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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.F.A. 42/2018, CAV 1007/2018 & CM APPL. 45769-45770/2018
SHASHI MOHAN KAPUR THRO LRS Appellant
Through Mr. Rajiv Khosla, Mr. Sunil Singh,
Advs.

versus

SOBHA SINGH & SONS PVT LTD Respondent
Through Mr. Neeraj Malhotra, Sr. Adv. with
Anand Singh, Ms. Nishtha Khurana,
Ms. Monika Phartyal, Advs. for
respondent / caveator.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **31.10.2018**

CAV 1007/2018

The CAV 1007/2018 stands discharged.

EX.F.A. 42/2018 & CM APPL. 45769-45770/2018

Vide the present appeal, the appellant assails the impugned order dated 22.10.2018 of the learned ADJ-02, & Waqf Tribunal, New Delhi District, New Delhi in execution no. 5655/16, whereby the objections filed by Mr. Gaurav Kapur, the legal representative of Mr. Shashi Mohan Kapur indicated to be arrayed as the appellant to the present appeal and the objections and an application under Order 1 Rule 10 CPC of one Mr. Manmohan Kapur were dismissed with imposition of punitive and exemplary cost of Rs.5 lakhs each upon each of them with directions that

50% of the amount would be deposited with the Delhi Legal Services Authority within one month from the date 22.10.2018, which amount is stated to have not yet been deposited by the appellant.

Vide the impugned order furthermore, the Delhi Legal Services Authority was directed to intimate to take steps in case there is failure on the part of the objectors to deposit the cost with remaining cost to be paid to the decree holder within a period of one month from the date of the impugned order.

Through submissions that have been made on behalf of the appellant, it has been sought to be contended that in Civil Suit No. 369/09 (New No. 675/09) which had been filed by the respondent to the present appeal against Sh. Shashi Mohan Kapur now arrayed as the appellant represented through his legal representative Sh. Gaurav Kapur, the suit had been filed by the respondent herein seeking relief of possession and mesne profits/damages in respect of property bearing no. Flat No. G-81, Second Floor, and Servant Quarter bearing no. J-3-62, IIIrd Floor, Sujana Singh Park, New Delhi. The said suit as reflected vide impugned order itself, was disposed of vide order dated 01.06.2002 of the learned ADJ-2/Waqf Tribunal, New Delhi, which reads to the effect : -

“Suit No. 675/09

Sir Sobha Singh Sons Pvt. Ltd. vs. Shashi Mohan Kapur

Unique ID Case number-02403C0073422009

01.06.2012

*Present: Mr. S.K. Mehta, counsel for the plaintiff along with
Brig Gurbux Singh, Director and Principal Officer of
the plaintiff and Mr. Girish Kalia, State Manager of
the plaintiff.*

Defendant in person with counsel Mr. P.K. Srivastav and Mr. Sumeet Singh.

With judicial intervention, the dispute between the parties has been amicably settled. It is agreed that defendant has shall vacate and hand over the vacant and peaceful possession of the suit property i.e. Flat no. G-81, IInd floor and servant quarter no. J-3-62, Illrd floor, Sujan Singh park, New Delhi, as shown in the site plans already exhibited as Ex. PWI/14 and Ex. PWI/15 to the plaintiff on or before 31.05.2016. Defendant also undertaken to pay the user charges of the suit property at the rate of Rs. 5000/-per month w.e.f. 01.06.2012 to the plaintiff regularly till the date of handing over of the suit property to the plaintiff. Defendant also undertake not to sublet or create any third party interest in the suit property.

It is prayed that the case may be disposed off as compromised.

Statements of Brig Gurbux Singh and Mr. Shashi Mohan Kapur have been separately recorded and they have been identified by their respective counsel.

Heard. Perused. Considered.

It appears that the statements have been made voluntarily and are accepted.

Both the sides shall remain bound by their respective statements.

In view of the submissions made as well as the statements of the both the sides, the case is hereby disposed off as compromised.

Attested copies of the order be given to both the sides, dasti, as requested.

After completion of the formalities, file be consigned to record room.

