

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

% *Judgment Reserved On: May 02, 2014*
Judgment Delivered on: May 16, 2014

+ **EFA(OS) 8/2014**

MAMTA DHAWAN Appellant
Represented by: Mr.P.S.Bindra and Mr.Vineet
Chaudhary, Advocates.

versus

NARESH DHAWAN Respondent
Represented by: Ms.Sumedha Dua, Advocate

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MR. JUSTICE JAYANT NATH

PRADEEP NANDRAJOG, J.

1. Vide impugned order dated August 26, 2013, objections filed by the appellant to the execution petition filed by the respondent to execute a consent decree dated March 10, 2006 have been dismissed and the matter adjourned for further proceedings to give effect to the decree.
2. The appellant and the respondent shared a matrimonial bond but have unfortunately strained the bond.
3. On May 02, 2014, we had endeavoured our best to try and made the parties understand logic and reason and the uselessness of the litigation undertaken by the two.
4. Whereas the respondent is aged 58 years, the appellant is aged 54 years. We had asked the two whether they intend to find a new partner in their life. Both responded in the negative. We had asked the appellant and

the respondent as to who would inherit their wealth. Both of them informed that their only daughter Natasha would inherit their estate.

5. If ultimately Natasha, the daughter of the parties, would inherit their estate, how would it matter to the two as to who gets what, for ultimately the water from the glaciers would flow to Natasha. Under the compromise decree the appellant and the respondent have got enough to lead a comfortable life. Both of them are professionals and have an income to lead a comfortable life

6. But since a consensus eluded the parties, we reserved the matter for judgment.

7. Mamta Dhawan had filed a suit registered as CS(OS) No.1222/2004 for partition of immovable properties and mesne profits against her husband. The couple were engaged in multifarious proceedings including divorce proceedings, criminal proceedings and proceedings before the Company Law Board.

8. Plot No.B-4, Sushant Lok, Phase-I, Gurgaon was in the joint names of the parties. The plot ad-measures 360 sq.yds. The second floor of property bearing No.E-282, Greater Kailash, New Delhi was also in the joint names of the parties. A flat (commercial) No.308, Uday Plaza, Masjid Moth, New Delhi is registered in the name of the appellant. The basement of the building at plot No.E-2, Greater Kailash Enclave, Part-I, New Delhi is registered in the name of Mamta Dhawan. A residential flat proposed to be constructed by M/s Ansal Properties & Industries Ltd. was booked by the respondent for which ₹3,24,135/- was paid. The project has yet to take off. The developer is in litigation with DDA and one does not know whether at all the booking would mature into a flat being allotted to the respondent.

9. On March 10, 2006, CSOS 1222/2004 was decreed in terms of a compromise effected between the parties, the terms whereof could be found in the statement made by the appellant on oath before the Court. The statement reads as under:-

“10.03.2006

CS(OS) No.1222/204

**STATEMENT OF MS.MAMTA DHAWAN S/O SHRI
NARESH DHAWAN R/O C-592, DEFENCE COLONY,
NEW DELHI.**

On SA

1. *I have settled the disputes with my husband (defendant). It has been agreed that plot No.B-470, Shushant Lok, Phase-I, Gurgaon, measuring 300 sq.yds. shall vest absolutely in me which is at the moment in the joint name of the parties. Flat No.308 (3rd floor) Uday Plaza, Masjit Moth, New Delhi measuring 390 sq. Ft. is in my name and my husband has given up any claim in respect of the flat. I am the recorded owner of E-2, (Basement), Greater Kailash Enclave, Part-I, New Delhi. I agree to execute all necessary documents for transfer of the said flat in the name of my husband or in the name of his nominee and the said flat shall vest absolutely with the defendant. There is another flat bearing No.E-282 (Second Floor), Geater Kailash-I, New Delhi, which is in the joint names of myself and my husband. I give up all rights title and interest in respect of the said flat and shall execute the documents for the said purpose either in the name of the defendant or his nominee.*

2. *I hereby give up all my claims in respect of any other property of the defendant. This is so since I have claimed rights in respect of a number of properties of which the defendant is the recorded owner.*

3. *I agree and undertake to withdraw all civil and criminal proceedings initiated by me against the defendant and will assist in getting the same compounded.*

4. *I also withdraw all my claims in respect of M/s. Setron India Private Limited and shall withdraw the proceedings initiated in respect of my share holding in the said company. I undertake to transfer the shares in the said company in the name of the defendant or his nominee without consideration.*

5. *I and my husband agree to file a petition for divorce by mutual consent before the competent court and in view of the said agreement my husband has agreed to transfer the rights in respect of the properties in my favour.” (Underline Emphasised)*

10. Disposing of CS(OS) 1222/2004 on the basis of a mutual consent, the learned Single Judge passed a decree on March 10, 2006 as under:-

“ The plaintiff has filed a suit for partition of immovable properties and mesne profits against her husband (defendant). There are multifarious proceedings pending between the parties including the divorce proceedings, criminal proceedings, further civil proceedings, petition before the Company Law Board and before the Registrar of Companies. The matter was listed before the Court when the parties were present and fortunately better sense prevailed on the parties, who have agreed to amicably settle their disputes. The statement of the parties have been recorded.

