

* **HIGH COURT OF DELHI : NEW DELHI**

+ **Ex. No. 400/2008**

% Reserved on : September 18, 2009
Decided on : November 19, 2009

Krishan Kumar Kathuria ...Decree Holder/Petitioner
Through : Mr. Gaurav Puri, Adv.

Versus

Inder Kumar Kathuria ...Judgment Debtor/Respondent
Through : Mr. Kuldip Singh, Adv.

AND

I.A. No. 14136/2007 in CS(OS) No. 90/2004

Inder Kumar Kathuria ...Plaintiff
Through : Mr. Kuldip Singh, Adv.

Versus

Krishan Kumar Kathuria ...Defendant
Through : Mr. Gaurav Puri, Adv.

Coram:

HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether the Reporters of local papers may
be allowed to see the judgment? No
2. To be referred to Reporter or not? Yes
3. Whether the judgment should be reported
in the Digest? No

MANMOHAN SINGH, J.

1. By this common order, I shall be disposing of an application
being I.A. No. 14136/2007 filed by Mr. Krishan Kumar Kathuria, the
defendant no.1 in CS (OS) No. 90/2004 under Section 12 of the

Contempt of Court Act, 1971 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC') for non-compliance of order dated 10th November, 2004 passed in the civil suit mentioned above as well as the execution petition bearing Ex. No. 400/2008 filed by the said defendant no.1 in the main suit, who is the petitioner in the contempt application and decree holder herein (hereinafter referred to as the 'decree holder').

2. The brief factual matrix of the case is that the plaintiff in CS (OS) No. 90/2004, who is the respondent in the contempt application and judgment debtor herein (hereinafter referred to as the 'judgment debtor'), filed a suit for recovery of possession and injunction against the decree holder and other defendants. The said suit was filed by the judgment debtor for, among other reliefs, a decree of possession of immovable property bearing no. D-133 (1st Floor), East of Kailash, New Delhi-110065 and in the said suit, a compromise application being I.A. No. 7595/2004 was jointly filed by the parties for recording of the agreement arrived at between them. The relevant terms of the said compromise have been set out in the application. An order was passed by this Court allowing the compromise application on 10th November, 2004 and the time period for compliance of the terms of the settlement/compromise was fixed to be three years i.e. up to 10th November, 2007.

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3. Simultaneously, this Execution Petition has also been filed by

the decree holder praying that the decree be executed by directing delivery of the suit property i.e. 1st floor of D-133, East of Kailash, New Delhi by calling upon the judgment debtor to execute all the documents necessary for transferring the interest of the judgment debtor in the suit property. It is contended in the Execution Petition that the judgment debtor has not complied with the undertaking given by him before this Court in CS(OS) No. 90/2004. The details of non-compliance by the judgment debtor, leading to the filing of the present contempt application as well, are given hereinbelow :-

- a) In the joint application filed by the parties, the judgment debtor has given an undertaking that in the event that the property is not sold by the judgment debtor within three years of the order, he would transfer completely the ownership/title of the suit property i.e. 1st floor thereof, to the decree holder on the expiry of the said period of three years and would also execute all the documents as may be required for the said purpose and the decree holder was to be the complete owner with liberty to deal with the property in any manner thereafter;
- b) In para 3 of the said compromise application, there was a stipulation that the parties shall continue to be bound by the said settlement/agreement;
- c) The decree holder as per the settlement was to pay to the judgment debtor a sum of Rs.8,75,000/- out of which a

sum of Rs.1 lac stood paid and acknowledged by the judgment debtor leaving a balance sum of Rs.7,75,000/- and the decree holder has always been ready and willing to pay the said amount; and

- d) The period of three years expired on 10th November, 2007 but the judgment debtor has not complied with the terms of the said compromise application.

4. With these facts in the background, the present Execution Petition has been filed by the decree holder requiring the judgment debtor to execute all the documents for transferring his right in the suit property and to hand over vacant and peaceful possession thereof to the decree holder and further prayer is made that as the judgment debtor is not ready to pay the court fee stamp, if leviable, the same be ordered to be adjusted from the amount payable to the judgment debtor.

