

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

+ **EFA 20/2014 & C.M.Nos.13804/2014 (Exemption)**
&13805/2014 (stay)

% **26th AUGUST, 2014**

SMT.HARDEEP KAUR & ORS. Petitioners
Through: Mr.Rajeev Kumar and Mr.Saurabh
Kumar, Advocates.

VERSUS

SH.DEEPANSH MALHOTRA & ANR. Respondents
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

1. Challenge by means of this execution first appeal is to the impugned order dated 07.8.2014 by which the executing court refused to recall the order dated 19.7.2014 by which the objections filed by the petitioners were dismissed in default.

2(i) Disputes in the present case pertain to property bearing no.43/43A, Punjabi Bagh (West), New Delhi, which property belonged to the father of the petitioners/objectors who are five daughters who have also filed their

own objections to the judgment and decree for possession passed in favour of the respondent no.1/deGREE holder. The judgment and decree is dated 10.11.2009. The decree holder is a purchaser for consideration from Manohar Singh, who is the brother of the petitioners. All five sisters as per the brother Manohar Singh had executed a registered relinquishment deed on 9.5.1996 in favour of the brother and who thereafter sold the suit property to the decree holder after receiving valuable consideration. The Respondent no.1/deGREE holder filed the suit for possession in the year 2007 against the brother Manohar Singh and which was contested by the brother, Manohar Singh. The suit was ultimately after trial decreed on 10.11.2009. An appeal which was preferred by the respondent no.2/defendant/brother was dismissed. Though it is not clear from the record but it appears that further challenges were also filed by the brother Manohar Singh by filing of further appeals, but these also appear to have been dismissed.

(ii) The respondent no.1/deGREE holder then sought execution of the decree dated 10.11.2009, and at this stage, the sisters/petitioners filed their objections to execution. The basic contention of the sisters/petitioners including the petitioner no.1 was that the relinquishment deed was got signed in a hurry from the sisters by the brother and actually the sisters never

gave their consent or signed the documents and they were not in the knowledge that they are going to relinquish their respective shares in the suit property in favour of the brother, Manohar Singh. It is the case of the sisters who have filed their objections that the brother wanted to take a loan, and therefore the request was only to get executed a general power of attorney but actually the relinquishment deed was got signed hurriedly and thumb impressions of the sisters were also put on the same.

(iii) The executing court framed the issues in the objections on 05.5.2014.

3. I may note that no doubt objections have to be tried as a suit, however, once there is a decree against the main judgment debtor, in the facts of the case such as the present, objectors have to be vigilant in ensuring that they diligently pursue their objections more so in the present case where there were directions passed by this Court for expeditious disposal of the objections. Objectors are however guilty of causing various delays in disposal of the objections, inasmuch as on the first date fixed after framing of issues, the petitioner no.1/objector herself did not offer for cross-examination because an application under Order XI Rule 14 of the Code of

Civil Procedure, 1908 (CPC) was filed by the petitioners/objectors for filing of the documents. Evidence consequently was not led by the objectors and the case was adjourned. Even on the next date no evidence was led and petitioner no.1/objector did not allow her cross-examination to start because one other application under Order XIV Rule 5 CPC was filed to amend the issues. The impugned order dated 07.08.2014 shows that on the next date of hearing, the matter could not be taken up inspite of repeated calls till 1.15 PM as the counsel for the objectors was not available till the lunch session. In the post lunch session, since no one appeared for the objectors, the objections have been dismissed in default. The relevant observations in the impugned order in this regard read as under:-

“ Briefly stated the facts of the case necessary to appreciate the facts are that the execution petition of a decree passed in favour of Deepansh Malhotra against the JD Manohar Singh in the court and the objectors who are sisters of JD Manohar Singh have filed their objections to the execution claiming that the relinquishment deed executed in favour of JD Manohar Singh has not been executed by them and the deed is forged and fabricated and farther that the sale deed in favour of DH has been executed by relaying the forged and favour of Dh has been executed by relaying the forged and fabricated relinquishment deed. **There are directions from the Hon’ble High court to decide the objections filed by Ms. Hardeep Kaur expeditiously** and as the objection raised to the execution could not be decided without the evidence of the parties so the issues

were settled by the court on 05.05.2014 in the presence of objector and their counsels and the objectors were asked to lead their evidence first.

On the day fixed for evidence, on application is moved on behalf of objectors U/o 11 Rule 14 CPC and the case was deferred for the disposal of the application as well as for the evidence and again on the next date of hearing another application U/o 14 Rule 5 CPC was moved on behalf of the objectors and as per submissions of the Ld. Counsel for the DH that evidence is being led by the parties with full knowledge about the relinquishment deed in question and during the trial if need arises about the re-framing the issues, the same may be re-framed later on, the application was kept pending and the affidavit of objector Ms. Hardeep Kaur was tendered and the case was adjourned for her cross-examination as the court time was over. On the adjourned date, the matter could be taken up at 1:15 p.m. due to non-appearance of the Ld. Counsels at the earlier calls and the case was adjourned as the Ld. Counsel for the objector was not available for post lunch session. On the next date of hearing i.e. 19.07.2014 at 12:00 noon, the Proxy counsel for the objector Sh. Amit Saini appeared and he intimated the court that the Ld. Counsel Sh. Amar Saini is not available as busy in saket courts and if the main counsel for the objector is required he may appear at 2:00 P.m. The Ld. Counsel for the DH raised his objections and stated that he will not be available at 2:00 p.m. and that the date was given by the Court as per convenience of the Ld. Counsels. It is the law that non-availability of a counsel as busy in another case is not a ground to adjourn the case, thus finding no other option considering the conducts of the objectors as well as the directions of expeditious disposal the Court was forced to dismiss the objections due to default in appearance.”

The grounds taken by the objectors in the applications cannot be said sufficient grounds which restrained their appearance in the Court rather indicates their malafide intentions to delay the trial. Accordingly both the applications are dismissed.”

(underlining added)

4. No doubt, courts are liberal with respect to procedural issues, however, the extent of liberality has to be considered as per the facts of each case. In the facts of the present case where the respondent no.1/deGREE holder has first contested the suit till various stages of trial and thereafter has been successful in claiming the decree for possession and mesne profits, the objectors who have executed the registered relinquishment deed only claimed that the relinquishment deed is not valid because it was hurriedly got signed, and thus they were bound to ensure that they diligently perused their case and not play hide and seek with judicial process causing delay in disposal of their objections to the decree. This is all the more so because the objectors know the directions passed by this Court for expeditious disposal of the objections.

5. Since in the present case for over three hearings, no evidence was led by the objectors and even no one appeared for the objectors for repeated calls on two dates, the executing court was hence completely justified in dismissing the objections for default, inasmuch as judicial process cannot be

misused to deliberately cause delay, and which in my opinion, the sisters/petitioners were causing qua the execution of the judgment and decree obtained after contest and which has been tested at various tiers of appeals.

6. In view of the above, there is no illegality in the impugned order, and the petition is therefore dismissed, leaving the parties to bear their own costs.

VALMIKI J. MEHTA, J

AUGUST 26, 2014
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