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

CS(OS) NO.1968/2003 & IAs No.1571/2006 (of D-4 u/O 23 R-3 and/or O-9 R-13 CPC), 15028/2009 (u/S 151 CPC), 15276/2009 (of D-1 to 3 u/S 340 CrPC) & 17091/2014 (of D-3 for change of Mediator)

RAJIV GUPTA

..... Plaintiff

Through: Mr. Rahul Gupta and Mr. Shekhar Gupta, Advs.

Versus

L.R. GUPTA, HUF & ORS.

..... Defendants

Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Manish Vashisht, Mr. Rikky Gupta and Mr. Sameer Vashisht, Advs. for D-1 to 3.
Mr. P.K. Agarwal and Ms. Mercy Hussain, Advs. for D-4.

AND

CS(OS) NO.255/2011

SUMANGLI GUPTA

..... Plaintiff

Through: Mr. P.K. Agarwal and Ms. Mercy Hussain, Advs.

Versus

L.R. GUPTA, HUF & ORS

..... Defendants

Through: Mr. T.K. Ganju, Sr. Adv. with Mr. Manish Vashisht, Mr. Rikky Gupta and Mr. Sameer Vashisht, Advs. for D-1 to 3.
Mr. Rahul Gupta and Mr. Shekhar Gupta, Advs. for D-4.

AND

+ EX.P. NO.70/2012

SANJAY GUPTA

..... Decree Holder

Through: Mr. Manish Vashisht, Mr. Rikky Gupta and Mr. Sameer Vashisht, Advs.

Versus

RAJIV GUPTA

..... Judgement Debtor

Through: Mr. Rahul Gupta and Mr. Shekhar Gupta, Advs.

Mr. P.K. Agarwal and Ms. Mercy Hussain, Advs. for Ms. Sumangli Gupta.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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03.10.2016

IA No.1571/2006 in CS(OS) No.1968/2003 (of D-4 u/O 23 R-3 & u/O 9 R-13 CPC)

1. CS(OS) No.1968/2003 was filed for partition of properties and assets stated to be of defendant No.1 in that suit namely L.R. Gupta HUF and Sh. L.R. Gupta, Sh. Sanjay Gupta and Smt. Sumangli Gupta were impleaded as defendants therein. The said suit was decreed as compromised on 9th January, 2006.
2. IA No.1571/2006 of defendant No.4 Smt. Sumangli Gupta therein under Order XXIII Rule 3 and Order IX Rule 13 of Code of Civil Procedure, 1908 (CPC) for setting aside of the said decree is for consideration.
3. Smt. Sumangli Gupta has also filed CS(OS) No.255/2011 claiming her share in the Hindu Undivided Family (HUF) and challenging the compromise decree dated 9th January, 2006 in CS(OS) No.1968/2003.

4. The counsel for Smt. Sumangli Gupta has been heard in support of IA No.1571/2006 in CS(OS) No.1968/2003.
5. It was *inter alia* the contention of the senior counsel for L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta on an earlier date that Smt. Sumangli Gupta cannot simultaneously proceed with IA No.1571/2006 in CS(OS) No.1968/2003 and CS(OS) No.255/2011 and in response where to the counsel for Smt. Sumangli Gupta had stated that no proceedings were being taken in CS(OS) No.255/2011 for the reason of pendency of IA No.1571/2006 in CS(OS) No.1968/2003.
6. As such after some hearing, it has been enquired from the counsel for Smt. Sumangli Gupta, as to how both i.e. an application for setting aside of the compromise decree in CS(OS) No.1968/2003 as well as CS(OS) No.255/2011, also for the same relief, are maintainable.
7. Though the counsel for Smt. Sumangli Gupta had initially responded that CS(OS) No.255/2011 is not maintainable according to him and is misconceived but subsequently upon being asked to give a statement for withdrawal of the said suit has stated that CS(OS) No.255/2011 would be maintainable, if IA No.1571 in CS(OS) No.1968/2003 for setting aside of the compromise decree in CS(OS) No.1968/2003 is dismissed.
8. I have further enquired from the counsel for Smt. Sumangli Gupta, whether any of the defendants in CS(OS) No.255/2011 in their written statements, stated to have been already filed in the said suit, have taken a stand that that suit is not maintainable, for the reason of compromise decree dated 9th January, 2006 in CS(OS) No.1968/2003.

9. Again, though the counsel for Smt. Sumangli Gupta had earlier stated that none of the defendants have taken the said stand but while this order is being dictated states that L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta have taken such a stand in their written statement.

10. I had earlier enquired from the counsel for Mr. Rajiv Gupta as well as the senior counsel for L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta, whether it is their stand that CS(OS) No.255/2011 is not maintainable for the reason of compromise decree dated 9th January, 2006 in CS(OS) No.1968/2003.

11. Both have stated that it is not their plea. The senior counsel for L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta however stated that the maintainability of CS(OS) No.255/2011 is challenged on other grounds.

