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

+ **RSA 171/2011 & Conn.**

% **21<sup>st</sup> November, 2014**

**+RSA 171/2011**

SMT. SUDERSHANA KUMARI BLAGAN ..... Appellant

Through: Ms. Tamali Wad and Mr. Yogendra  
Kumar, Advs.

Versus

SMT. TULSAN DEVI DECD THRU LRS & ORS ..... Respondents

Through: Mr.K.S.Pathania, Adv. for R-1.  
Mr. Ashish Mohan, Adv. for Mr.  
Anshumalee Sood through L.Rs.

+ **RSA 172/2011**

SMT. SUDERSHANA KUMARI BLAGAN ..... Appellant

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+ **RSA 173/2011**

SMT. SUDERSHANA KUMARI BLAGAN

..... Appellant

Through

versus

SHRI. ANSHUMALEE SOOD & ANR

..... Respondents

Through: Mr. Ashish Mohan, Adv. for Mr.  
Anshumalee Sood through L.Rs.  
Mr.K.S.Pathania, Adv. for R-2.

**CORAM:**

**HON'BLE MR. JUSTICE VALMIKI J. MEHTA**

To be referred to the Reporter or not? **Yes.**

**VALMIKI J.MEHTA, J (ORAL)**

**CM No. 19063/2014 (U/o 23 Rule 3 CPC for recalling of the order dated 18.2.2014) in RSA No. 171/2011**

1. There are certain sections of litigants for whom a legal binding compromise agreement entered into before the Court, is not a deterrence for seeking to recall the consent order/agreement by saying in almost a blasé manner that convenience supported by dishonesty is very much a general thing in this *kalyug*. The present application which has been filed is symptomatic of these types of litigants. I am using very strong words and

deliberately so, and which are intended to send a strong message that courts of law have to be accessed for the purpose of justice and where there is if not a strong case at least some reasonable case, but access to justice does not mean entitlement to indulge in gross abuse of the process of the law. Before reproducing the consent order, disposing of as many as five Regular Second Appeals (RSAs) filed under Section 100 of the Code of Civil Procedure, 1908 (CPC) and which brought to an end litigation of three decades, it is required to be noted that the consent order dated 18.2.2014 recording the agreement between the parties was passed after the counsels were heard on merits in the RSAs. In fact, the earlier order dated 29.1.2014 specifically records that the case was adjourned at the joint request of the parties, who wanted to consider settlement out of court.

2. The consent order recording the agreement between the parties dated 18.2.2014 is a long order but I have no option but to reproduce the same in its entirety and the same is therefore reproduced as under:-

“1. Counsel for the parties were heard with respect to their respective stands on merits. I am happy to note that counsels have taken a pragmatic stand and have advised their clients to arrive at a settlement in terms of the present consent order so that this family litigation which is now pending for about

three decades will come to an end. This court place on record the appreciation for the stand which is taken by the parties who have been ably assisted by their counsels. The present appeals are accordingly disposed of in terms of the following consent order:-

(i) The property bearing no. I-13, Jangpura Extension, New Delhi-14 will be demolished and rebuilt at the cost of Sh. Deen Dayal Sood or his nominee. The new construction will comprise of basement(as permissible), stilt parking, ground floor, first floor, second floor and third floor. There will be maximum coverage/construction as per applicable laws including municipal laws. Sh. Anshumalee Sood and Smt. Sudershana Kumari Blagon will be entitled to have parking of one car space in the stilt parking which will be provided in the newly built up property. All the floors will have same type and quality of fittings and fixtures.