In terms of the statement made by the respective parties Plot No.B-470, Shushant Lok, Phase-I, Gurgaon, measuring 300 sq. yds. and Flat No.308 (3rd Floor), Uday Plaza, Masjid Moth, New Delhi measuring 390 sq. ft. shall vest absolutely with the plaintiff and in all other properties rights, title and interest shall vest with the defendant for which the parties will execute necessary documents. Such documents are to be executed in favour of the other party or his/her nominee as may be required by the party who gets right in the said property.

The defendant has also agreed to make a provision for his daughter, Ms.Natasha, and has agreed that the total provision to be made would be ₹10 lakh including the marriage expenses for the daughter apart from whatever else he may give to her out of his love and affection. Out of this amount of ₹10 lakh, an immediate provision for ₹5 lakh would be made for the benefit of the daughter.

The FDRs lying with the defendant whether in the joint names with the plaintiff or his daughter shall be used for the said purpose and the deficiency shall be made up by the defendant. It is made clear that if there are any FDRs in the custody of the plaintiff which are still subsisting or which have been encashed the same shall not form part of this provision made by the defendant of ₹5 lakh. The further provision of ₹5 lakh shall be made by the defendant for the marriage of his daughter at least one month before said marriage on the plaintiff informing the defendant about the same.

The parties have agreed to file a petition for divorce by mutual consent before the competent court and shall cooperate in respect of the same. The plaintiff has also agreed to cooperate with the defendant for seeking quashing of all criminal proceedings.

The parties shall execute the documents and implement the settlement within a maximum period of 30 days from today.

The undertakings given by the parties are accepted and the suit is compromised in terms thereof. Decree sheet be drawn up accordingly. The statements recorded shall form part of the decree sheet.

*Dasti to learned counsel for the parties.” (**Underline Emphasised**)*

11. Regretfully, the parties have litigated for eight years thereafter. The consent decree has not been given effect to. It is apparent that to give effect to the consent decree the respondent was to execute a relinquishment deed or any other document required by the appellant to convey full title to the appellant in plot No.B-470, Sushant Lok, Phase-I, Gurgaon. The appellant was to retain ownership and possession of flat No.308, Uday Plaza, Masjid Moth which was already in her name. She was to execute a sale deed or a gift deed transferring ownership in the basement of the building at plot

No.E-2, Greater Kailash Enclave, Part-I, New Delhi to the respondent. She was to execute a relinquishment deed or such other desired by the respondent to convey her 50% ownership right in the second floor of the building at E-282, Greater Kailash, Part-I, New Delhi.

12. Seeking execution, the respondent volunteered to execute such documents as was required by the decree in favour of the appellant and likewise wanted the appellant to execute such documents as were required to convey title to him in the properties as per the compromise. He prayed that if appellant refuses to take possession of the properties which had to be conveyed to her, the daughter of the parties Ms.Natasha be appointed as a receiver. He prayed that the appellant should execute the documents as mandated by order 21 Rule 34 of the Code of Civil Procedure to convey title in his name for the basement at Greater Kailash, Part-I, New Delhi and full title with respect to the second floor of the property in Greater Kailash, Part-I, New Delhi.

13. Object to the execution, the appellant took a stand that on January 25, 2006 the respondent had obtained a decree of permanent injunction against her restraining her from selling plot No.B-470, Sushant Lok, Part-I, Gurgaon which fell to her share. Appellant claimed that said fact was not disclosed to the Court and the decree continues to operate against her.

14. The next objection filed by the appellant was that the decree did not embrace the flat booked with M/s Ansal Properties & Industries Ltd. and thus the compromise was incomplete. She took a third objection that the respondent was to provide ₹5 lakhs for the benefit of the daughter which he did not do so.

15. The learned Single Judge has held that the decree passed on January 10, 2006 was an ex-parte decree and restrained the appellant from creating

any third party rights in plot bearing B-470, Sushant Lok, Part-I. The learned Single Judge has held that consent decree dated March 10, 2006 would obviously render redundant the ex-parte decree dated January 25, 2006 obtained by the respondent. As regards the flat booked with Ms. Ansal Properties & Industries Ltd., the learned Single Judge emphasised the fact that as per the compromise, reflected in paragraph 2 of the statement made on oath by the appellant, she expressly gave up any claim in respect of other property of the defendant. The learned Single Judge has emphasised that in the second paragraph of the order dated March 10, 2006, the decree passed was that in all other properties right, title and interest shall be that of the respondent. As regards ₹5,00,000/- not paid by the respondent to the daughter, the learned Single Judge has noted that the same was the result of mistrust and acrimony between the parties. The learned Single Judge has directed the respondent to immediately deposit ₹5,00,000/- together with interest @ 12% per annum from March 10, 2006 till date of deposit in the name of the Registrar General of this Court, noting that the deposit would be subject to further orders which may be passed.

