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

Decided on : 28.09.2015

+ **FAO(OS) 271/2015, CAV. NO.496/2015 & C.M. NO.9248/2015**

RAM CHARANAppellant
Through: Sh. Dheeraj Malhotra and Ms. Krishna Kedie,
Advocates.

Versus

RAM GOPALRespondent
Through: Sh. Kirti Uppal, Sr. Advocate with Sh. S.D.
Dixit and Ms. Wamika Trehan and Sh. Samar Bansal,
Advocates.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MS. JUSTICE DEEPA SHARMA

MR. JUSTICE S. RAVINDRA BHAT (OPEN COURT)

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1. It was brought to the notice of the Court that one of us (*S. Ravindra Bhat*, J) had earlier given order dated 30.08.2010 in Ex.P. 227/2010. Learned counsel for the parties expressed no objection to this Bench hearing the present appeal and so we proceed with the same.
2. The present appeal is directed against the order of a learned Single Judge dated 30.01.2015 in an application preferred by the appellant, being IA.No. 13663/2013 for rectification of decree dated 14.02.2008 in CS (OS) No. 737/1984. The records of the suit and execution are part of the appeal and have been considered by this Court.
3. The facts in brief are that Ram Gopal, ("the plaintiff") and Ram

Charan, (the first defendant, hereafter “the appellant”) are two sons of late Sh. Ganeshi Lal and Smt. Kasturi. In 1962 the plaintiff, the appellant and their father late Sh. Ganeshi Lal started trading under a partnership firm “M/s Lalji Mal Tika Ram” the second defendant (hereafter “the firm”). The father, Ganeshi Lal passed away in 1981. The disputes erupted between the brothers and their families leading to multiple litigations. Ram Gopal filed C.S. (OS) 737/1984, for dissolution of the firm, as well as rendition of accounts. Other litigations too ensued.

4. During pendency of the suits, at the intervention of the Court a compromise was arrived at, whose terms were recorded through a consent order dated 23.10.2007. The order recorded consent of the parties that the immovable properties would be divided half and half between the plaintiff and the appellant. Three separate lots were made of such properties, i.e. at Mumbai, Delhi and Hathras, U.P. The parties agreed to bid for the three lots separately and the party bidding highest for any particular lot was entitled to it and would pay 50% of the bid amount to the unsuccessful bidder. In the event that the successful bidder defaulted to pay within the stipulated period, the other party was entitled to the properties in question on payment of 50% of its bid, (i.e. lower bid). The bids resulted in an order dated 14.02.2008. The bids of the two parties resulted in the appellant being declared the highest bidder in respect of all the three lots. He paid the money for the Delhi lot and the Mumbai lot but did not pay for the Hathras lot. On payment, he became entitled to the properties forming part of the Delhi and Mumbai lot.

5. The present dispute is regarding one of the properties, forming part of the Delhi lot, i.e. 1375, Katra Lehswan, Chandni Chowk, Delhi (“Katra

Lehswan property”). Smt. Prem Lata and Sh.Ram Kishan, the plaintiff’s wife and the son, own the Katra Lehswan property respectively. The said owners purchased this by a Sale deed dated 25.05.1998. The ground floor of the said property was in occupation of the firm. Previous litigation in regard to this property too was pending between the parties, as in 1999 the appellant had filed a suit for prohibitory injunction against the plaintiff, his wife and son seeking that they be restrained from making additions, alterations or structural changes to the ground floor of the Katra Lehswan property. The appellant claimed ownership rights of the Katra Lehswan property alleging that the bid accepted by the Court pursuant to order-dated 14.02.2008 related to the ownership rights in that property. Contending that he became the absolute owner of the said property the appellant filed an execution petition for directions to the respondent plaintiff, his wife and son to execute a Conveyance Deed in his favor in respect of the said property. A Single Judge of this Court, on 30.08.2010, allowed the appellant’s execution application. On appeal, Division Bench in EFA (OS) 23-24/2010 by an order dated 03.08.2012 reversed the order of the learned Single Judge and dismissed the appellant’s execution petition.