(ii) Smt. Sudarshana Kumari Blagan will get the ground floor of the property to be newly constructed. Smt. Sudershana Kumari Blagan will be entitled to a rental per month of a sum of Rs.40,000/- per month from Din Dayal Sood/nominee for the period of two and half years from today during which new construction will be made on the property and the possession of the newly built up property will be handed over to Smt. Sudershana Kumari Blagan. In case, for any reason construction of the new property cannot be completed within a period of two and half years, thereafter the amount which would be payable to Smt. Sudarshana Kumari Blagan will be a figure of more than Rs.40,000/- per month and which amount/figure would be commonly decided by Smt. Sudarshana Kumar Blagan, and Mr. Din Dayal Sood or his nominee. The object of fixing of a

fresh figure of rental per month will be to ensure a fair and reasonable rental amount to be available to Smt. Sudarshana Kumari Blagan equivalent to the property she is occupying if for reasons beyond control the new construction cannot be completed within a period of two and half years and she cannot be given possession of the ground floor of the property to be newly constructed. The period of making of the newly constructed property will in no circumstance exceed a period of three years from today.

(iii) Sh.Anshumalee Sood who is the son and legal representative of late Smt.Dev Kumari Sood will get the first floor of the property to be newly constructed.

(iv) For the sake of clarification, it is clarified that Sh. Din Dayal Sood or his nominee will get the basement (as permissible), stilt parking except spaces of Mr. Anshumalee Sood and Smt. Sudershana Blagon, second floor and third floor with terrace rights in the building to be newly constructed subject to the condition that the terrace will be available to the other residents of the property for their various conveniences/amenities including water tanks, antenna etc etc. However, the physical use of the terrace, except for the aforestated purposes, will be only of Sh. Din Dayal Sood.

(v) All the parties will ensure that within a period of three months from today, they will agree to a common name of a builder/collaborator who will make the new construction on the plot after demolishing the old construction. The parties will

agree to such a common builder who has reputation for ensuring timely completion of construction. Counsel for the parties agree before me that they will not select a builder with negative reputation who would be not acceptable as a common person of the parties.

(vi) If the parties to the proceedings, namely Sh. Din Dayal Sood, Sh. Anshumalee Sood and Smt. Sudershna Kumari Blagan cannot agree to a name of a common builder / collaborator within a period of three months, then, the trial Court will within a period of three months thereafter by a judicial order appoint the builder/collaborator to demolish the old construction and make a new construction on the property in terms of the present order.

(vii) It is further clarified that Smt. Sudershna Kumari Blagan will not be asked to hand over her possession of the ground floor of the suit property for demolition of the property unless the entire agreement with the builder/collaborator is final and Smt. Sudershana Kumari Blagan gets at least one year advance rent for her to shift to an alternative residence for the period for which the property is to be newly constructed and till possession of the ground floor in the newly constructed property is handed over to her.

(viii) Before commencement of demolition of the old construction on the suit plot, Sh. Anshumalee Sood will be paid a lumpsum amount of Rs.7.5 lacs and Smt. Sudershana Kumari Blagon will get a sum of Rs.2.5 lacs, and which would be

payable at the time of signing of the agreement with the builder/collaborator and Sh. Anshumalee Sood and Smt. Sudershana Kumari Blagon giving up any right to remain in possession of any part of the old property. The amount payable of Rs.2.5 lacs is in addition to rent which Smt. Sudershana Kumari Blagon has to get.

(ix) It is agreed that the Advocates who are representing the parties, namely Sh. K.S.Pathania, Advocate, Sh. Ashish Mohan, Advocate and Ms. Tamali Wad, Advocate will be joint referees to implement the present consent order in its letter and spirit because they are aware of the sentiments of the parties at the time of passing of the consent order and which is to ensure that in spite of small differences which may crop up nothing should come in the way of ensuring over all implementation of the present settlement which is already arrived at before passing this order but reflected in terms of the present order.

2. In terms of the settlement all disputes, claims, counter claims and issues in the present proceedings of all the parties i.e Sh. Din Dayal Sood, Sh. Anshumalee Sood and Smt. Sudarshana Kumari Blagan will stand merged as per the terms of the present compromise order.

3. All pending applications including any contempt petition will stand disposed of as not pressed and will stand merged in terms of the present compromise order.

4. If there are any other litigations between the parties except the present appeals, those disputes between the parties pertaining to the estate of Sh. Mela Ram existing between them till date will stand merged in terms of the present compromise order.