16. In appeal, same objections which were urged before the learned Single Judge have been reiterated.

17. It assumes importance to note that when the suit was filed by the appellant in the year 2004 and even on March 10, 2006 when the suit was disposed of by a consent recorded between the parties, apart from four immovable properties: (i) B-470, Sushant Lok, Phase-I, Gurgaon in the joint name of the parties; (ii) Flat No.308, Uday Plaza, Masjid Moth, in the name of the appellant; (iii) Basement of building E-3, Greater Kailash Enclave, Part-I, New Delhi, in the name of the appellant, and (iv) the Second floor of the building E-282, Greater Kailash, Part-I, New Delhi in the joint name of

the parties, neither of them in their individual or joint names owned any other immovable property. The respondent had paid ₹3,24,135/- vide booking No.78 for being allotted a residential flat admeasuring 1050 sq.ft. with M/s Ansal Properties & Industries Ltd. in the proposed complex called DCM Green Acres at Bara Hindu Rao, Delhi.

18. The statement made on oath by the appellant recording the terms of the consent for a decree to be passed would evidence that she was aware of the said booking made by the respondent for the reason in paragraph 2 of her statement she clearly stated that she gave up her claim in respect of other property of the defendant, which found a reflection in the second paragraph of the consent decree dated March 10, 2006. The learned Single Judge has clearly recorded that in all other properties, rights, title and interest shall vests with the defendant. It assumes importance to note that in the statement of the appellant a reference was made to the municipal number given to four immovable properties ownership whereof was either in the joint names of the parties or in the name of the appellant. It was followed by a statement made by the appellant that she would have no interest in any other property of the respondent, which would obviously mean the proprietary interest of the respondent by virtue of the booking with M/s Ansal Properties & Industries Ltd.

19. The learned Single Judge has thus correctly opined that the appellant cannot resist execution of the decree on said objections. We would be failing not to highlight that after the decree by consent was passed the appellant filed IA No.4766/2006 raising an issue to the title of the commercial flat No.308, Uday Plaza, Masjid Moth, New Delhi alleging that at the time of the compromise she was given to understand that the value of the property was between ₹18,00,000/- to ₹20,00,000/- but the

current value thereof was less. She prayed for directions that the respondent should pay her a sum of ₹18,00,000/- to ₹20,00,000/-. She volunteered to transfer the flat to the respondent. As noted above, the said flat was in the name of the appellant and as per the compromise she was to retain ownership thereof. The application was dismissed on April 28, 2006. The appellant filed IA No.13401/2006 thereafter seeking a clarification of the consent decree concerning the term of the settlement requiring money to be paid by the respondent for the benefit of Ms.Natasha, the daughter of the parties. The said application was dismissed on December 11, 2006. The appellant persisted. She filed IA No.13368/2013 which had also been dismissed.

20. We find that the appellant is unnecessarily putting hurdles in the implementation of the consent decree passed. We see no escape from the obligation of the appellant to take possession of plot No.B-470, Sushant Lok, Phase-I, Gurgaon and join in the execution of such documents which the respondent volunteers to execute to convey his 50% interest in the said plot to the appellant. We see no escape from the requirement of law for the appellant to retain possession of flat No.308, Uday Plaza, Masjid Moth, New Delhi, ownership whereof is in her name. This would be as per the consent decree. We see no escape from the obligation of the appellant to be complied with by her to convey title to the respondent in the basement of the building E-2, Greater Kailash Enclave Part-I, New Delhi. We see no escape from the obligation of the appellant to be complied with by her to convey her 50% share in the second floor of the building at E-282, Greater Kailash, Part-I, New Delhi. The appellant cannot claim any right, title or interest in the booking of made by the respondent for being allotted a flat by M/s Ansal Properties & Industries Ltd.

21. The appeal is dismissed. We refrain from imposing costs notwithstanding the conduct of the appellant warranting exemplary cost inflicted upon her for the reason we hope and believe that goods sense will prevail on the appellant.

22. We bring the curtains down by reminding the parties that if both desire that their estate would be inherited by their only daughter, they should ponder over whether any useful purpose would be served for them to litigate keeping into account that neither one of them intends to find another life partner.

(PRADEEP NANDRAJOG)
JUDGE

(JAYANT NATH)
JUDGE

MAY 16, 2014
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