

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

% *Judgment Reserved on : March 03, 2014*
Judgment Pronounced on : March 28, 2014

+ **EFA (OS) 04/2014**

MON MOHAN KOHLI (THR NEXT
FRIEND AND GUARDIAN)

.....Appellant

Represented by: Mr.Sandeep Sethi, Sr.Advocate
instructed by Mr.Ashish Dholakia,
Mr.Abhimanyu Mahajan, Mr.Krishna
Kumar and Mr.Milan Deep, Advocates

versus

NATASHA KOHLI & ORS

.....Respondents

Represented by: Mr.Jayant Mehta, Advocate with Ms.Anu
Bagai and Mr.Bhuvan Mishra, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MR.JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Objection taken in appeal is to the order dated November 07, 2013 disposing of Execution Petition No.30/2007 filed by the first respondent Natasha Kohli. A consent decree dated January 03, 1996 passed in CS (OS) No.824/1993 has been executed by directing judgment debtor No.2 Sh.Mon Mohan Singh Kohli to transfer 600 shares held by him in judgment debtor No.1 'M/s.JEY KAY Pvt. Ltd.' in favour of a company named M/s.Monet Developers (P) Ltd. subject to the prior fulfillment of the terms and conditions No.(i) to (vii) in paragraph 27 of the impugned order by the decree holder. The seven terms and conditions imposed for decree to be executed read as under:-

“i) The decree holder shall file her own, and cause Mr.Israni to file in this Court their respective affidavits of undertaking that they shall not claim any right, title, or equity on account of the fact that they are the promoters/shareholders of Monet and that they shall transfer their entire shareholding in Monet in favour of the Registrar General of this Court, which shall be held by him in trust and subject to orders of the Court in CS(OS) No.1321/2006.

ii) The decree holder and Mr.Israni shall also state in their affidavits that Monet has not incurred any liability of any kind whatsoever, which may in any manner cause any encumbrance on the 600 share of JEY KAY that may be transferred to Monet in compliance of this order;

iii) The decree holder and Mr.Isani shall also file their respective indemnity bonds, indemnifying Monet and judgment debtor no.2 against any loss that may be suffered by Monet or judgment debtor no.2 in the eventuality of judgment debtor No.2 suffering any loss on account of any act of conduct of theirs before the transfer of 600 shares of JEY KAY in Monet;

iv) The decree holder and Mr.Israni shall file within four weeks an upto date duly audited balance sheet of Monet to establish that there is no outstanding liability held by Monet to any other entity;

v) The list of directors of Monet shall be disclosed and affidavit of all other directors shall also be filed thereby affirming the correctness of the statements made by the decree holder in her affidavit;

vi) All the directors of Monet, including the decree holder, shall resign upon the transfer of the shareholding in favour of the Registrar General of this Court and necessary communications/returns in this regard shall be filed with the Registrar of Companies. The Registrar General of this Court shall nominate two honorary directors who are officers of the court to ensure compliance of the statutory requirements as contained in the Companies Act and the Rules framed thereunder;

vii) The decree holder and the other directors of Monet shall undertake on affidavit that they shall not held themselves out as directors or office bearers of Monet and shall not incur any

obligation or enter into any contract or transaction for and on behalf of Monet with anymore.”

2. Krishan Dass Kohli was a man of means and had acquired considerable wealth; but unfortunately could not keep the family together. Blessed with a daughter, Ms.Vijay Kohli, two sons Mon Mohan Kohli and Joginder Nath Kohli, the family had four businesses : (i) The Printing House Ltd.; (ii) JEY KAY Pvt. Ltd.; (iii) Sunflower Enterprises; and (iv) Kohli Graphic Systems. Four trusts by the name Chandrawali Kohli Charitable Trust, Bishan Dass Kohli Charitable Trust, Naraian Dass Kohli Charitable Trust and Laxmi Devi Charitable Trust were also managed by the family. Whereas Ms.Vijay Kohli was a spinster, Mon Mohan Kohli was married to Natasha Kohli. Joginder Nath Kohli was married to Veena Kohli. As of the year 1995 Joginder Nath Kohli and Veena Kohli were blessed with a son who was then aged 23 years and was named Arjun Kohli.