5. The appeals are accordingly disposed of in terms of the present compromise order and parties will now appear before the District & Sessions Judge (East), Karkardooma Courts, Delhi on 23.3.2014. District & Sessions Judge will mark the suit for implementation of the present consent order to the extent it is necessary to a competent Court in accordance with law.”

3. The consent order records a very detailed agreement to sort out disputes with respect to the suit property bearing no.I-13, Jangpura Extension, New Delhi-14. The property was a very old property which required reconstruction for effecting the compromise. The detailed terms and conditions as to who gets which floor, for vacating the property a particular person has to get rental charges per month or lumpsum payment has to be made to certain persons, are all recorded in detail in the aforesaid order.

4. The most important aspect which has to be noted and which is mentioned in the order dated 18.2.2014 is that the order consciously and

deliberately while making reference to Sh. Din Dayal Sood records that reference to Sh. Din Dayal Sood includes the reference to his nominee. This has been recorded because to my clear recollection there had been stated before the court during the deliberations in the case and before the compromise was recorded in terms of the order of this Court that Sh. Din Dayal Sood had no remaining interest in the property and he had sold his rights in the suit property to a third person, and to which aspect there was no contest by any of the other parties in the matter, and consequently wherever the expression 'Din Dayal Sood' is stated in the order dated 18.2.2014 it is also stated that reference to Sh. Din Dayal Sood will include reference to his nominee.

5. Now, this application is filed by two applicants namely Ms. Seema Sood and Mr. Kanak Sood who claim to be the legal heirs of Sh. Anshumalee Sood who is stated to have expired on 4.5.2014 ie after passing of the consent order. The applicants Ms. Seema Sood and Mr. Kanak Sood are claiming rights only on the ground that they are representatives of late Sh. Anshumalee Sood and since Sh. Anshumalee Sood was a party to the consent order /agreement dated 18.2.2014, they have a right to seek recall of

the order for the reason stated in the application that Sh. Din Dayal Sood had already expired before passing of the consent order dated 18.2.2014.

6. As per the consent order/agreement dated 18.2.2014, Sh. Anshumalee Sood was to get the first floor of the newly constructed property. Sh. Anshumalee Sood was also to get stilt parking space. Sh. Anshumalee Sood was also to get a lumpsum amount of Rs.7.5 lacs. Rights of different parties to the suits, and all of which suits basically emerged as for partitioning the Jungpura Extension property, were delineated in detail in the consent order dated 18.2.2014 as reproduced above.

7. The only and only ground which is urged on behalf of the applicants for setting aside the consent order/agreement dated 18.2.2014 is that Sh. Din Dayal Sood, who was one of the parties to the RSAs, had already expired on 16.9.2012 and therefore the power of attorney which was executed by Sh. Din Dayal Sood in favour of his attorney Sh. Arun Saini came to an end and therefore Sh. Arun Saini could not represent Sh. Din Dayal Sood who had already expired at the time of passing of the consent order dated 18.2.2014. The consent order/agreement dated 18.2.2014 be hence recalled it is prayed.

8. I have already stated above, that in the consent order wherever relevant reference is made to Sh. Din Dayal Sood the same records that reference to Sh. Din Dayal Sood includes his nominee. Counsel, Mr. K.S.Pathania, who appeared for Sh. Din Dayal Sood through his attorney has now filed in this Court various registered documents being the registered Agreement to Sell dated 7.2.2007 executed by Sh. Din Dayal Sood in favour of M/s Business Environment Assessments (India) Pvt. Ltd., a registered general power of attorney executed by Sh. Din Dayal Sood in favour of one Sh. Jagbir Singh dated 7.2.2007, a registered Will dated 7.2.2007 executed by Sh. Din Dayal Sood in favour of M/s Business Environment Associates Pvt. Ltd. bequeathing his rights in the suit property to the company etc.