12. I have further enquired from the counsel for Smt. Sumangli Gupta, as to how Smt. Sumangli Gupta can, at the same time, resort the two proceedings for the same relief and why she should not be directed to make an election. Attention of the counsel in this regard is invited to the judgment of the Supreme Court in ***Ambalal Sarabhai Enterprises Ltd. Vs. Amrit Lal & Co.*** (2001) 8 SCC 397 in the wake of the Amendment of the year 1998 to the Delhi Rent Control Act, 1958 taking the premises, rent whereof was Rs.3,500/- per month, beyond the purview of the Act and holding that a landlord could not at the same time pursue proceedings before the Rent Controller as well as in the Civil Court for the same relief. The senior counsel for L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta has also drawn attention in this regard to ***Jai Singh Vs. Union of India*** (1977) 1 SCC 1 also holding that the appellant before the Supreme Court cannot

pursue two parallel remedies in respect of the same matter at the same time.

13. As far as the plea of the counsel for Smt. Sumangli Gupta that L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta in their written statement in CS(OS) No.255/2011 have taken such a plea is concerned, needless to state that in the light of the statement made today before the Court and by which they as well as Sh. Rajiv Gupta are bound, they would be estopped from taking such a plea in CS(OS) No.255/2011.

14. Rather, it appears that insistence on pursuing IA No.1571/2006 in CS(OS) No.1968/2003 for having the compromise decree dated 9th January, 2006 in CS(OS) No.1968/2003 set aside must be at the behest of one of the parties to the said compromise now wanting to wriggle out therefrom.

15. The senior counsel for L.R. Gupta HUF, Sh. L.R. Gupta and Sh. Sanjay Gupta has stated that it is at the behest of Sh. Rajiv Gupta who had also earlier filed applications for setting aside thereof on the same grounds, as have now been raised by Smt. Sumangli Gupta.

16. The counsel for Smt. Sumangli Gupta states that no such plea has been taken in the reply to IA No.1571/2006 in CS(OS) No.1968/2003. The counsel for Sh. Rajiv Gupta also states that IA No.1571/2006 of Smt. Sumangli Gupta is not at the behest of Sh. Rajiv Gupta. Rather, he states that Sh. Rajiv Gupta in written statement to CS(OS) No.255/2011 has stated that the compromise decree dated 9th January, 2006 in CS(OS) No.1968/2003 is final and binding on the parties.

17. In this view of the matter and with the aforesaid observations and binding the other parties thereto, IA No.1571/2006 in CS(OS) No.1968/2003

is dismissed with liberty to Smt. Sumangli Gupta to agitate her rights, if any in CS(OS) No.255/2011.

18. All counsels state that in view of above, all pending applications in CS(OS) No.1968/2003 have also become infructuous.

19. The same are also disposed of.

20. The file of CS(OS) No.1968/2003 be disposed of.

CS(OS) 255/2011 & IAs No.1685/2011 (u/O 39 R-1&2 CPC), 1686/2011 (u/O XL R-1 CPC), 1687/2011 (u/O 13 R-1&2 CPC), CRL.M.A. No.3206/2011 (of D-3 u/S 340 CrPC), IAs No.4264/2011 (for vacation of interim order), 6638/2011 (u/O 39 R-1&2 CPC), 14691/2011 (of D-3 u/O 6 R-17 CPC), 14692/2011 (of D-3 u/S 151 CPC), 1236/2012 (of D-3 u/O 39 R-4 CPC), 5119/2012 (of D-4 u/S 151 CPC), 5120/2012 (of D-4 u/O 9 R-1 CPC), CRL.M.A. No.7014/2012 (of D-4 u/S 340 CrPC), IAs No.13482/2013 (u/S 151 CPC) & 25619/2014 (of D-3 for directions)

21. The counsels, on enquiry, state that pleadings in this suit are complete and the same is ripe for framing of issues and for hearing of the applications, including under Order VII Rule 11 CPC. They however state that the same be put up for some other day.

22. List for hearing of this suit and pending application on 19th January, 2017.

EX.P. 70/2012 & EAs No.166/2012 (u/S 151 CPC) & 467/2012 (u/S 8 of Arbitration Act)

23. On enquiry as to the status of execution, it is stated that the compromise decree dated 9th January, 2006 in CS(OS) No.1968/2003 has already been implemented but Sh. Rajiv Gupta is making claims with respect to several properties and which he had in paragraphs No.13, 14 & 18 of the compromise decree undertaken not to make. Attention in this regard

is invited to pages 95, 110 and 126 of the documents filed with this execution petition.

24. The counsel for Sh. Rajiv Gupta has at the outset also stated that the execution is not maintainable, since the decree has not been drawn up as yet.

25. I have enquired from the counsel for Sh. Rajiv Gupta, whether Sh. Rajiv Gupta has deposited the stamp duty for drawing up of the decree qua the properties which have fallen to his share. I have further enquired from the counsel for Sh. Rajiv Gupta, whether Sh. Rajiv Gupta is willing to deposit the court fees of his share.

26. The answer is in the negative.

27. In view of the aforesaid, this objection to the execution is *mala fide* and is not entertained.

28. The counsel for Sh. Rajiv Gupta also states that the said complaints be treated as withdrawn and he, on behalf of Sh. Rajiv Gupta, undertakes that no further claims in contravention of the decree shall be made.

29. The undertaking of Sh. Rajiv Gupta is accepted and he is ordered to be bound therewith.

30. With the aforesaid, the execution petition stands disposed of. The file thereof be also consigned.

RAJIV SAHAI ENDLAW, J.

OCTOBER 03, 2016

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