* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **EFA(OS) 35/2015 & CM Nos.15797-15799/2015**

% **Date of decision: 18th August, 2015**

R C SOOD & CO DEVELOPERS PVT LTD THR ITS AUTHORISED SIGNATORY ..... Appellant

Through: Mr. Akhil Sibal, Ms. Priya Deep and Mr. Nikhil Chawla, Advs.

versus

ANIL BANSAL & ORS ..... Respondents

Through: None

**CORAM:**
**HON'BLE MS. JUSTICE GITA MITTAL**
**HON'BLE MR. JUSTICE I.S.MEHTA**

**GITA MITTAL, J (Oral)**

1. The appellant assails the order dated 12th August, 2015 passed by the learned Single Judge in Ex.P.72/2012, Crl.M.A. 5347/2013 & Ex.Appl.(OS) 651/2012, 127/2014 & 37/2015 entitled M/s First Blue Home Finance Ltd. v. Anil Bansal & Ors., inter alia, on the ground that the appellant was not a party to the execution case and that the impugned order which materially effects its rights, hereby has been passed without notice to it and without giving it an opportunity to place the real facts of the case before the court.

2. Briefly noted, the appellant contends as follows - The appellant is the developer of the project of construction of residential villas known as “Grand Mansions” Rosewood City, Gurgaon, Haryana. The judgment debtor Mr.Sunil Bansal entered into an agreement for

purchase of a villa bearing no. B-25 in this project. Thereafter Sunil Bansal approached the appellant for a no objection to avail a housing loan to purchase a residential villa in the Grand Mansion, Rosewood City, Gurgaon, Haryana. The appellant issued the no objection certificate to the ICICI Bank noting its lien in its records.

3. Mr.Sibal submits that Sunil Bansal failed to clear the outstanding dues and take possession of the property. Instead he filed a false consumer complaint bearing no. 09/2012 before the State Consumer Dispute Redressal Commission, Panchkula alleging deficiency in service and unfair trade practice on the part of the appellant. By an order passed on 28th January, 2013, the State Commission directed the appellant to hand over possession of this property to the complainant. This order was challenged by the appellant by way of an appeal bearing no. 177/2013 filed before the National Consumer Dispute Redressal Commission. By an order dated 17th April, 2013, the National Commission stayed the operation of the order dated 28th January, 2013.

This order continues to subsist even on date.

4. We are informed that in the meantime the ICICI Bank initiated proceedings under the SARFASAI Act, 2002 in respect of the said villa. The appellant company informed the ICICI Bank on 27th August, 2013 that an amount of Rs.1,19,59,239/- was payable by Sh. Sunil Bansal to it in respect of the said villa. In the SARFASAI proceedings, the said villa came to be sold on 15th November, 2013 after due process.

5. Before the learned Single Judge, in the pending execution

proceedings no. 73/2012, on 5th September, 2013, Sh. Sunil Bansal, one of the judgment debtors wrongly claimed that he was the owner of the said villa. It is submitted that Sh. Sunil Bansal made a false statement on oath that he owned the said villa, thereby misleading the court and caused warrants of attachment of the property claimed to be owned by him to be issued.

6. Despite having effected the sale on 15th November, 2013, the ICICI Bank also failed to apprise the learned Single Judge about the auction of the property in the proceedings under the SARFAESI Act.

7. On 22nd November, 2013, the application being EA(OS) No.728/2013 filed by the decree holder was taken up for consideration. By this application, the decree holder sought directions to the ICICI Bank Limited to deposit the balance sale consideration received from the villa sale, after satisfaction of its debt. A statement was made by Mr.Pruthi, the representative of the ICICI Bank that the application can be allowed. Mr. Pruthi additionally gave an undertaking on behalf of the ICICI Bank to deposit the surplus amount, if any, received on "conclusion of the auction". The court passed orders accordingly.

Mr.Sibal urges that the undertaking was contrary to the facts which subsisted inasmuch as the property stood sold in the auction which had been held on 15th November, 2013.

8. So far as the amount received upon the auction in the SARFASAI proceedings is concerned, by a letter dated 28th December, 2013, the ICICI Bank informed the appellant that the villa in question has been sold to one Jyoti Singh Narwal on 15th November, 2013 and sought facilitation by the appellant to complete the transfer of the

property in the name of the auction purchaser and execution of the sale deed. ICICI Bank further informed the appellant that out of the sale consideration, it had adjusted the amount of Rs.2,42,96,773/- towards the amounts owed by the judgment debtor to it. It also stated that as against the liability of Rs.1,65,17,719/- pending against the property to the appellant (in terms of the appellant letter dated 29th November, 2013) it was forwarding the balance sale consideration of Rs.1,44,93,894/-. Upon receipt of this amount and based on the clearance of his dues, the appellant was persuaded to execute a sale deed in favour of Ms. Jyoti Singh Narwal the auction purchaser.

