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

\+ CS(OS) 988/2004

M/S BSK REALTORS LLP ..... Plaintiff
Through:

versus

ROMESH SHARMA AC+ ..... Defendant
Through: Mr. Rahul Chaudhary, Sr. Standing Counsel for Income Tax Department.

**CORAM:**
**HON'BLE MR. JUSTICE VIPIN SANGHI**

**O R D E R**

% **03.05.2016**

**I.A. No.5410/2016**

This application has been moved on behalf of the Principal Commissioner, Income Tax-11, Dr. S.P. Mukherjee Civic Centre, New Delhi with the prayer that the order dated 02.02.2015 passed in I.A. No.18116/2014 in the present suit be recalled and for a further direction that the petitioner be directed to redeposit the amount released by the Registrar of this Court.

The Income Tax Department was not a party to the present suit. The premise on which the present application has been moved by the applicant is that Mr. Romesh Sharma, the defendant in the suit had failed to pay an amount of Rs.89,49,74,586/- to the Income Tax Department and, therefore, the property in question stood attached as per the order of attachment dated 15.03.2010 issued under Section 222 of the Income Tax Act, 1961 read with Rule 48 of the 2nd Schedule of the said Act. The applicant states that the said attachment was concealed by the parties from the Court.

The applicant states that as per the order of attachment dated 15.03.2010, the said Mr. Romesh Sharma/ defendant was prohibited and restrained from transferring or charging the property in question which had been included in the property of the defaulter by virtue of explanation to sub-section (1) of section 52 of the Income Tax Act in any way, and the order also prohibited all persons from taking any benefit under such transfer or charge.

The applicant states that upon gathering information with regard to the compromise recorded in the present suit, the present application has been moved.

The Income Tax Department not having been a party to the present suit and having an independent statutory claim and right over the property in terms of the attachment order is not bound by the compromise recorded in the present suit. The compromise is inter se the parties and only binds the parties. Thus, in my view, the applicant is entitled to act de-horse the said compromise and settlement, and it is made clear that their rights are in no way affected by the said compromise.

Application stands disposed of with the aforesaid observations.

Dasti.

**VIPIN SANGHI, J**

**MAY 03, 2016**

sr