3. Joginder Nath Kohli, his wife Veena Kohli and their son Arjun Kohli had filed a suit praying that they had 50% undivided interest in the joint family assets, partition whereof was prayed for. The defendants impleaded in the suit were Krishan Dass Kohli, Ms.Vijay Kohli and Mon Mohan Kohli.

4. By the grace of God, good sense prevailed over the family members and on October 16, 1995 a Memorandum of Family Settlement was drawn up recording the terms and conditions on which the disputes were settled. Lest the wives have an issue and probably for the reason Joginder Nath Kohli's wife Veena was a plaintiff No.2 in the suit which was registered as CS(OS) No.824/1993, the Memorandum of Family Settlement was executed by Krishan Dass Kohli, his daughter Vijay

Kohli, his two sons Mon Mohan Kohli and Joginder Nath Kohli as also their wives Ms.Natasha Kohli and Ms.Veena Kohli besides Arjun Kohli.

5. The settlement divided the family into three groups. Group ‘A’ comprised Krishan Dass Kohli and his daughter Ms.Vijay Kohli. Group ‘B’ comprised Mon Mohan Kohli and his wife Natasha Kohli. Group ‘C’ comprised Joginder Nath Kohli, his wife Veena Kohli and his son Arjun Kohli. The number of shares held in various companies by the individual family members as also the trust was valued and the manner in which the division/distribution took place was indicated.

6. Being concerned in the present appeal with the company JEY KAY Pvt. Ltd., we note that the Memorandum of Family Settlement notes that the present shareholding, with face value of the shares, would be as under:-

Name	Number of Shares	Total Face Value (₹)	%
Mr.Mon Mohan Kohli	600	60,000/- (Rupees Sixty Thousand only)	44.44
Mr.Krishan Dass Kohli	150	15,000/- (Rupees Fifteen Thousand only)	11.11
Mr.Joginder Nath Kohli	200	20,000/- (Rupees Twenty Thousand only)	14.82
Mr.J.N.Kohli – Karta (Joginder Nath Kohli – HUF)	400	40,000/- (Rupees Forty Thousand only)	29.63
	1350	1,35,000/- (Rupees One Lac Thirty Five Thousand only)	100

7. As per clause 2(b) of the Memorandum of Settlement it was agreed that the shareholding would be changed as under:-

Name	Number of Shares	%
Mr.Mon Mohan Kohli	600	50
Mr.Joginder Nath Kohli	200	16.67
Mr.J.N.Kohli – Karta (Joginder Nath Kohli – HUF)	400	33.33
	1200	100

8. The Memorandum of Settlement required 600 shares of Mon Mohan to be transferred at a break-up value of ₹135/- (Rupees One Hundred Thirty Five only) per share to a company M/s.Monet Developers Pvt. Ltd.; a company which had yet to be incorporated and further that the said 600 shares held by M/s.Monet Developers Pvt. Ltd. in JEY KAY Pvt. Ltd. would be converted into a single equity share to be called ‘A-Share’ with face value ₹60,000/- (Rupees Sixty Thousand only).

9. The only asset of JEY KAY Pvt. Ltd. was a lease-hold perpetual tenure in property bearing municipal No.15, Amrita Shergil Marg, New Delhi on which a building was constructed. Clause 2(h)(i) of the Memorandum of Family settlement created an exclusive licence in the holder of the single share of face value ₹60,000/- (Rupees Sixty Thousand only) i.e. M/s.Monet Developers Pvt. Ltd. to use and occupy one half portion of the built up property, shaded in yellow colour in the map annexed to the Memorandum of Family Settlement as also one half portion of the vacant land, shaded in green. Obviously, the other half would be enjoyed by Joginder Nath Kohli.

10. Removing the corporate veil, it is apparent that possession of the land and the building at 15, Amrita Shergil Marg, New Delhi was to be enjoyed by Jagan Nath Kohli and his family and Mon Mohan Kohli and

his family in the manner provided under the agreement i.e. the yellow built up and the green vacant area of the property to be exclusively occupied and possessed by Mon Mohan Kohli and his family and the remainder by Joginder Nath Kohli and his family members.