(Nivedita Anil Sharm)
ADJ-02/Wakf Tribunal New Delhi
01.06.2012”

Apart from the contentions that have been raised on behalf of the

appellant herein in relation to the jurisdiction of the Court of the learned ADJ-2/Waqf Tribunal, New Delhi that the said suit bearing no. 369/09 (New No. 675/09) on the ground that the said suit was *per se* barred in terms of Section 50 of the Delhi Rent Control Act, 1958 after as per the averments made in para 2 of the plaint that the appellant was working with the respondent company and the Flat No. G-81, Second Floor and servant quarter No. J-3-62, IIIrd Floor, Sujjan Singh Park, New Delhi was let out at a monthly rental of Rs.1,290/- (Rs.1,160/- rent for the flat and Rs.130/- rent for the servant quarter) excluding other charges.

It was also contended *inter alia* on behalf of the appellant that the order dated 01.06.2012 pursuant to which the execution had been filed by the respondent herein, was not executable and that thus the order in the Execution Petition No. 5655/16 needs to be set aside.

It has been submitted on behalf of the appellant that the said order was not executable in as much as the requisite decree has not been drawn up and reliance in relation thereto was placed on behalf of the appellant on the verdict of this Court in *Bina Devi Vs. Surat Nirmal Dass 2015 VAD (Delhi) 505* in which it was observed to the effect : -

“8. Thus the twin requirement of Order XXIII Rule 3 CPC is that it is proved to the satisfaction of the Court that a suit has been adjusted in whole or part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit. In the present case the first requirement of the satisfaction of the Court regarding adjustment of the suit wholly or in part by a lawful agreement or compromise in writing and signed by the parties has been

duly fulfilled. The only issue is that the learned Trial Court while disposing of the suit and passing the judgment did not direct a decree to be prepared. This was entirely in the domain of the act of the Court and it is well-settled that an act of a Court cannot prejudice a party.

9. Section 2(2) CPC defines "decree" as a formal expression of an adjudication of the rights of the parties conclusively determined by the Court. This formal expression of adjudication of the rights of parties conclusively has happened in the present case. Passing of a decree pursuant to a judgment is a ministerial act which a Court is bound to perform. This Court in Abdul Saliq Khan (supra) in a similar situation held that where the Court had inadvertently not drawn up a formal decree as per the mandate upon the Court to have drawn up the decree in terms of compromise recorded by the Court this was an error which could be corrected and such a power was available under Section 152 of the CPC. It was held that Section 152 of the CPC was founded on the maxim "actus curiae neminem gravabit" i.e. an act of Court shall prejudice no man. Where the decree does not correctly express what was really decided and initiated by the Court, the Court has inherent power to amend the decree so as to carry out its own meaning.

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12. Consequently, the impugned order is set aside. The petitioner would be at liberty to file an application under Section 152 CPC before the Court for passing of a formal decree whereupon the execution petition of the petitioner will be considered by the learned Trial Court. Appeal is disposed of accordingly."

The said verdict of this Court placed reliance *inter alia* on the observations in the case titled as ***Abdul Saliq Khan Vs. Shri Nahid Khan & Ors. 179 (2011) DLT 347*** in which it had been laid down that where a Court had inadvertently not drawn up a formal decree as per the mandate upon the Court to have drawn up the decree in terms of compromise recorded by the Court this was an error which could be corrected in terms of Section 152 of the CPC and thus vide para 12 of the judgment in ***Bina Devi Vs. Surat Nirmal Dass (supra)***, the petitioner thereof was held to be at liberty to file an application under Section 152 of the CPC before the Court for passing of a formal decree whereupon an execution petition of the petitioner thereof was directed to be considered by the learned Trial Court.

Reliance has also been placed on behalf of the appellant herein on the verdict of Hon'ble Supreme Court in ***S. Satnam Singh and Ors. Vs. Surender Kaur and Anr. AIR 2009 SC 1089*** with specific reference to the observations made in paragraphs 14 and 15 of the said verdict, which read to the effect : -

“14. A ‘decree’ is defined in Section 2(2) of the Code of Civil Procedure to mean the formal expression of an adjudication which, so far as regards, the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. It may either be preliminary or final. It may partly be preliminary and partly be final. The court with a view to determine whether an order passed by it is a decree or not must take into consideration the pleadings of the parties and the proceedings leading upto the

passing of an order. The circumstances under which an order had been made would also be relevant.

15. For determining the question as to whether an order passed by a court is a decree or not, it must satisfy the following tests :

"(i) There must be an adjudication;

(ii) Such adjudication must have been given in a suit;

(iii) It must have determined the rights of the parties with regard to all or any of the matters in controversy in the suit;

(iv) Such determination must be of a conclusive nature; and

(v) There must be a formal expression of such adjudication."