9. I may note that the Special Power of Attorney which was executed in favour of Sh. Arun Saini is dated 6.2.2007 and these documents in favour of the company M/s Business Environment Assessments (India) Pvt. Ltd. and the power of attorney holder Sh. Jagbir Singh are immediately of the next date i.e 7.2.2007. In all these documents dated 7.2.2007 there is a paragraph which refers to appointment of Mr. Arun Saini as the Special Power of Attorney Holder of Sh. Din Dayal Sood and which obviously was

because the Special Power of Attorney was a limited power of attorney with respect to the litigations.

10. It is therefore clear that when the consent order was passed, it was to the knowledge of the parties that Sh. Din Dayal Sood had already sold/transferred his rights in the suit property to a third person, whose name was not mentioned and reference to such person was by reference to the nominee of Sh. Din Dayal Sood, but, it is clear that the expression 'nominee' was clearly understood by all the parties to have been deliberately used and was used in view of the documentation dated 7.2.2007 being the registered agreement to sell, registered power of attorney and a registered Will executed by Sh. Din Dayal Sood. Therefore, when today this application is filed the same is only on a technical ground, obviously however the real intention is to back out of the detailed settlement agreement recorded by this Court on 18.2.2014, and therefore, the issue is that whether the technicality of Sh. Din Dayal Sood having already expired when the consent order dated 18.2.2014 was recorded is a ground for setting aside the compromise agreement dated 18.2.2014. It bears reiterations that none of the parties are

questioning the fact that all the parties gave their consents and all the terms recorded in the order dated 18.2.2014 are agreed terms.

11. At this stage, it is necessary to refer to Section 202 of the Indian Contract Act, 1872 and more particularly the illustration (b) given under that Section.

12. The aspect as to whether a power of attorney given for consideration under Section 202 of the Indian Contract Act continues or comes to an end after the death of the principal has been dealt with by me in the judgment in the case of ***Sh.Ramesh Chand Vs. Suresh Chand & Anr.*** in RFA No.358/2000 decided on 9.4.2012: ***2012 (188) DLT 538*** and the relevant paras of this judgment are paras 3 and 4 and which read as under:-

“3. A reference to the aforesaid paras shows that unless there is a proper registered sale deed, title of an immovable property does not pass. The Supreme Court has however reiterated that rights which are created pursuant to Section 53A of the Transfer of Property Act, 1882 dealing with the doctrine of *part performance* (para 12), an irrevocable right of a person holding a power of attorney given for consideration coupled with interest as per Section 202 of the Contract Act, 1872 (para 13) and devolution of interest pursuant to a Will (para 14). Therefore, no doubt, a person strictly may not have complete ownership rights unless there is a duly registered sale deed, however, certain rights can exist in an immovable property pursuant to the

provisions of Section 53A of the Transfer of Property Act, 1882, Section 202 of the Contract Act, 1872. There also takes place devolution of interest after the death of the testator in terms of a Will.

4. There is also one other aspect which needs to be clarified before proceeding ahead and which is whether a power of attorney given for consideration would stand extinguished on the death of the executant of the power of attorney. The answer to this is contained in illustration given to Section 202 of the Contract Act, 1872, and the said provision with its illustration reads as under:-

**“Section 202. Termination of agency, where agent has an interest in subject matter.-** Where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

#### Illustrations

- (a) A gives authority to B to sell A's land, and to pay himself, out of the proceeds, the debts due to him from A. A cannot revoke this authority, nor can it be terminated by his insanity or death.
- (b) A consigns 1,000 bales of cotton to B, who has made advances to him on such cotton, and desires B to sell the cotton, and to repay himself out of the price the amount of his own advances. A cannot revoke this authority, nor is it terminated by his insanity or death.”

The object of giving validity to a power of attorney given for consideration even after death of the executants is to ensure that entitlement under such power of attorney remains because the same is not a regular or a routine power of attorney but the same had elements of a commercial transaction which cannot be allowed to be frustrated on account of death of the executant of the power of attorney.”