5. Both, the execution petition as well as the contempt application, have been contested by Shri Inder Kumar Kathuria, judgment debtor herein mainly on the following grounds by filing an objection under the provisions of Section 47 read with Section 151, Order 21 and Order 23 of CPC :-

- i) That the execution filed by the decree holder is not maintainable as no decree sheet has been filed by the decree holder;
- ii) That only a decree can be executed and not a settlement filed by the parties before the court as per law and it is

only the decree holder who can file an application for execution and not a party in whose favour there is no decree drawn by the court within the meaning of Section 2[2] read with Order 20 Rule 6 CPC; and

- iii) That the court has not passed an order for drawing a decree intentionally as the agreement presented by the parties under Order 23 Rule 3 CPC shows a fresh agreement entered into between the parties leaving aside the issues raised in the subject matter of the suit and, therefore, the so-called compromise is beyond the nature and scope of the suit filed by the Objector and the fact is that no decree was ever drawn up by the court.

6. As regards the reply to the contempt application, it is contended by the judgment debtor that the said application would not be maintainable as per law and practice. It is also averred that the only remedy after disposal of a suit is to invoke the provisions of Order 21 CPC and not the provisions of the Contempt Act. It is also contended that the said compromise arrived at between the parties has never been acted upon between the parties as the decree holder blatantly refused to perform his set of assurances, promises, commitments and obligations under the said compromise agreement and in fact it is due to the non-cooperative attitude of the decree holder that the compromise had fallen through. The reasons for the same are that the decree holder was obliged to pay all the bills including electricity, water and other miscellaneous

charges to the competent authorities after passing of the order and also towards lump sum reimbursement of other arrears from 1996 till 2004 and in spite of the said order and due to the hostile attitude of the decree holder, the terms and conditions mentioned in the application have fallen through.

7. In his rejoinder, the decree holder has submitted that the sum of Rs. 1 lac was paid by him vide cheque number 375634 drawn on the Central Bank of India dated 10th November, 2004. Further, the decree holder has denied non-payment of water/electricity bills and has stated that he has paid all such bills after the order dated 10th November, 2004.

8. However, the judgment debtor has stated that since the decree holder refused to vacate the suit property and has constantly represented the same as disputed property leading to falling of the property's price, various purchasers pulled out of the intended transaction with the result that the property could not be sold within the time stipulated in the settlement and since the decree holder further failed and neglected to perform his obligation under the compromise and refused to pay the said charges as well as to comply with the other requirements within the period of three months, therefore, the question of the judgment debtor's compliance with the terms and conditions of the compromise does not arise as he has not violated any term thereof.

9. The judgment debtor has argued that the executing court cannot go beyond the decree and since the execution of a settlement deed is not a decree, execution of the same is forbidden and deemed

impermissible. The said execution is also not maintainable as per the provisions of Section 46 CPC. It is also contended that it appears from the order passed by the court that the court was reluctant to pass a decree and the court was not satisfied itself and, therefore, the court simply allowed the application for settlement between the parties and disposed of the suit as satisfied, leaving the parties to bear their own costs. Hence, the execution and the contempt application both are not maintainable and against the law, therefore, both may be dismissed under the said circumstances.

10. Learned counsel for the judgment debtor has referred the judgments in **G.C. Kumar & Ors. v. Ashok Kumar & Ors. AIR 2001 Delhi 338**, **Prithvichand Ramchand Sablok v. S Y Shinde AIR 1985 Bombay 297** and **Siddalineshwar 7 Ors. v. Virpaxgouda & Ors. AIR 2003 Karnataka 407** in support of his contentions.

11. I have perused these judgments and have come to the conclusion that the judgments referred by the judgment debtor emphasising that the order dated 10th November, 2004 cannot be called a decree are not applicable to the facts of the present case. In **G.C. Kumar (supra)** the issue was whether drawing up of a decree can be withheld due to non-payment of court fees and this court held that a decree must follow a judgment, however, the same would not be executed till the court fees is paid.