It is thus contended that there essentially has to be a formal expression of an adjudication made in a lis.

On behalf of the respondent, reliance has been placed on the verdict of this Court in *Kanwar Singh Saini Vs. High Court of Delhi 2011 (10) SCALE* and on the verdict of the Hon'ble Supreme Court in *Kerala State Coir Corpn. Ltd. Vs. Delhi Intercontinental (Hotels) Pvt. Ltd. 1993 SCC Online Del 97*. It is essential to observe that the proceedings in *Kanwar Singh Saini Vs. High Court of Delhi (supra)* reflect that the decree had been passed as indicated vide para 16 of the said verdict.

The proceedings in *Kerala State Coir Corpn. Ltd. Vs. Delhi Intercontinental (Hotels) Pvt. Ltd. 1993 SCC Online Del 97* also reflect vide para 6, which read to the effect : -

"6. After this order was passed it appears the Plaintiff-Decree Holder filed an execution petition before the Executing Court

which was dismissed on the ground that there is no decree and it is not executable against which C.R. 81/91 was filed. In this revision petition, on an application filed by the respondent, Duggal, J. passed an order that the Decree Holder can move an appropriate application before the Trial Court which passed the compromise order and that application would be disposed of in accordance with the provisions of law. Accordingly such an application was made and ultimately decree was ordered to be drawn by the Trial Court on 30.5.1991. In view of the fact that the decree was since prepared, that revision petition was disposed of on 19.2.1992. However, on a clarification sought for by the Judgment Debtor-petitioner, it was clarified on 19.2.1992 by this Court that the Trial Court would decide whether the decree was executable in the eviction-petition and the Judgment Debtor would be at liberty to raise all possible objections about the non-executability of the decree before the Trial Court and the Trial Court would decide the same in accordance with the law. Consequently, the objections filed by the petitioner-Judgment Debtor have been considered vide the impugned judgment by the Trial Court and the same have been dismissed and warrants of attachment have been ordered to issue against the Judgment Debtor.”

In these circumstances, the reliance placed on behalf of the respondent on the observations in para 10 of this verdict do not assist the respondent.

As apparently the requisite decree in terms of Section 2(2) CPC has not been drawn up in the instant case as laid down by this Court in *Bina Devi Vs. Surat Nirmal Dass (supra)* and in *Abdul Saliq Khan Vs. Shri Nahid Khan & Ors. (supra)* and on the verdict of Hon’ble Supreme Court in *S. Satnam Singh and Ors. Vs. Surender Kaur and Anr. (supra)*, the impugned order in execution no. 5655/16 is presently set aside with liberty granted to the respondent to move a requisite application under Section 152

CPC before the Court concerned for passing of a formal decree whereupon the execution petition, if any, filed by the respondent, shall be determined by the Executing Court in accordance with law.

At this stage, a submission is made on behalf of the respondent that the appellant is in occupation of the suit premises and has not paid a penny since July, 2016 and that in terms of the settlement that had been arrived at between the parties on 01.06.2012, the payment @ Rs.5,000/- per month was to be paid which was being paid w.e.f. 01.06.2012 and was continued to be paid till July, 2016 and that the payment cannot be permitted to continue in the premises with the payment of requisite user charges in terms of the verdict of the Hon'ble Supreme Court in *Atma Ram Properties (P) Ltd. Vs. Federal Motors Pvt. Ltd. (2005) 1 SCC 705*.

Without any observations on the merits or demerits of the settlement arrived at in the proceedings in the Suit No. 675/09 dated 01.06.2012 and taking into account the averments made in the plaint that had been filed, with the contentions raised on behalf of the appellant herein that the premises fall within the domain of the Delhi Rent Control Act, 1958, for the period w.e.f. 01.08.2016 onwards till the disposal of the application for execution of the decree, if any, passed in terms of the order dated 01.06.2012 in Suit No. 675/09, the appellant herein is directed to make the payment @ Rs.3,500/- per month w.e.f. 01.08.2016 onwards directly into the account of the respondent.

With these observations the petition is disposed of.

Nothing stated hereinabove shall however amount to any expression

on the merits or demerits of the averments made in the plaint or contentions that may be raised by either side in the application for execution, if any, filed.

Copy of the order be given Dasti under the signatures of the Court Master.

ANU MALHOTRA, J

OCTOBER 31, 2018/MK