9. Mr. Akhil Sibal, learned counsel on behalf of the appellant vehemently contends that concealing these material facts, on 12th August, 2015, in the proceedings in Execution Petition No. 72/2012, the judgment debtor and the ICICI Bank played a fraud upon the appellant. It is urged that they did not inform the court at any point of time about the rights of the appellant in respect of the said villa or the proceedings under the SARFASAI Act or the orders of the Consumer Dispute Redressal Forum and National Commission.

10. We find substance in the submission that the ICICI Bank as well as the judgment debtor no. 3 were duty bound to place the true and correct facts before the executing court. It was incumbent upon them to have apprised the court seized of the matter on 5th September, 2013 itself about the claim of the appellant that Sh. Sunil Bansal was not the owner of the property and that in fact the same belong to and remained the property of the builder i.e. the appellant herein. The ICICI Bank as well as the judgment debtor as well as Sh. Sunil Bansal should have

also informed the court about the SARFASAI Act proceedings when the court took up EA(OS) No.728/2013 filed by the decree holder was taken up for consideration. As per the appellant, these two parties also concealed the material fact that the auction in favour of the third party stood concluded or the full sale consideration stood received and that the balance amount had to be paid to the appellant for its dues.

11. Misrepresentation and concealment of material fact is a serious matter which renders the concerned party liable for appropriate proceedings under the Contempt of Court Act. So far as deliberately misleading the court is concerned, the same may tantamount to criminal contempt of the court.

12. The fact that the valuable rights of the appellant were involved is a serious matter. According to the appellant, both, the judgment debtor Sunil Bansal as well as ICICI Bank, were fully aware of rights inasmuch as the judgment debtor had sought the appellants no objection for obtaining the loan of the ICICI Bank from the appellant. The ICICI Bank had also sought the participation and cooperation of the appellant in order to compel the transfer in favour of the auction purchaser.

13. Our attention is drawn by Mr. Sibal to the order dated 18th February, 2014 whereby the court issued notice to show cause to the ICICI Bank as to why contempt proceedings be not initiated in the CCP No.29/2014 which was filed by the decree holder. The appellant is not in a position to inform us about the contents of the contempt petition but a reading of the subsequent orders would suggest that it was complained that the ICICI Bank had not deposited the balance

amount after adjusting its dues in favour of the decree holder. This order came to be followed by the impugned order dated 12th August, 2015 whereby reference is made to a letter dated 7th August, 2015 claimed to have been addressed by the ICICI Bank to the appellant "requesting" return of the amount of Rs.1,44,93,894/-. The copy of this letter has been placed before us, reading whereof would show the attempt by the ICICI Bank to mislead the appellant as well. [Reference is made to approval of the jurisdiction of grant to the appellant] whereas the same was never under contemplation for the reason that the ICICI Bank had concealed material facts from the court. It has not informed the court that no balance remained in its kitty after adjusting its dues and payment to the respondent. There, therefore, appears to be substance in the grievance of the appellant that it was entitled to a notice and a proper hearing before its rights could be impacted in any manner in the execution proceedings.

14. The appellant states that it informed the ICICI Bank by its letter dated 11th August, 2015 that it was seeking legal advice and would revert to the bank. Before the appellant could react, on 12th August, 2015, the order was passed holding as follows :-

> "Since the payment of Rs.1,44,93,894/- has been made by ICICI Bank to M/s R.C. Sood & Co. Developer Pvt. Ltd. in violation of the orders of this court. M/s R.C. Sood & Co. Developers Pvt. Ltd. hereby directed to deposit the said amount of Rs.1,44,93,894/- to the Registrar General of this court within one week from today."

15. The grievance of the appellant is that the executing court has been completely misled into passing the impugned order which effect

valuable rights of the appellant without it having been arraigned as a party. Prima facie, there appears to be substance in the grievance made by the appellant. However, it would appear that it would be appropriate for the appellant to first approach the learned Single Judge by way of an appropriate application placing the facts stated in the appeal seeking modification of the order already passed.

16. Mr. Sibal submits that the appellant will approach the learned Single Judge. However, pending consideration of the application, the appellant prays that interim protection be given qua the imperative direction in the order dated 12th August, 2015 to the effect that the appellant must deposit the amount of Rs.1,44,93,894/- with the Registrar General within one week of the passing of the order.

17. In view of the above, we direct as follows: -

(i) The present appeal is dismissed as withdrawn with liberty to the appellant to make an appropriate application placing all facts, circumstances and grounds detailed in the appeal and any other relevant fact as well as documents before the learned Single Judge within two weeks from today.

(ii) It is further directed that the direction to the appellant in the order dated 12th August, 2015 to deposit the aforesaid amount with the Registrar General of this court, shall be kept in abeyance till such time this direction is modified by the learned Single Judge if the application is so filed.

(iii) If no application is filed as directed, the interim order passed by us shall stand vacated on expiry of two weeks from today.

(iv) It is made clear that nothing herein contained is an expression of opinion on the merits of the appellant's contentions.

This appeal and application are disposed of in the above terms.

Dasti under signature of Court Master.

**GITA MITTAL, J**

**I.S.MEHTA, J**

**AUGUST 18, 2015**
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