6. The appellant then filed an application, IA. No. 13663/2013, for rectification of decree dated 14.02.2008, stating that the Division Bench, while allowing the respondent plaintiff’s appeal in EFA(OS) 23-24/2010 and dismissing the appellant’s execution petition granted liberty to him to approach the Single Judge through an application for modification and amendment of the decree. The appellant, in the course of his arguments before the learned Single Judge, in this round of litigation, relied on the relative valuations, highlighting that his bid was considerably higher than

that of the plaintiff, which can only be explained from the common understanding that title to the property in question, was put to auction. Since the appellant was the highest bidder for the Delhi lot, he had all rights and absolute title to the Katra Lehswan property. Alleging the plaintiff's avarice, the appellant complained that soon after he bid for the Delhi properties and paid for it, the plaintiff induced an eviction petition.

7. The appellant relies upon the statement of the plaintiff, Ram Gopal dated 14.02.2008, (i.e. the date of the compromise) that no further claim would be made by him or his family against the appellant, or his family members in respect of the partnership firm as well the properties which form the subject matter of the disputes in the matters. The appellant urges that the said statement, shows that the plaintiff agreed not to lay claim to the Katra Lehswan property. The appellant also argued that an agreement transferring tenancy rights for consideration would be illegal and void inasmuch as it is contrary to and is hit by Section 5(3) of the Delhi Rent Control Act.

8. The learned Single Judge, after considering the submissions of parties, firstly dealt with the appellant's submission that he had been given liberty to move an application for modification of decree and rejected it. The impugned order states, in this regard, as follows:

“...It is clear from the reading of the said para 29 of the judgment that the Division Bench has merely recorded that defendant No. 1 has not asked for amendment or modification of the decree. It does not in any way stipulate or state that any liberty is granted to defendant No. 1 to move the present application to re-agitate and re-argue all the contentions and submissions that have already been made before the Division Bench and dealt with by the Division Bench. In fact the above observations in the order appear to be a contention to support the view taken by the Division Bench that defendant No. 1 all

along envisaged when he made the bid and when the consent decree was passed that the court was only dealing with the tenancy rights in respect of the disputed property and nothing else. The submissions of the applicant are without any merits and have to be rejected. No liberty has been granted by the Division Bench to file the present application. No such liberty can be deciphered in the said order.

15. Even otherwise, in my opinion, the present application is hit by principles akin to res judicata. In the execution petition out of which the judgment of the Division Bench dated 03.08.2012 was passed, the issue was regarding the execution of the decree as sought by defendant No.1. The execution sought ownership rights in the disputed property and not the tenancy rights. The submissions in support of the said execution are being repeated here for supporting this application. The defendant no.1 is relying on the same submissions to press this application. The only difference in the present application is in the prayer clause i.e., here instead of execution defendant No.1 seeks amendment/modification/clarification of the decree. In my opinion, the contention of defendant No.1 are clearly hit by principles akin to res judicata.”

Independently of the above, the impugned order considered the merits of the appellant's submissions and rejected it, observing that the Court's order dated 23.10.2007, which noticed that the tenancy rights of the Katra Lehswan property, (owned by the plaintiff's wife and son), were up for auction. The impugned order also rejected the appellant's contention, noting pleadings in a contemporaneous application: *“Perusal of the said documents does show that even after order dated 14.02.2008, defendant no.1 has assumed that the bid pertains to tenancy rights of the said property and not the ownership rights. Regarding the first document relied upon by the plaintiff i.e. I.A. No.4476/2008 filed by the applicant/defendant No. 1 which*

was filed in April 2008; this I.A. clearly states that the bid was for the disputed property in respect of the tenancy rights only.”

