Ram Gopal Aggarwal that we shall have a half share in the firm's assets (M/s Lalji Mal Tika Ram). In order to bring about a settlement between the parties, it has been agreed between me (on behalf of my father) and my uncle Mr. Ram Gopal that despite the Will dated 05.10.1981 of Shri Ganeshi Lal bequeathing his share in the properties to my father, the said properties shall be shared between my father and Shri Ram Gopal equally i.e., 50% each.

We have agreed that the immovable properties shall be divided half and half between my father (Shri Ram Charan Aggarwal) and my uncle Shri Ram Gopal Aggarwal individually as well as in their capacity as kartas of their respective HUFs. We shall abide by the terms of the bidding which have been set out in the order dated 23.10.2007. It has also been agreed that the sum of Rs.17 lacs which has been mentioned in the order dated 23.10.2007 shall be paid by my father and the same shall be adjusted in or added to in the amounts that may be payable to him or by him, as the case may be, after the bidding. It has also been agreed between us that the vacant, peaceful and unencumbered possession of the properties consequent upon the bidding being finalized would be handed over immediately upon the receipt of the payments. This settlement which has been arrived at between us shall entirely take care of all the claims and disputes in all the matters that are pending before this court or any other court and no

further claim shall be raised in all these matters. I have the authority to make this statement on behalf of my family members and the statement that is being made by me is binding on all of us including the LRs.

14.02.2008

**CS(OS) 737/1984, 1723/1984, 1724/1984,
1983A/1995, 1984A/1995, 1985A/1995,
1986A/1995, 1867/1984 & OMP 177/1998**

**Statement of Mr. Ram Gopal S/o Shri Ganeshi
Lal, R/o 1287, Kashmeri Gate, Delhi.**

On oath.

I have had discussions with my nephew Mr. Ram Bhakt Aggarwal who has been authorized by my brother Mr. Ram Charan Aggarwal to have discussions on his behalf with me. We have arrived at a settlement as has been recorded in the order dated 23.10.2007. However, with regard to the amount of Rs.1.75 crores mentioned in that order, the figure has now become Rs.1.80 crores due to accrual of interest. Insofar as that sum of money is concerned, it has been agreed between me and my brother that since the same has to come out of the partnership firm, my brother shall bear the liability to the extent of Rs.90 lacs i.e., 50% of the said amount. The said amount shall be adjusted or become payable as per the finalization of the bids. It has also been agreed between us that the sum of Rs.17 lacs which has been mentioned in the order dated 23.10.2007 shall be the liability of my brother towards me. I shall abide by the terms of the bid that have been set out in the order dated 23.10.2007 and I also undertake that vacant, peaceful and unencumbered possession of the properties shall be handed over/taken over simultaneously with the payment/receipt of the sums of money as per the bids. I have the

authority to make this statement on behalf of my family members and the statement that is being made by me is also binding on them. We have fully and finally settled all our disputes between me and my brother as well as between my family and his family and it has also been agreed by my brother Mr. Ram Charan that despite the Will dated 05.10.1981 of late Shri Lala GAneshi Lal, his properties, including his share in the partnership (M/s Lalji Mal Tika Ram) shall be distributed between the two brothers equally i.e., 50% each. In view of this settlement that has been arrived at between the parties, I undertake to withdraw the Special Leave Petition which has been filed before the Supreme Court and it has been agreed that both me and my nephew shall make a joint statement before the Supreme Court on the next date of hearing. No further claim shall be made by me or my family members including my LRs against my brother Shri Ram Charan and/or his family members in respect of the said partnership firm as also the properties which form the subject matter of the disputes in these matters.

14.02.2008

CS(OS) 737/1984, 1723/1984, 1724/1984, 1983A/1995, 1984A/1995, 1985A/1995, 1986A/1995, 1867/1984 & OMP 177/1998

Statement of Smt. Prem Lata w/o Mr. Ram Gopal, R/o 1287, Kashmeri Gate, Delhi.

On oath.

I have authorized my husband to make the statement on my behalf.”