11. For reasons unknown Mon Mohan Kohli and his wife Natasha Kohli could not pull on together. Matrimonial disputes surfaced notwithstanding the two sharing a common bond through their son.

12. The company M/s.Monet Developers Pvt. Ltd. had obviously to be incorporated by Mon Mohan Kohli. He did not do so. Thus, the compromise as per the Memorandum of Family Settlement which found its manifestation in a decree passed by consent in CS(OS) No.824/1993 on January 03, 1996, could not be translated into reality concerning enjoyment of the property at Amrita Shergil Marg in the form of the corporate entity M/s.Monet Developers Pvt. Ltd. being firstly transferred 600 out of 1200 shares of JEY KAY Pvt. Ltd. to it followed by conversion of the 600 shares into one share called 'A-SHARE' having face value of ₹60,000/- (Rupees Sixty Thousand only).

13. Alleging that an attempt was made to throw her out from 15, Amrita Shergil Marg, New Delhi which was stated by her to be her matrimonial home, Natasha Kohli filed CS(OS) No.1321/2006 praying as under:-

“(a) Issue a decree of permanent injunction in favour of the plaintiff and against the defendant No.1 thereby injuncting the Defendant No.1, his servants, agents or any person claiming through or under him from interfering with the peaceful possession and enjoyment of the Suit Property by the Plaintiff in any manner whatsoever;

(b) Issue a decree of permanent injunction in favour of the Plaintiff and against the Defendant No.1 thereby injuncting the Defendant No.1, his servants, agents or any

person claiming through or under him from creating any third party interest in the suit property or dispossessing the plaintiff from the suit property;

(c) Pass a decree of permanent injunction in favour of the plaintiff and against the defendants thereby restraining the Defendants from changing the shareholding of the defendant No.2 by way of increasing the authorized share capital of defendant No.2;

(d) Pass a decree of permanent injunction in favour of the plaintiff and against the Defendants thereby restraining the defendants from issuing additional or subscribing to the presently un-subscribed/un-issued 800 shares from the authorized share capital of 2000 of the Defendant company;

(e) Issue a decree of mandatory injunction in favour of the plaintiff and against the Defendants thereby directing the Defendants to transfer 300 shares of JEY KAY Pvt. Ltd. from the Defendant No.1 to the plaintiff

(f) Pass such further order(s) and/or direction(s) as this Hon'ble Court deem fit and proper in the facts and circumstances of the case;

(g) Costs of the suit may also be granted to the Plaintiff."

14. The next year she filed an execution petition numbered as Ex.PNo. 30/2007 praying as under:-

"1. Direct the judgment debtors to take steps to incorporate and form a Company by the name of M/s.Monet Developers Pvt. Ltd. in which the Decree Holder and Judgment Debtor No.2 have 50% shareholding each;

2. That in the failure of the Judgment Debtor to take such steps this Hon'ble Court may be pleased to appoint a Receiver or a Court Commissioner to do the same;

3. Direct the Judgment Debtors to transfer 50% of the shareholding of Judgment Debtor No.1 into the newly

formed company M/s.Monet Developers Pvt. Ltd. so that the Decree Holder could have 25% ownership of the premises bearing No.15, Amrita Shergill Marg, New Delhi.

4. Pass any other or further order as this Hon'ble Court may deem just, fair and equitable."

15. The suit and the execution petition was opposed by Mon Mohan Kohli pleading that Natasha Kohli was never impleaded as a party in CS (OS) No.824/1993. He pleaded that the suit was decreed on an application filed under Order 23 Rule 3 of the Code of Civil Procedure of which application Natasha Kohli was not a co-applicant. Explaining Natasha Kohli being a co-signatory to the Memorandum of Family Settlement drawn up on October 16, 1995, he pleaded that her signatures were obtained by way of abundant precaution by the parties in litigation i.e. his brother Joginder Nath Kohli, his sister Ms.Vijay Kohli and his father Krishan Dass Kohli, lest Natasha Kohli created any kind of problem later on. In a nut shell, right of Natasha Kohli to seek the reliefs prayed for in CS (OS) No.1321/2006 as also to seek execution of the consent decree dated January 06, 1996 passed in CS (OS) No.824/1993 was questioned.