9. The Single Judge also noted that under the settlement and decree drawn on 14.02.2008, all claims, disputes in respect of matters pending in Court or before any other Court stood settled. Since assets were distributed and accounts settled, the firm ceased to exist. That the disputed property fell to the share of the appellant, an erstwhile partner, held the Single Judge, “*cannot mean that any subletting has taken place or tenancy has changed hands. Reference in this context may be had to the judgment of the Division Bench of this Court in the case of Kanahiya Lal Balkishan Dass v. Labhu Ram AIR 1971 Delhi 219..*”

10. The appellant restates the submissions that he urged before the Single Judge and argues that the impugned order is in error of law and based on a mis-appreciation of facts. It was highlighted that the appellant had placed the bid for the Delhi properties, including the Katra Lehswan property, after taking into account their market value. After submitting a rival- though abortive bid for those properties, including the Katra Lehswan property, the plaintiff could not be heard to say that title was not for offer in the auction. It was submitted that a comparative evaluation of the two bids vis-à-vis the said Katra Lehswan property itself revealed that there was no mistake as to what was to be auctioned; it clearly was the right, title and interest in the said property. Having lost the bid, the plaintiff could not have resorted to deception and cannot be permitted to contend that mere tenancy rights were in issue. It was also submitted that the conclusions recorded by the learned Single Judge on the operation of Section 5 (3) of the Delhi Rent Control Act are clearly erroneous.

11. In our opinion, there is no infirmity in the approach or order of the learned Single Judge in the impugned order. The previous litigation history of this case makes for interesting reading. The appellant successfully persuaded a learned Single Judge in the earlier round to agree to his submission that title to the Katra Lehswan property had been transferred upon acceptance of his bid. The order of the Single Judge in that round of litigation, *inter alia*, was premised on the following reasoning:

“12. No doubt, the Court had noticed that the rights in respect of the suit property were tenancy rights. However, the Court equally recorded that the ownership of the property was that of Sh. Ram Gopal as well as the second and third Judgment Debtors. It was, in these circumstances, that the Court felt compelled to state that whoever succeeded to the property as a bidder would not be hindered in the enjoyment of the same. Sh. Ram Gopal in his statement dated 14.02.2008 clearly undertook that vacant, peaceful and unencumbered property which were with him would be handed-over whenever the payments were received. Crucially, he also stated that he had authority to make the statement on behalf of the family members and that the same was binding upon them. If this statement is to be read along with the entirety of the order dated 23.10.2007, it is clear that the Court's direction that whoever succeeded to the property consequent to bid would not be hindered in the enjoyment of the same precisely meant that in the letter and spirit. Any other construction, in the opinion of the Court, would render the whole exercise a futility as the Decree Holder would be deemed to have bid and paid substantial amount of approximately ₹ 1.5 crores towards tenancy rights and at the same time be exposed to eviction proceedings immediately thereafter. Such construction would plainly defeat the intention of the decree and the understanding arrived at by the parties. This Court has also noticed earlier that the second and third Judgment Debtors nowhere challenged the statement made by Sh. Ram Gopal; nor do they question it on the ground of his incompetence today was and that the same is not binding upon them.”

12. However, the Division Bench upset the order of the learned Single Judge, in EFA 23-24/2010, *inter alia*, stating that:

“Ownership of the property was not a subject matter of dispute in any of the proceedings or the suits which were pending before the Court. In these circumstances, in case the ownership of the property was to be transferred to Ram Charan if he was to be the highest bidder, a specific noting to this effect was required and necessary. There is no specific noting in the order dated 20 October, 2007. The two brothers were to give bids to acquire the same right, i.e., the tenancy right. It is not recorded or stated that the bid given by Ram Gopal would be for the tenancy right, while the bid offered by Ram Charan would be both for the tenancy and ownership rights, which would be transferred by Prem Lata and Ram Kishan, wife and son of Ram Gopal.