12. In **Prithvichand Ramchand (supra)**, the court adjudicated upon the question whether a consent decree creates a new tenancy or

continues the old one, which is not the position in the present case. Siddalingeshwar & Ors. (supra) relates to decrees passed by compromise in representative suits, and the court in that case allowed persons affected by the decree (but not party to it) to file a suit for appropriate relief ignoring the compromise decree. The court also noted that courts should make sure, at the time of passing a compromise decree, that the same is passed only in terms of the compromise/ agreement, and only in so far as it relates to the parties to the suit. Therefore, it is clear that the facts of the present matter are totally dissimilar with the facts and issues in the above-mentioned cases.

13. Learned counsel for the decree holder has referred to **Rachakonda Venkat Rao & Ors. V. R. Satya Bai (D) by LR & Anr., AIR 2003 SC 3322**, wherein while determining whether the compromise decree passed in a partition suit was partly preliminary or partly final, the Apex Court observed the following :

“19. For purposes of determination whether the said decree was a preliminary decree or a final decree or a decree partly preliminary or partly final, reference has to be made to the decree itself, it is also important to gather the intention of the parties from the compromise application because it was a compromise decree. We have already made reference to both these documents. In our view, intention of the parties is clear, i.e. the entire controversy in the suit was sought to be finally settled. ...In the present case, the parties mutually agreed to keep some of the properties joint. ...These facts clearly show that at the time of compromise itself the parties had taken a final decision with respect to partition of all the joint family properties and the same had been given effect to, The compromise application does not contain any clause regarding future course of action which gives a clear indication that nothing was left for future on the question of partition of the joint

family properties, The curtain had been finally drawn.

22. The fact that the compromise in 1978 was a final partition between the parties finds support from absence of any averment in the compromise application regarding reservation of right to the parties to seek partition with respect to properties kept joint in future, the decree as a matter of fact leaves nothing for future.”

14. In reliance of his contention that the present execution suit is not maintainable, the judgment debtor referred to **Chandrasekhar Patel v. Ukiabati Patel & Ors., AIR 1977 Orissa 82** wherein it was held as follows :

“11. I find myself in respectful agreement with the Bombay and Calcutta views, because according to Order 23, Rule 3, C.P.C. it is the adjustment or compromise of the suit before the court that has to be recorded and a decree has to be passed according to it. Any reference in the compromise to matters extraneous to the suit would be an agreement and not a compromise in the suit and the proper thing for the parties in such circumstances is to enforce the agreement by a separate suit. I therefore hold that the term of compromise regarding' partition of the movable and immovable properties of the defendant which did not relate to the suit can only be enforced by a separate suit and not by execution.”

15. The referred judgment is also not applicable to the facts of this case as in the present case, compromise of settlement has been arrived at by the parties with regard to the suit property, i.e. by no stretch of imagination can it be said that the compromise decree in the present suit related to matters extraneous to the suit. Hence, there is no force in the submission that the order dated 10th November, 2004 is not executable as a decree or that no decree can be drawn as the settlement/compromise arrived at between the parties is beyond the

nature and scope of the subject matter of the suit. The objection raised by the judgment debtor is merely a flimsy one which is not sustainable in law and is, therefore, rejected.

16. The next objection raised by the judgment-debtor that due to the nature of the order passed by this court on the compromise application under Order 23 Rule 3, no decree can be drawn as the same is not executable and enforceable in law is also totally false and frivolous. A similar situation arose in the matter of **Gopal Das Estates & Housing Pvt. Ltd. v. National Insurance Co. Ltd.**, titled **Ex. No. 59/2008** decided on April 29, 2009. In that case also a compromise was arrived at between the parties vide an application under Order 23 Rule 3 which was allowed and an order was passed in view of the same, and consequently the main suit was dismissed as withdrawn. When the judgment debtor refused to comply with its part of the compromise, an execution petition was filed. One of the objections of the judgment debtor was that the execution petition was not maintainable as an execution can only be filed when a decree has been passed by the court and in that case, it was contended that the compromise order passed on the application did not amount to a decree. It was held in that case that since the joint application was signed by both parties and supported by affidavits and since the court while passing the compromise order said that the parties would be bound by the terms of the settlement, allowing and hence disposing of the application, the said order would amount to a decree within the meaning of Section 2(2) of the Code of Civil