16. From the reliefs prayed for by Natasha Kohli in CS (OS) No.1321/2006 and the pleadings relatable thereto made by her it is apparent that the fulcrum on which she moves the lever is that she and her husband being Group 'B' as per the Memorandum of Family Settlement dated October 16, 1995, she would be entitled to half share in the assets of the family which were assigned to Group 'B' and since 50% share in 15, Amrita Shergil Marg, New Delhi was to be her husband's and hers, through the corporate shell of M/s.Monet Developers Pvt. Ltd. she would be entitled to half share holding of said company and through said share

holding she would be entitled to half share in the 50% share in 15, Amrita Shergil Marg vested in the company M/s.JEY KAY Pvt. Ltd. This is evidenced by the fact that in the suit she prays that 300 shares of JEY KAY Pvt. Ltd. be transferred to her name. (The issued and subscribed shares of JEY KAY Pvt. Ltd. are 1200). This explains the relief prayed for by her in the Execution Petition wherein she claims a direction that the company M/s.Monet Developers Pvt. Ltd. be incorporated and 50% share holding of JEY KAY Pvt. Ltd. be transferred in the name of M/s.Monet Developers Pvt. Ltd. and further that 50% shares of M/s.Monet Developers Pvt. Ltd. be assigned to her so that she could enjoy 25% ownership of 15, Amrita Shergil Marg.

17. The learned Single Judge has referred to Section 47 of the Code of Civil Procedure to hold that all questions arising between the parties to the suit in which a decree was passed or their representatives have to be determined by the court executing the decree as long as the questions relate to the execution, discharge or satisfaction of the decree. With reference to the law declared in the decision reported as 1932 (34) Bom.LR 670 Rustom Ji & Ginwala Vs. Fazal Raheem, the learned Single Judge has held that a decree can be enforced even by a party in whose favour the decree is made notwithstanding that the said party was not a party to the suit. Referring to the law declared in the decision reported as AIR 1943 Madras 407 Alluri China Bapanna Garu & Ors. Vs. Muthangi Jaggiah @ Jagga Rao Garu & Anr. the learned Single Judge has held that for Section 47 of the Code to be attracted the contest must be between the opposing parties in a suit or their representative in interest. Referring to the law declared in the decision reported as (1999) 3 SCC 644 Jagdish Dutt & Anr. Vs. Dharampal & Ors. the learned Single Judge has held that a joint decree has to be executed as a whole because it is not

devisable. So holding, the learned Single Judge has opined that as per the terms of the Memorandum of Family Settlement the shareholding of the company JEY KAY Pvt. Ltd. had to be treated as 1200 out of which 600 shares were to be transferred to M/s.Monet Developers Pvt. Ltd. and thereafter the said shares were to be converted into a single equity share to be called 'A-Share' with face value ₹60,000/-. So holding, Ex.P.No.30/2007 has been disposed of issuing seven directions as noted by us in paragraph 1 above.

18. The directions mean that 600 shares of M/s.JEY KAY Pvt. Ltd. have to be transferred to the company M/s.Monet Developers Pvt. Ltd.

19. At this stage we need to note a relevant fact. The company M/s.Monet Developers Pvt. Ltd. had been incorporated by Natasha Kohli. Of the 10000 subscribed shares she holds 9999 shares and 1 share is held, as she claims, by a person close to her named Nitin Rup Chand Israni. This explains directions No. (i) to (iv) passed by the learned Single Judge to Natasha Kohli and Nitin Rup Chand Israni requiring them to file affidavit by way of undertaking as also indemnity bonds concerning 600 shares of JEY KAY Pvt. Ltd. directed to be transferred to M/s.Monet Developers Pvt. Ltd.