(emphasis supplied)

14. Pursuant to the said compromise in Suit No. 737/1984 and other suits, decree sheet was prepared and the relevant portion thereof records as under:-

“These suits coming on this day for final disposal before this Court in the presence of counsel for the parties as aforesaid, upon the parties having arrived at an agreement vide order dated 23/10/2007 and upon the Court having accepted the bid made by Sh. Ram Charan in respect of properties situated at Delhi and Mumbai, marked as Ex. C-2 and the bid made by Sh. Ram Gopal in respect of Hathras properties marked as Ex. C-3, pursuant to the agreement, it is ordered that a decree of partition be and the same is hereby passed declaring that:

Sh. Ram Charan shall be exclusively entitled to:

I Suit properties in Delhi Lot :

1. Ownership of House NO. 1287, Sultansingh Estate, Kashmere Gate, Delhi 110 006.
2. Tenancy rights of 1375, Katra Lewswan, Chandni Chowk, Delhi 110006.
3. Tenancy rights of 1304, Katra Dhulia, Chandni Chowk, Delhi 110006.

II Suit properties in Mumbai Lot:

1. Ownership of flat 19, Neelam, 80 Marine Drive, Mumbai 400002.
2. Tenancy rights of 96, Mangaldas Market, Mumbai 400002
3. Tenancy rights of 329, Swadesh Market, Mumbai 400002.
4. Tenancy rights of Godown No. 2, 3368, Kalbadevi Road, Mumbai 400002.
5. Tenancy rights of Godown No. 3, Kalbadevi Road, Mumbai 400002.

and Mr. Ramgopal shall be exclusively entitled to:

III Suit properties in Hathras Lot:

1. Plot 202 Sadabad Ward, Gali Dibba, Hathras.
2. House at 203, Sadabad Ward, Gali Dibba Hathras.

It is further ordered that upon making the payments by Sh. Ram Charan to Sh. Ram Gopal the possession of the properties comprised in the said lots will either be retained by Mr. Ram Charan or where he is not in possession shall be handed over by Mr. Ram Gopal and/or his family members to Sh. Ram Charan.

It is further ordered that the parties shall co-operate with each other effectuating the settlement and shall execute the necessary documents.

It is further ordered that statements and Ex. C-1 (Special Power of Attorney), C-2 and C-3 shall form parts of the decree.”

15. The contention of the appellant is that the decree sheet clearly states that Ram Gopal shall have exclusive tenancy right in the property and this was the intent of the court orders dated 23rd October, 2007, 14th February, 2008 and the statement of the parties. The language and words of the court orders accord and affirm the said contention.

16. The submission of the respondent is that the order dated 23rd October, 2007, records that the ownership of the property belongs to wife of Ram Gopal and whoever succeeds consequent to the bid would not be hindered of the enjoyment of the same. It is stated that the statement made by Ram Gopal refers to the properties which forms subject matter of the dispute in the matters and therefore, for all intents and purposes, the ownership right was to be transferred to the highest bidder.

17. We have considered the submissions made by the parties and accept the plea raised by the appellants. There are several reasons and grounds for the same. These are recorded below.

18. Ownership of the property was not a subject matter of dispute in any of the proceedings or the suits which were pending before the Court. In these circumstances, in case the ownership of the property was to be transferred to Ram Charan if he was to be the highest bidder, a specific noting to this effect was required and necessary. There is no specific noting in the order dated 23rd October, 2007. The two brothers were to give bids to acquire the same right, i.e., the tenancy right. It is not recorded or stated that the bid given by Ram Gopal would be for the tenancy right, while the bid offered by Ram Charan would be both for the tenancy and ownership rights, which would be

transferred by Prem Lata and Ram Kishan, wife and son of Ram Gopal.

19. The relevant portion of the order dated 23rd October, 2007, which has been underlined for the purposes of emphasis, states, clarifies and supports the said position. It states that wife of Ram Gopal and his son are owners of the property. It records that the tenancy rights of the property shall be the subject matter of the bid in respect of Delhi properties. In case the ownership rights of the property were also to be made subject matter of the bid, it would have been so indicated and stated. The last sentence does not cause any confusion and is not ambiguous as suggested by the respondent. It records and states that whoever succeeds and gives the highest bid would have unhindered enjoyment of the said. “Enjoyment of the same” only means right to enjoy the tenancy rights. In other words, in case Ram Gopal gives the higher bid, he would become the exclusive tenant and enjoy the tenancy rights and in case Ram Charan gives the higher bid and succeeds, he shall have unhindered right to enjoy the tenancy rights. The order also reveals that the parties were conscious about the difference between the ownership and tenancy right. What was made subject matter of the bidding process was the tenancy rights in the property.