19. The relevant portion of the order dated, 2007, which has been underlined for the purposes of emphasis, states, clarifies and supports the said position. It states that wife of Ram Gopal and his son are owners of the property. It records that the tenancy rights of the property shall be the subject matter of the bid in respect of Delhi properties. In case the ownership rights of the property were also to be made subject matter of the bid, it would have been so indicated and stated. The last sentence does not cause any confusion and is not ambiguous as suggested by the respondent. It records and states that whoever succeeds and gives the highest bid would have unhindered enjoyment of the said. “Enjoyment of the same” only means right to enjoy the tenancy rights. In other words, in case Ram Gopal gives the higher bid, he would become the exclusive tenant and enjoy the tenancy rights and in case Ram Charan gives the higher bid and succeeds, he shall have unhindered right to enjoy the tenancy rights. The order also reveals that the parties were conscious about the difference between the ownership and tenancy right. What was made subject matter of the bidding process was the tenancy rights in the property.”

The Division Bench also rejected the valuation based submission:

“..The difference in the bid amounts depends and reflects commercial wisdom and understanding. It was a matter of choice. No inference can be drawn from the bid amounts that the respondent had understood and offered bid for the ownership rights also.”

The Court also pertinently noted:

“The decree sheet specifically records that Ram Charan shall be exclusively entitled to tenancy right of the property. In respect of the Kashmere Gate property ownership right was transferred. Similarly ownership rights of flat at Marine Drive, Mumbai was to be transferred to Ram Charan and tenancy rights of some other properties at Mumbai were to be exclusively enjoyed by Ram Charan. In the decree sheet itself, difference is drawn between the ownership rights and the tenancy rights. This decree-sheet was prepared and Ram Charan had submitted stamp papers. Ram Charan had got the decree-sheet registered. In case there was a defect or mistake in the decree-sheet and the ownership rights were to be transferred and conveyed to Ram Charan, he would have moved an application or asked for modification or clarification. Order sheets reveal, and it is the accepted position that this has not happened and no such steps were taken. In view of dispute inter se parties, implementation of the order dated, 2008 was done through court proceedings and monitored by the Court.

The compromise decree shows that the parties had given bid for the tenancy rights in properties in Delhi & Mumbai. When the bids were given, they also took the inherent risks involved when a person takes or requires tenancy rights, which are protected in law. In the present case the family members of Ram Gopal namely his wife and son happened to be the owners of the property of which tenancy rights have been acquired by Ram Charan. However, any other person or third person could have

also been landlord or owner of the property. Similar right to seek eviction would have accrued to the benefit of the said owner/landlord. The respondent could not have asked for modification and amendment of the decree for this reason or ground.”

13. In view of the express findings of the Division Bench, the latter observation that the appellant had not sought for modification of decree (“*We record that the respondent has not asked for amendment or modification of the decree but had filed an execution petition stating that the decree itself postulates execution of the conveyance deed by Prem Lata and Ram Kishan.*”) was inconsequential; in any case, it did not undermine the findings recorded earlier, based on an elaborate analysis of the pleadings, materials and submissions of the parties. The Division Bench judgment is a 29 page document, that exhaustively dealt with all possible contentions. In the light of these facts, this Court finds no reason to interfere with the impugned order of the learned Single Judge.

14. As regards the other submission, i.e that a conclusion that the Katra Lehsuan tenancy rights were auctioned, would result in nullity, as a result of the consequence spelt out in Section 5 (3), we find this ground too, insubstantial. The learned Single Judge’s reliance on previous authority in *Kanahiya Lal Balkishan Dass* (supra) is apt. There is no dispute that the property was tenancy of the firm; the latter was dissolved. Parties agreed that the properties of the firm, as well as other assets were to be divided. Naturally, tenancy was one of the assets of the firm. *Kanahiya Lal Balkishan Dass* we note, is premised on previous authority: the Division Bench had referred to a number of previous rulings (*Mst. Saraswati Devi v. L. Gian*

Chand, 1970 874 (Delhi); *Murli Dhar v. Chuni Lal* 1970 RCJ 922 (SC); *Ram Viuchar v. Daulat Ram Mohan Das*, 1967 Delhi LR 223, a Division Bench decision of the Punjab High Court).

15. In view of the above conclusions, there is no merit in this appeal; it is consequently dismissed.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

SEPTEMBER 28, 2015