20. We also need to highlight that while disposing Ex.P.No.30/2007 the learned Single Judge has only granted the first prayer i.e. 50% shareholding of JEY KAY Pvt. Ltd. to be transferred to M/s.Monet Developers Pvt. Ltd. The direction No.(iii) that 25% ownership in 15, Amrita Shergil Marg, New Delhi be transferred to Natasha Kohli by directing 50% shareholding of M/s.Monet Developers Pvt. Ltd. to be transferred to her has not been directed. Probably for the reason Natasha Kohli has 9999 shares of M/s.Monet Developers Pvt. Ltd. and her friend

Mr.Asrani owning the remaining 1 share of the 10000 shares which were issued when M/s.Monet Developers Pvt. Ltd. was incorporated.

21. The learned Single Judge has correctly opined that as per Section 47 of the Code of Civil Procedure all questions arising between the parties to the suit in which a decree was passed or their representatives have to be determined by the Court executing the decree as long as the questions relate to the execution, discharge or satisfaction of the decree. The learned Single Judge is also right when he held that a decree can be enforced even by a party in whose favour the decree is made notwithstanding said party being not a party to the suit in which the decree was passed. But what has been overlooked by the learned Single Judge is that one has to carefully see whether the dispute is one arising between the parties or their representatives. The dispute between a party and his representative would not be a dispute between the parties or their representatives envisaged by Section 47 of the Code of Civil Procedure. For example in a suit between 'A' and 'B' a decree for partition is passed declaring share of each to be 50%. The property is thereafter to be partitioned by metes and bounds. A dispute arises to the boundary line dividing the suit property by metes and bounds in the context of the land being quadrilateral in shape thereby affecting the right to possess 50% of the property. 'A' has died in the meanwhile. The representative in interest of 'A' can have the decree executed against 'B' while seeking partition and possession as per the decree. This would be the illustrative example of the applicability of Section 47 of the Code when it requires questions arising between parties or their representatives relating to a decree. Now, the son of 'A' has an issue with his father and claims half share in the half property decreed in favour of his father in the litigation between 'A' and 'B'. The son of 'A' cannot claim execution of the

decree in the suit between 'A' and 'B'. He may be vitally interested in the decree being executed because depending upon which half portion, properly delineated, falls to the exclusive share of his father, his right to claim half share in half property from his father may be affected. But he has to sue by way of an independent suit.

22. In paragraph 12 of the impugned decision the learned Single Judge has held that being a co-signatory to the Memorandum of Family Settlement, Natasha Kohli has to be treated as a beneficiary under the consent decree dated January 03, 1996, more so for the reason that the Memorandum of Family Settlement was embodied in the consent decree.

23. The learned Single Judge has overlooked that parties may join as co-signatories to an agreement or even an indenture as confirming parties and not with parties with any interest. From the mere fact that Natasha Kohli is a co-signatory to the Memorandum of Family Settlement no inference can be drawn that she would be entitled to 50% share assigned to Group 'B'. This issue needs evidence to be recorded, and since suit filed by Natasha Kohli is still pending, we speak no further lest prejudice is caused to any party in the suit. But we simply highlight that the view taken by the learned Single Judge in paragraph 12 is premature. It has to be kept in mind that on the marriage of a son, the daughter-in-law does not acquire any ownership interest in the assets of her in-laws' family. The house where she moves as a bride and which becomes her matrimonial home and rights ensuing therefrom under the Personal Law or today under the Protection of Women from Domestic Violence Act, 2005 have to be worked upon independently. Besides, the learned Single Judge has overlooked that if there is a decree which is joint in favour of two parties, the decree has to be executed jointly by the two and if there is an inter-se dispute between the two, the share has to be separated in an

independent proceedings and only thereafter can the locus of one to execute the decree be looked into.