Procedure, 1908 as ultimately the suit was dismissed in view of the settlement arrived at between the parties. In another case, i.e. in **Mohd. Iqbal v. Mohd. Amin, 2008 (146) DLT 521** a similar situation arose wherein a similar objection was raised by the judgment debtor. In that case it was held as follows :

“3. ...The Division Bench was of the view that when the order dated 25.2.1991 was passed by this Court permitting withdrawal of the suit, the Court was conscious of the fact that the suit had been withdrawn in view of the compromise which had been placed on record. The Division Bench specifically noted that it is because of that that the Court had directed that the parties would be bound by the terms of the compromise. Consequently, the Division Bench concluded that the observation of the Executing Court that Clause 10 of the agreement was a new agreement between the parties, did not appear to be correct. As a result of this conclusion, the Division Bench set aside the impugned order and remanded the case back to the Executing Court to decide the execution petition afresh in the light of the observations made by the Division Bench.”

17. In the present case, as regards the filing of the execution petition, the same has been filed on the basis of the compromise order dated 10th November, 2004 part of which reads as under :

“This is a joint application under Order XXIII Rule 3 read with Section 151 CPC moved on behalf of the parties praying for recording settlement and satisfaction reached between the parties in relation to the subject matter of the suit. The application is supported by the affidavit of Mr. Inder Kumar Kathuria-plaintiff, Mr. Krishan Kumar Kathuria-defendant no. 1, Mrs. Veena Kathuria- defendant no. 2, Mr. Amit Kathuria- defendant no. 3 and Mr. Arjun Kathuria- defendant no. 4. Parties are present in court and they fully affirm to the contents of the application. Accordingly the application is allowed, the compromise reached between the parties is taken on record and the suit of the plaintiff is disposed of as satisfied, leaving the parties to bear their own costs. All pending applications also stand disposed of.”

18. The terms and conditions of the above-mentioned settlement arrived at between the parties are reproduced hereinbelow:

I. That the defendants categorically stated that they do not dispute or bring into question the title of the plaintiff in the suit property, viz., the first floor of property bearing No.D-133, East of Kailash, New Delhi-1100065. The plaintiff also assures the defendants that, subject to the terms of the present compromise contained hereinafter, the defendant No.1 shall be the owner of the suit property for all intents and purposes.

II. That the parties agree that the plaintiff shall be entitled to sell the entire property, namely D-133, East of Kailash, New Delhi-110065 (including the suit property) to a third party within a period of three years from the passing of the compromise decree by this Hon'ble Court, at a price which may be mutually agreed by the parties. The defendant No.1 shall be entitled to be a part of all negotiations for the said sale. The plaintiff undertakes to pay to the defendants No.1 or his nominees an amount from the sale consideration equivalent to 29 % of the gross sale price. The plaintiff undertakes to faithfully comply with the aforesaid condition and make prompt immediately upon the receipt of the sale consideration from the purchaser.

III. In the event of the plaintiff not being able to sell the said entire property to a third party within a period of three years from the passing of the compromise decree by this Hon'ble Court as aforesaid, the plaintiff undertakes to transfer completely, the ownership/title of the suit property to the defendant No.1, immediately on the expiry of the said three years and to execute all necessary documentation as may be required for the said purpose. The plaintiff agrees that the defendant No.1 shall be then at complete liberty to deal with the suit property in such manner as he deems fit, with full proprietary rights therein.

The defendants agree that the plaintiff is entitled to the payment from the defendants, a sum of Rs 8,75,000/- (Rupees eight lakhs and seventy five thousand only) towards lump-sum reimbursement of electricity, water and other charges levied by the competent authority and paid by the plaintiff in respect of the suit property for the period August 1996 till the date of passing of the compromise

decree by this Hon'ble Court. Of the said amount, the defendants shall pay to the plaintiff a sum of Rs 1 lac by cheque, before the Hon'ble court on the date of hearing of the present application. The defendants agree that the plaintiff shall be entitled to deduct the balance amount of Rs 7,75,000/-(Rupees Seven Lacs and Seventy Five Thousand only), from the share of the defendants in the sale proceeds referred to above. In the event the plaintiff not selling the property within three years and transferring the ownership of the suit property, to the defendant No.1, the defendant No.1 undertakes to this Hon'ble Court to pay the said balance amount of Rs 7,75,000/-(Rupees Seven Lacs and Seventy Five Thousand only) before the said documentation is executed by the plaintiff in his favour.”