20. Learned counsel for the respondent has submitted that there was substantial difference between the bid of Rs.4 cores and Rs.7.10 crores given by Ram Gopal and Ram Charan, respectively and, therefore, it should be accepted that Ram Charan has given a bid for the ownership rights as well as for tenancy rights. The argument cannot be accepted and is fallacious. Both the parties had and were required to give their bid and quote a figure. The bid as noted above was to acquire the same right and interest in the property. The difference in the bid amounts depends and reflects commercial wisdom and understanding. It was a matter of choice. No inference can be drawn from the bid amounts that the respondent had understood and offered bid for the ownership rights also. In respect of Hathras property, the bid of Ram Charan was Rs.1.5 crores and bid given by Ram Gopal was only Rs.1 crore. The difference was again substantial. Therefore, the difference in the bid amount for the Delhi properties does not show that Ram Charan has given bid for the ownership rights. Further, the bid paper of Ram Charan does not record the said factum. In the bid which was given by the Ram Charan, he had given a break-up of the bid amount of Rs.11.85 crores and had attributed Rs. 7.10 crores towards the Delhi properties. He did not mention that it includes the value of ownership rights.

21. We do not accept the contention of the respondent that the respondent had understood that the bid amount included the ownership right and required transfer of the ownership right. We have quoted the decree sheet which was prepared subsequently after the passing of the order dated 14th February, 2008. The decree sheet specifically records that Ram Charan shall be exclusively entitled to tenancy right of the property. In respect of the Kashmere Gate property ownership right was transferred. Similarly ownership rights of flat at Marine Drive, Mumbai was to be transferred to Ram Charan and tenancy rights of some other properties at Mumbai were to be exclusively enjoyed by Ram Charan. In the decree sheet itself, difference is drawn between the ownership rights and the tenancy rights. This decree-sheet was prepared and Ram Charan had submitted stamp papers. Ram Charan had got the decree-sheet registered. In case there was a defect or mistake in the decree-sheet and the ownership rights were to be transferred and conveyed to Ram Charan, he would have moved an application or asked for modification or clarification. Order sheets reveal, and it is the accepted position that this has not happened and no such steps were taken. In view of dispute inter se parties, implementation of the order dated 14th February, 2008 was done through court proceedings and monitored by the Court. On 28th May,

2008, the respondent paid bank drafts towards properties in Delhi and Mumbai lots and gave up the bid/right in respect of Hathras property. Mr. P. Nagesh, Advocate was appointed as the Court Commissioner. He was asked to lock the property in question and bring the keys of the property in Court. It was also directed that the possession was to be handed over to Ram Bhakt appearing on behalf of Ram Charan. Simultaneously payments will be made in respect of Bombay and Delhi lots. Parties thereafter appeared before the Court on 14th August, 2008 and an order was passed making some adjustment in view of the fact that the Hathras properties had to go to Ram Gopal and he had to make payment to Ram Charan for the same. Ram Bhakt, son of Ram Charan, had filed IA No. 4476/2008 asking for clarification of the order dated 14th February, 2008. This application was filed on the ground that some of the properties were tenanted and, in view of the bid given by Ram Charan, they were exclusively entitled to the said tenancy rights. It was averred in the application that the order dated 14th February, 2008 did not mention identifying details of the properties of the firm and details of the properties of Ram Gopal Aggarwal HUF etc. In this application, the properties in Mumbai lot and Delhi lot were specifically stated. In respect of the Delhi lot and the property in question, it was stated as under:-

“B) Delhi Lot

- i) Shop at 1375, Katra Lheswan,
Delhi 110 006.

Direction to : Smt. Premlata Ramgopal and
Ramkrishna Ramgopal regarding tenancy
and rent receipt.”

22. Thus contrary to what is urged before us, the respondent in April, 2008 had stated and accepted that the bid given by the parties as recorded in the order dated 14th February, 2008, was for the tenancy rights.

23. Learned counsel for the respondent submitted that till that date payment had not been made by Ram Charan and the aforesaid statement made in the application is not an admission and should be ignored. The contention is fallacious and wrong. The stand taken by the respondent is clearly an afterthought, if not dishonest. The bid given by the respondent was accepted by the court on 14th February, 2008. The question is whether the respondent had given bid for the tenancy right or for tenancy right plus the ownership rights of the wife and son of Ram Gopal. It is clear, from what was stated by the respondent in the application, that the respondent had given bid only for tenancy rights and not for the ownership rights that belonged to Prem Lata and Ram Krishna.