13. The reason why any power of attorney given for consideration does not lapse after the death of the principal who has executed the same is

because once consideration has been received by a person which is a subject matter of the power of attorney, and such interest is created in favour of the agent, agent should not be prejudiced because of the death of the principal inasmuch as the principal has received whatever benefits/consideration which had to be received under the power of attorney. Once therefore the special power of attorney holder Sh. Arun Saini was acting in terms of his special power of attorney dated 6.2.2007 executed by Sh. Din Dayal Sood and which document has to be necessarily seen with the other documents of the transactions dated 7.2.2007 being the registered power of attorney, agreement to sell and Will dated 7.2.2007, inasmuch as documents executed even on different dates can surely in law form part and parcel of the same transaction, it is clear that mere death of Sh. Din Dayal Sood which took place prior to recording of the consent order which is dated 18.2.2014 should not be allowed to be made as a convenient but illegal basis to recant from the detailed consent agreement dated 18.2.2014. Even if the documents are not seen part and parcel of the same transaction and the documents dated 7.2.2007 are seen independently, the power of attorney executed on 7.2.2007 in favour of Sh. Jagbir Singh, and Sh. Jagbir Singh not disputing entitlement of Sh. Arun Saini, the same is enough for holding that even after the death of

Sh. Din Dayal Sood the same did not make any difference to the recording of the consent order dated 18.2.2014 especially because in the order dated 18.2.2014 alongwith the expression 'Din Dayal Sood' the expression 'nominee' is also simultaneously and repeatedly used.

14. The matter in my opinion in the peculiar facts of this case can also be seen in the context that in the interest of justice, Sh. Arun Saini who was admittedly the special power of attorney holder of Sh. Din Dayal Sood can be taken to be a party to the RSAs for the purpose of arriving at the detailed settlement agreement as recorded on 18.2.2014 and the applicants cannot now dishonestly seek to back out of the settlement. To allow litigants such as the applicants to succeed in their dishonest purpose, and which is obviously to back out of the consent order recorded on 18.2.2014, would be to allow such litigants to play games of hide and seek with the Court, and which in my opinion is something which should definitely not be permitted.

15. Learned counsel for the applicants very vehemently argued that the documents dated 7.2.2007 which have been referred to in the present order have only now been filed in this petition and that they should not be

referred, but I find this argument an argument of sheer desperation inasmuch as not only these documents make specific reference to the special power of attorney which was executed in favour of Sh. Arun Saini but also because these documents are registered which show payment of consideration of cheques to Sh. Din Dayal Sood. Additionally, and as stated above, there is no surprise or prejudice to the applicants inasmuch as all the parties at the time of passing of the consent order on 18.2.2014 knew why the expression 'nominee' was used alongwith the name of Sh. Din Dayal Sood.

16. The present application therefore being an abuse of the process of the law is dismissed with costs of Rs.1.5 lacs in favour of representatives of Sh. Din Dayal Sood. Costs shall be paid within a period of four weeks from today, failing which the costs imposed upon the applicants can be got adjusted by the nominee of Sh. Din Dayal Sood from the amount which is payable to Sh. Anshumalee Sood or his estate in terms of the consent order dated 18.2.2014.

CM is dismissed and disposed of in view of the aforesaid order.

**CM Nos. 15977/2014, 16002/14 and 16003/2014**

These applications will not survive in view of the detailed order passed by me dismissing the CM No. 19063/2014 in RSA 171/2011 and therefore these applications are also dismissed because there does not arise any question of representation to the estate of Sh. Anshumalee Sood or even Sh. Din Dayal Sood in view of a detailed discussion given while dismissing CM No. 19063/2014

**CM Nos. 15942/14, 15944/14, 15945/14 & 19061/14 in RSA 172/2011**  
**CM Nos. 15947/14, 15949/14 15950/14 & 19202/14 in RSA 173/2011**

These applications will stand dismissed in terms of the order passed in CM No. 19063/2014 in RSA No. 171/2011.

**VALMIKI J. MEHTA, J**

**NOVEMBER 21, 2014**

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