24. The matter could be looked at from an entirely different but practical angle. At the core is the ownership right, and flowing therefrom the right to enjoy possession, of 15, Amrita Shergil Marg. The residential plot of land with a residential building is owned by JEY KAY Pvt. Ltd. The family settlement envisages the corporate shell to be retained and ownership vested in the corporate entity. Possessory rights to be enjoyed : 50% by Joginder Nath Kohli and his family and 50% by Mon Mohan Kohli and his family by constituting M/s.Monet Developers Pvt. Ltd. with 50% shareholding of JEY KAY Pvt. Ltd. to be transferred to M/s.Monet Developers Pvt. Ltd. Since issued and subscribed shares of JEY KAY Pvt. Ltd. would be 1200, 600 of which to be retained by Joginder Nath Kohli and his HUF, the remaining 600 to be transferred to M/s.Monet Developers Pvt. Ltd. Thereafter the said 600 shares to be converted into a single share called A-Share. M/s.Monet Developers Pvt. Ltd. was to be treated as a licensee of the portion of the property shaded in Yellow and Green colour in the site plan annexed with the Memorandum of Family Settlement. Needless to state M/s.Monet Developers Pvt. Ltd. was envisaged to be a company, holding whereof was exclusively in the control of Mon Mohan Kohli and his family. Thus, if Natasha Kohli has to lay a claim to the immovable estate held by her husband, whether held in his personal name or through shareholding of companies, the same had to be as per a civil suit filed; which right she exercised when she filed CS (OS) No.1321/2006. Prima-facie she was ill advised to file the execution petition.

25. Even the directions issued by the learned Single Judge are interim in nature if one carefully perused the same. What has been secured by

the learned Single Judge is simply 50% control of M/s.JEY KAY Pvt. Ltd. in the hands of M/s.Monet Developers Pvt. Ltd. The sixth direction regarding Directors of M/s.Monet Developers Pvt. Ltd. to resign and the transfer of the shares of the company in favour of the Registrar General of this Court, who would hold the same as a trustee, with further requirement that the Registrar General shall nominate two Honorary Directors to ensure compliance with the statutory provisions with the Companies Act is a pointer in said direction. We wonder what practical relief has flown to Natasha Kohli who appears to have obtained a theoretical relief and no more. Now, company law does not recognize the concept of Honorary Directors. One could be a Director in a company. An alternative Director is also understood, but not an Honorary Director. Besides, the impugned order has tasked the Registrar General of this Court to perform a duty till when the civil suit filed by Natasha Kohli would be decided. In other words the impugned order would in effect be relegated to the status of an interim order till the suit filed by Natasha Kohli is decided. It appears that the intention of the learned Single Judge was to secure the ownership rights in 15, Amrita Shergil Marg as an interim measure, but the same could have more appropriately, and in conformity with law, been secured by way of interim orders passed in CS (OS) No.1321/2006. The execution petition which was being tagged along with the suit file by Natasha Kohli was required to be kept pending and tagged along with the suit and final orders passed simultaneously, depending upon what relief was ultimately granted to Natasha Kohli in the suit filed by her. If she was declared to be entitled to a share, with simultaneous declaration of share in 15, Amrita Shergil Marg, appropriate directions, if found not feasible in the suit, could be issued in the execution petition treating her as a joint decree holder along with her

husband in CS (OS) No.824/1993; but with share subsequently severed in the suit filed by her.

26. We dispose of the appeal setting aside the impugned order dated November 07, 2013. We restore Ex.P.No.30/2007. On revival, the same shall be adjourned sine die, to be revived and tagged along with CS (OS) No.1321/2006 when the same ripens for final hearing after parties have led their evidence.

27. The usual mantra. Nothing stated by us in the appeal shall be construed as an expression on the merits of the controversy between Natasha Kohli and her husband Mon Mohan Kohli. Reference to facts and any inference drawn by us is limited to the disposal of the appeal and in view of the final view taken by us as above neither a reference to a fact nor an inference drawn thereto would be treated as an expression on the merits of the controversy between the parties. CS (OS) No.1321/2006 shall be decided by the learned Single Judge uninfluenced by any observation made by us, and so would be Ex.P.No.30/2007 if at all while deciding CS (OS) No.1321/2006 orders would be required to be passed issuing mandatory directions in the execution petition.

28. Parties shall bear their own costs all throughout.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MARCH 28, 2014

mamta