24. There is evidence that even after the 28th May, 2008, the respondent did not claim ownership right in the property. We would like to reproduce letter dated 9th February, 2008, written by Ram Bhakt Aggarwal and Ram Charan to Prem Lata Aggarwal. The said letter read as under:-

“Madam,

I attempted to contact you at the address A-2, Bhamashah Marg, Opp. Guru Harkishan Public School, Delhi – 110 033; to offer you rent for the premises at 1375, Katra Lheswan, Chandni Chowk, Delhi – 110 006. However, I was not able to locate your address. Kindly let me know the place, time and mode of payment desired by you to enable me to tender the rent.

Kindly communicate the required information at my address mentioned above.

Yours truly,

Sd/-

(Ram Charan Agrawal)

Sd/-

(Rambhakt Agrawal)”

25. The respondent accepts and admits that the said letter was written but claims and submits that this letter states that the amounts due towards rent should be settled as rent had not been paid for a long time. The contention is again false and incorrect. The letter states that the respondent wanted to tender and pay rent for the property to Prem

Lata. It states that they had offered to pay rent but they had not been able to locate the address of Prem Lata. Respondent could not have in more clear and categorical words accepted the position that the appellant Prem Lata was the owner of the property and that they enjoyed tenancy rights.

26. Learned counsel for the respondent submitted that reading of the order dated 14th February, 2008 and the statement of parties recorded on the same date show that the parties were entitled to possession and enjoy properties without any obstruction. It was highlighted by the respondent that the statement made by Ram Gopal was on behalf of his wife Prem Lata and even the arbitration proceedings to which Prem Lata and Ram Kishan were parties were to be settled. The contentions do not have any merit. The order and the statements of the parties show what was to be transferred and handed over was the possession of the properties. The tenancy rights of the property were earlier in favour of partnership firm of which both Ram Gopal and Ram Charan were partners. In view of the aforesaid orders and payment made, Ram Charan became the sole tenant and entitled to tenancy rights in the property to the exclusion of Ram Gopal. It was to this extent and reason that the possession was to be transferred. In none of the orders, it is recorded that “ownership” of the property was to be transferred.

In terms of the interim arbitration awards, payments were to be made to Prem Lata, Ram Kishan, Surjeet and Kumud, wife and children of Ram Gopal. The total amount due and payable to the said persons under the interim awards as recorded in the order dated 14th February, 2008 and the statement of Ram Bhakt of the same date, was Rs.1.80 crores. It was stated that this amount was payable by the partnership firm and accordingly Ram Charan's 50% liability was Rs.90 lakhs. In addition, another sum of Rs.17 lakhs was to be paid. The said sums were added to the bid amount. The order and the statements also refer to the properties which were joint properties or HUF properties. This was necessary and required to be stated as what was subject matter of the suit were not only partnership properties but were also joint properties which were owned by Ram Gopal and Ram Charan. There was no dispute and it is not reflected in any of the orders quoted above or subsequent orders wherein directions were given for implementation, that the ownership rights of the property were in question. There is no averment or statement that the respondent and the appellants were joint owners. On the other hand, there are ample evidence and in fact repeated admissions by the respondent that the ownership right in the property was not treated as joint. Prem Lata and Ram Kishan had purchased the property way back vide conveyance

deed dated 28th May, 1998. In the suits for partition and rendition of accounts which were filed in the year 1984, the reference was made to the tenancy right in the property. The ownership of the property was not subject matter of the compromise.

27. The problem in the present case has arisen because of the decision of the Supreme Court dated 16th April, 2008 in *Satywati Sharma vs. Union of India* (2008) 5 SCC 287. As per the said decision protected commercial tenants can be evicted on the ground of bonafide requirement of the owner-landlord. This brought about a substantial change and effectively reduced the market value of the tenancy rights. The said decision of the Supreme Court was rendered on 16th April, 2008 which is after 14th February, 2008. The question raised is whether the appellant should be allowed and can be allowed to take benefit of the said decision or the respondent can and should be made owner of the property as at the time when the bid was given, the respondent had not visualized or imagined that the landlord-owner would be able to evict a protected commercial tenant. Learned counsel for the respondent has pleaded equity and submitted that the disputes being a family matter, a holistic and broader view is required to be taken and in this regard has relied upon decisions of the Supreme Court in *Bhavan Vaja and Ors. v. Solanki*

