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

+ EFA (OS) 8/2020 & C.M. Nos.11153/2020, 11154/2020, 1115/2020 & 11156/2020

AKM ENTERPRISES PRIVATE LIMITED Appellant
Through: Mr. Ranjit Kumar, Senior
Advocate with Mr. Sanjeev Kumar
Dubey, Advocate

versus

VESTA HOLDING PRIVATE LIMITED & ANR Respondents
Through: Mr. Suhail Dutt, Senior Advocate
with Mr. Azhar Alam & Mr.
Sankalp Goswami, Advocates

WITH

+ RFA (OS) 13/2020 & C.M. NO. 11138/2020, C.M. NO. 11139/2020
C.M. NO. 11140/2020, C.M. NO. 11141/2020, C.M. NO. 11142/2020
C.M. NO. 11143/2020, C.M. NO. 11144/2020, C.M. NO. 11145/2020

AKM ENTERPRISES PRIVATE LIMITED Appellant
Through: Mr. Ranjit Kumar, Senior
Advocate with Mr. Sanjeev Kumar
Dubey, Advocate

versus

VESTA HOLDING PRIVATE LIMITED & ANR Respondents
Through: Mr. Suhail Dutt, Senior Advocate
with Mr. Azhar Alam & Mr.
Sankalp Goswami, Advocates

CORAM:
HON'BLE MS. JUSTICE HIMA KOHLI
HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

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ORDER

20.05.2020

The matters have been **HEARD** **THROUGH VIDEO**
CONFERENCING.

CM Nos.11139-40/2020 and 11143-45/2020 (exemption) in RFA (OS) 13/2020

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM No.11164/2020 (for condonation of delay in filing of the application seeking modification of the order dated 3.2.2020 and 19.3.2020) in RFA (OS) 13/2020

For the reasons stated in the application, the same is allowed and delay is condoned.

C.M. No. 11138/2020 (application seeking modification of the orders dated 3.2.2020 and 19.3.2020) in RFA (OS) No.13/2020

1. The appellant/judgment debtor is aggrieved by the order dated 13.5.2020 passed by the learned Single Judge in Ex. P. No. 34/2020. The learned Single Judge has issued several directions to the appellant/judgment debtor including directions to pay to the respondent/decreed holder a sum of Rs.10 crores on or before 22.5.2020. The second direction issued to the appellant/judgment debtor is that payment schedule for the balance payment of Rs.15 crores that forms a part of the principal amount, shall not extend beyond 31.3.2021. Thirdly, the appellant/judgment debtor has been directed to file an affidavit furnishing the details of its moveable and immovable assets. Lastly, the appellant has been restrained from alienating, encumbering and/or creating any third party interest in the two immovable commercial properties situated at Ludhiana, Punjab.

Aggrieved by the aforesaid order, the present execution appeal has been filed by the appellant/judgment debtor.

2 As regards RFA (OS) 13/2020, the same was filed by the appellant/judgment debtor, being aggrieved by the common judgment and decree dated 3.12.2019 passed by the learned Single Judge in CS(OS) 1016/2010 filed by it and CS (OS) 1020/2009 filed by the respondent/decree holder. By virtue of the impugned judgment, a decree has been passed in favour of the respondent/decree holder and against the appellant/judgment debtor, dismissing the latter's suit, i.e., CS(OS) No.1016/2010. Further the appellant/judgment debtor has been directed to pay a sum of Rs.25 crores with interest. Besides the above, actual costs have been directed to be paid by the appellant to the respondent.

3. Vide order dated 3.2.2020, while issuing notice in the appeal, it was directed that subject to the appellant depositing the decretal amount within four weeks, operation of the impugned order shall remain stayed. It was further directed that in the event the appellant/judgment debtor fails to deposit the decretal amount within the timeline stipulated, then the respondent/decree holder would be entitled to seek execution of the impugned judgment/decree and in the event amount is paid by the appellant/judgment debtor to the respondent/decree holder, the same would be subject to the outcome of the said appeal.

4. It is a matter of record that the appellant failed to deposit the decretal amount, as directed. Subsequently, the appellant filed an application for modification of the order dated 3.2.2020 (CM No.9095/2020), which was listed before the Division Bench on 6.3.2020. After addressing arguments for some time, learned Senior Advocate appearing for the appellant had sought leave to withdraw the said application, while reserving the right of the appellant to file a fresh application. Thereafter, CM No.1014/2020 came to be filed by the appellant for seeking modification of the order dated 3.2.2020. The said application was also dismissed by this Bench vide order dated 19.3.2020. Aggrieved by the orders dated 3.2.2020 and 19.3.2020, the appellant/judgment debtor filed an SLP before the Supreme Court, which was dismissed vide order dated 11.5.2020.

5 In the meantime, the respondent/decreed holder filed an execution petition against the appellant/decreed holder, registered as Ex. Pet. No.34/2020 wherein the order impugned dated 13.5.2020, referred to hereinabove, has been passed. We may add for the sake of completion of facts that the appellant has filed a separate application in RFA (OS) 13/2020 (CM No.11138/2020) yet again praying, *inter alia*, for modification of the orders dated 3.2.2020 and 19.2.2020.

6. Mr. Ranjeet Kumar, learned Senior Advocate appearing for the appellant/judgment debtor, states on instructions that the appellant is ready and willing to pay a sum of Rs.10 crores to the respondent/decreed holder, subject to

the condition that the respondent offers adequate surety/security to safeguard the interest of the appellant/judgment debtor. He further states that as regards the balance principal amount of Rs.15 crores, the appellant/judgment debtor shall comply with the directions issued in the impugned order. Coming to the balance sum and the interest component, which by now has mounted to Rs.28 crores (approx.), it is stated that the appellant is willing to offer two commercial immovable properties situated at Ludhiana, Punjab.

7 We have *prima facie* expressed a view that this Court is not inclined to modify the orders dated 3.2.2020 and 19.3.2020 passed in the pending appeal. Even otherwise, the appellant/judgment debtor has tested the said orders by approaching the Supreme Court, but without success.

8. At this stage, Mr. Ranjit Kumar, learned Senior Advocate appearing for the appellant/judgment debtor, states that he may be permitted to obtain instructions from Mr. S.K. Dubey, learned counsel for the appellant. On obtaining telephonic instructions, he submits that the appellant/judgment debtor may be permitted to withdraw EFA(OS) No.8/2020 and CM No.11138/2020 filed in RFA (OS) No.13/2020, while reserving its right to approach the learned Single Judge in the pending Execution Petition for seeking appropriate orders for directing the respondent to secure the interest of the appellant/judgment debtor, insofar as the payment of Rs. 10 crores is concerned.

9. Mr. Suhail Dutt, learned Senior Advocate appearing for the respondent/decreed holder submits that the next date fixed before the learned Single Judge is 28.5.2020 and the respondent/decreed holder reserves its rights to oppose such an application, if moved by the appellant/judgment debtor.

10. In view of the submission made by learned Senior Advocate appearing for the appellant, EFA(OS) 8/2020 and CM No.11138/2020 filed in RFA(OS) 13/2020 along with the misc. application filed with the said application are disposed of, with liberty granted to the appellant/judgment debtor as recorded hereinabove. The respondent/decreed holder shall be entitled to oppose the application proposed to be filed by the appellant/judgment debtor and take all the pleas that may be available to it before the learned Single Judge.

HIMA KOHLI, J.

SUBRAMONIUM PRASAD, J.

MAY 20, 2020

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