19. The case of Mohd. Iqbal (supra) is directly applicable to the facts of the present case. Therefore, the objections raised by the judgment debtor have no force and appear to be false, frivolous and filed as an afterthought.

20. A bare perusal of the order and the settlement stated above shows that the suit was disposed of in terms of the settlement arrived at between the parties. As such, it cannot be said that the present execution is not maintainable and no decree is to be drawn and that the order dated 10th November, 2004 is not executable and enforceable under law.

21. I am of the considered opinion that in view of settled law, the order dated 10th November, 2004 which has been passed in the application under Order 23 Rule 3 which has been accepted by the parties as the application was duly signed by the parties and supported by affidavits and the order was passed in the presence of the parties whereby the terms and conditions mentioned in the application were also accepted by the Court, thus I feel that order dated 10th November, 2004 passed by this court amounts to a 'decree' within the meaning of Section

2(2) of the Code. Therefore, I direct that a decree be drawn in view of the order passed on 10th November, 2004.

22. The decree holder is also entitled to his right to the suit property being D-133 [1st Floor], East of Kailash, New Delhi and I direct the judgment debtor Sh. Inder Kumar Kathuria to execute all the documents for transferring his right in the suit property to the decree holder against the amount agreed to by the parties and also to hand over vacant and peaceful possession of the same to the decree holder. Further, the judgment debtor is directed to pay the court fee stamp, if leviable, and if not, then the same shall be adjusted from the amount payable to the judgment debtor. Execution petition disposed of accordingly.

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23. The case of the decree holder is that the judgment debtor has completely failed to comply with the compromise decree passed in this case in spite of repeated requests of the decree holder whereas all the terms of the compromise decree have been duly complied with by the decree holder in the suit and a sum of Rs.1 lac also stands paid by the him. The decree holder further mentioned in the application that between the date of expiry of the time period granted by the order dated 10th November, 2004 and the date of filing of the present application, he has orally requested the judgment debtor to comply with the said order but the latter has not responded on any of the occasions when the said requests were made and, therefore, it is clear that the judgment debtor has failed to fulfil the undertaking given before this Court and he is

guilty of deliberate and wilful disobedience of the order passed by this Court on 10th November, 2004 and therefore, contempt proceedings are liable to be initiated against the judgment debtor for the same.

24. Further, it is prayed in this application that the judgment debtor be directed to immediately transfer the ownership/title of the property no.D-133 [1st Floor], East of Kailash, New Delhi in favour of the decree holder.

25. As regards this application, the judgment debtor has referred to **Babu Ram Gupta v. Sudhir Bhasin & Anr., AIR 1979 SC 1528** wherein it was held as follows :

“11. Indeed, if we were to hold that non compliance of a compromise decree or consent order amount to contempt of court, the provisions of the CPC relating to execution of decrees may not be resorted to at all. In fact, the reason why a breach of clear undertaking given to the court amounts to contempt of court is that the contemner by making a false representation to the Court obtains a benefit for himself and if he fails to honour the undertaking, he plays a serious fraud on the court itself and thereby obstructs the course of justice and brings into disrepute the judicial institution. The same cannot, however, be said of a consent order or a compromise decree where the fraud, if any, is practised by the person concerned not on the court but on one of the parties. Thus, the offence committed by the person concerned is qua the party not qua the court, and, therefore, the very foundation for proceeding for contempt of court is completely absent in such cases. In these circumstances, we are satisfied that unless there is an express undertaking given in writing before the court by the contemner or incorporated by the court in its order, there can be no question of wilful disobedience of such an undertaking. In the instant case, we have already held that there is neither any written undertaking filed by the appellant nor was any such undertaking impliedly or expressly incorporated in the order impugned. Thus, there being no undertaking at all the question of breach of such an undertaking does not arise.”

26. In view of the order passed as regards the execution petition,

and in light of the crystal clear law laid down in the above-cited judgment, the present contempt application of the decree holder is dismissed being non-maintainable. Application disposed of accordingly.

No costs.

MANMOHAN SINGH, J.

NOVEMBER 19, 2009
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