Hanuji Khodaji Mansang and Anr. 1973 (2) SCC 40, *Parayya Allayya Hittalamani v. Sri Parayya Gurulingayya Poojari* 2007 (14) SCC 318, *Manish Mohan Sharma v. Ram Bahadur Thakur Ltd.* 2006 (4) SCC 416. Learned counsel for the appellant on the other hand has relied upon *Deepa Bhargava v. Mahesh Bhargava* (2009) 2 SCC 294, *Topanmal Chhotamal v. Kundomal Gangaram* AIR 1960 SC 388, *State Bank of India v. Mula Sahakari Sakhar Karkhana Ltd.* (2006) 6 SCC 293, *Godhra Electricity Co. Ltd. v. State of Gujarat* (1975) 1 SCC 199.

28. In *Bhavan Vaja* (supra), the Supreme Court held that the executing court cannot go behind the decree, but it is the duty of the executing court to find out the true effect of the decree and in appropriate cases it ought to take into consideration the pleadings as well as the proceedings leading to the decree. This is precisely what we have done. We have construed the decree as well as the proceeding, i.e., orders, statement of parties, etc. In *Parayya Allayya Hittalamani* (supra), same observations have been made. It has been also held that where “a document is ambiguous” the same can be construed having regard to surrounding and attending circumstances. The said decision does not help or assist the respondent. The decree in the present case is not vague. We to satisfy ourselves, have examined the

surrounding and attending circumstances. In *Manish Mohan Sharma* (supra), the Supreme Court emphasized that family settlements are governed by special equity and are to be enforced if honestly made, though sometimes the terms agreed may have their origin in a mistake or founded on ignorance of fact as to what the rights of parties actually are. The said observations have been made with the object that family settlements are to protect the family from long drawn litigation and they bring harmony and good will in the family. The courts, therefore, lean in favour of family settlements and accept the same even if the similar defects or faults may not be accepted, if the transaction was between strangers. The said decision does not support the respondent but supports the plea and contention raised by the appellants. The compromise decree has to be executed and implemented even if it is alleged and contended that the respondent did not fully appreciate the consequence and implication of acquiring tenancy rights and had not visualized that the Supreme Court by a judicial decision would permit and enable an owner-landlord to sue for eviction in commercial tenancies on the ground of bona fide requirement.

29. We have considered the said contentions raised by the respondent but they are without merit. The respondent was aware that it was giving a bid for the tenancy right and not the ownership rights.

The judgment of the Supreme Court in *Satyawati Sharma* (supra) was decided prior to 28th May, 2008 which is when the money was paid by the respondent. The decision of the Supreme Court does not justify and cannot become the reason or ground for the executing court to modify and amend the compromise or the compromise decree. The parties are bound by the terms of the settlement and cannot wriggle out of the same. The compromise decree shows that the parties had given bid for the tenancy rights in properties in Delhi & Mumbai. When the bids were given, they also took the inherent risks involved when a person takes or requires tenancy rights, which are protected in law. In the present case the family members of Ram Gopal namely his wife and son happened to be the owners of the property of which tenancy rights have been acquired by Ram Charan. However, any other person or third person could have also been landlord or owner of the property. Similar right to seek eviction would have accrued to the benefit of the said owner/landlord. The respondent could not have asked for modification and amendment of the decree for this reason or ground. We record that the respondent has not asked for amendment or modification of the decree but had filed an execution petition stating that the decree itself postulates execution of the conveyance deed by Prem Lata and Ram Kishan. The decree, as discussed above, does not

stipulate or say so and is to the contrary. It is well settled that the executing court can interpret the decree and accordingly implement or execute the same. Executing court cannot modify or amend the decree. Compromise between the parties requires consent of the parties and no amendment or change of the terms can be made except with the consent of the parties. Parties when they give bid took the risk involved. It was equally possible that the value of the tenancy rights may have gone up or increased and in that event the appellants herein would have been the loser.

30. In view of the aforesaid position, we accept the present appeal and set aside the impugned order dated 30th August, 2010. The execution petition 227/2010 is dismissed. There will be no order as to costs.

(SANJIV KHANNA)
JUDGE

(S.P. GARG)
JUDGE

AUGUST 3, 2012
KKB/VKRS