

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

% *Order delivered on: July 29, 2013*

+ **C.R.P. 94/2013 & CM No.7619/2013**

KAMAL MOHAN SONI Petitioner
Through Mr.T.N. Razdan, Adv. with Mr.P.P.N.
Razdan and Ms.Smriti Razdan, Advs.

versus

POONAM ARORA & ORS. Respondents
Through None.

CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner has filed the present revision petition under Section 115 of the CPC for quashing the order dated 12th April, 2013. Learned counsel for the petitioner has made only one submission that the compromise deed was not signed by all the parties particularly the same does not bear the signature of Smt.Madhu Kiran Malhotra. However, learned counsel for the petitioner does not dispute that the compromise deed was signed by his client namely Kamal Mohan Soni.
2. The trial court by order dated 10th November, 2010 decreed the suit in terms of the compromise. Smt.Poonam Arora on 6th June, 2011 filed an execution petition as decree holder against the present petitioner Kamal Mohan Soni, Lalit Mohan Soni and Madhu Kiran Malhotra as judgment debtors. The petitioner filed the objection on 4th May, 2012 inter alia taking

the same plea that since the compromise is not signed by all the parties therefore the execution petition is not maintainable.

3. Learned executing court heard the matter on 7th December, 2012 and rejected the objection to the execution petition No.336/2011 on 12th April, 2013 with cost of ₹10000/-.

4. The trial court in paras 13 to 14 has dealt with the objection raised by the objectors including the present petitioner and gave its findings in paras 13 to 15 of the impugned order which read as under:

“13. Now coming to the next point of objection i.e. Smt. Madhu Kiran Malhotra being not a party to the settlement. On this aspect, there is statement of JD no.1 Sh. Kamal Mohan Soni that the JD no.3 (Smt. Madhu Kiran Malhotra) had already relinquished her share in favour of JD no.2. Having made the statement on oath in Court on 08.02.2012, JD no.1 who is the objector herein is estopped from taking a contrary stand in the objections. This statement was also accepted on behalf of JD no.2 by his counsel in his statement recorded on 08.02.2012. Therefore, estoppel operates against both these JDs, who cannot stake a contrary stand now. In the referred to suit, as per the arguments of JD no.1 he himself and the DH herein had challenged the relinquished deed executed by JD no.3 in favour of JD no.2. Apparently, now when the DH and JD no.1 and 2 had settled the matter in the suit for partition, they have accepted the factum of relinquishment deed executed by the JD no.3 (Ms. Madhu Kiran Malhotra) in favour of the JD no.2. Ostensibly, the JD no.1 wants to come out of the settlement by pressing into service hypertechnical objections.

14. The rule of estoppel is that a person cannot take a ‘U’ turn from his earlier stand when other parties have changed their position on the basis of the said statement. Thus, the JD no.1 cannot take a contrary stand.

15. The objection of JD no.1 that the compromise deed was not signed by all the parties for the reason that it does not bear the signatures of Smt. Madhu Kiran Malhotra carries no substance for the reason that through the JD no.2 namely Sh. Lalit Mohan Soni, the JD no.3 is duly represented as she had relinquished her share in favour of JD no.2 and this fact has been conceded to by all the parties. Though, Smt. Madhu Kiran Malhotra was a party in the original suit as defendant no.3 and had filed her written statement.”

5. Learned counsel for the petitioner has not denied the fact that the settlement was duly signed by his client. He has also not argued that Smt.Madhu Kiran Malhotra has not relinquished her share in favour of Lalit Mohan Soni/judgment debtor No.2 who is the signatory to the settlement.

6. Thus, it appears to the Court that the present petition is totally false and frivolous. The same is accordingly dismissed.

(MANMOHAN SINGH)
JUDGE

JULY 29, 2013