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

Decided on : 16.02.2016

+ **EFA(OS) 6/2014, C.M. APPL.6526/2014**

**THE ENGINEERING AND INDUSTRIAL CORPORATION (P)
LTD** Appellant

Through : Sh. Vijay Kishan Jetly and Sh. Rajneesh
Vats, Advocates.

versus

SH C.M. SHARMA & ORS. Respondents

Through : Sh. Sunil Magon, Advocate, for
Respondent No.1.
Sh. Arjun Mitra, Advocate, for GNCTD.

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. The present appeal questions the judgment and order of the learned Single Judge, dismissing application E.A. No.1996/2014 in the course of execution proceedings. The application moved by the Judgement Debtor (appellant) [and referred to hereafter as such] had called into question the previous order requiring deposit of ₹11,28,300/- as well as the charges payable to the Local Commissioner for execution of the sale deed.

2. The facts necessary for deciding the appeal are that the plaintiff (hereafter referred to as “Decree Holder”) entered into an Agreement to

purchase the property, i.e. a shop at Inderpuri, New Delhi on 25.05.1951. The entire consideration – of ₹1375/- was paid by him in 1952. On 14.03.1961, the appellant/Judgement Debtor sought deposit of registration charges which at that time was ₹131/-, a fact produced on the record by documentary evidence (Ex.P-7). The Decree Holder/plaintiff complied with this payment and paid the said amount on 30.03.1961. The original plaintiff/Decree Holder's predecessor-in-interest died and his legal representatives/heirs instituted a suit for specific performance and also sought a decree for possession because the shop had been trespassed. The suit was contested by the third parties/alleged trespassers as well as the present appellant/Judgement Debtor. On 13.03.1996, Suit No. 632/1988 was decreed. The Judgement Debtor/appellant's appeal, being RFA (OS) 23/1996 was rejected. This order was affirmed by the Supreme Court which declined to grant substantial leave.

3. Alleging that the Judgement Debtor did not comply with the terms of the decree, the Decree Holder approached the Court in execution proceedings [Exec. Pet. 151/2013]. Learned Single Judge, by an order dated 21.11.2013 issued directions to the Decree Holder to bear the charges for Stamp duty and registration and at the same time clarified,

“The decree holder shall, for the time being, pay the charges to the authorised officer in this respect, which are quantified at Rs.20,000/-. The decree holder shall bear all the charges incurred towards the stamp duty and registration of the sale deed. The decree holder shall be entitled to recover the said amounts from the judgment debtors.

4. This latter sentence, i.e. to reimburse the amounts to the Decree Holder, on the part of the Judgement Debtor, became the bone of contention.

The Judgement Debtor moved E.A. 131/2014, urging several contentions. This included the submission that the differences between the parties which were substantially settled in CS (OS) 632/1988, never struck an issue with respect to the liability to pay registration and stamp duty charges, i.e. that the decree did not direct the Judgment Debtor to bear such liability; that the liability to bear such charges was upon the plaintiff/Decree Holder by virtue of Section 29 of the Indian Stamp Act, 1899 and that in any case, the executing Court had to confine its direction to what was sought and more importantly, granted in the decree and not exceed it. A large number of authorities were cited in support of the Judgment Debtor's submissions. The execution proceedings spanned several hearings.

5. The Judgement Debtor's contentions were overruled and the application for variation of the previous order dated 21.11.2013 was dismissed. Learned Single Judge, by a reasoned order, considered the findings recorded in the Civil Suit as well as the Division Bench judgment in appeal and was of the opinion that the directions complained of were not in excess of the decree but rather confined to it.

6. Sh. Vijay Kishan Jetly, learned counsel for the Judgement Debtor urged that the impugned order is clearly in error of law. He submitted firstly that the judgment of the Division Bench had recorded that in terms of the contract between the parties, the responsibility to pay the requisite charges was that of the Decree Holder. He relied upon the circumstance that the Judgement Debtor never refused to comply with the payment for execution of the documents and that the suit was filed almost four decades after the initial agreement to sell was entered into. It was urged in this context that such being the case, and there being no specific direction in the decree as

well as no finding or issue in respect of the controversy, the learned Single Judge should not have directed reimbursement of the payment of ₹11,28,300/- in regard to payment of stamp duty and registration of the sale deed.

7. Learned counsel relied upon several authorities for the proposition that the reliefs never sought should not be granted much less added by excluding the decree. He relied upon the decisions of the Supreme Court in *Pyare Mohan Lal v. State of Jharkhand and Ors.* AIR 2010 SC 3792; *Bachhaj Nahar vs Nilima Mandal & Ors* 2008 (17) SCC 491 and *Krishna Priya Ganguly v. University of Lucknow* AIR 1984 SC 186 in support of the proposition that reliefs not sought cannot be read into the judgment or decree.

8. Highlighting that the executing Court exercises extremely limited jurisdiction, it was urged by placing reliance on *ONGC Ltd. v. Modern Construction & Co.* 2014 (1) SCC 648 that the Court has to implement or execute the decree strictly in terms of what is contained in it and should not in any manner vary its terms. Reliance was also placed upon *Haryana Vidyut Prasaran Nigam Ltd. & Anr. v. Gulshan Lal & Ors.* 2009 (13) SCC 354.

9. Learned counsel submitted that the learned Single Judge in the present case went beyond the limits of his jurisdiction in observing as he did that justice demanded reimbursement of this specific kind. He submitted that the Court cannot import its notions of justice while exercising its jurisdiction in execution of a decree. Learned counsel relied upon the judgement in *FCI Union v. Food Corporation of India* AIR 1990 SC 2178. It was lastly urged that the terms of the decree are to be construed and the executing Court cannot go into the controversy – the only exception being where ambiguity

exists. Here, reliance was placed upon *Ghaziabad Development Authority v. Urmila (Smt) and Anr.* 2004 (13) SCC 489. Learned counsel stressed that in the present case, the judgement and decree was silent and did not require the Judgement Debtor/appellant to bear the charges – it is not clearly showing that there was no ambiguity in the first instance which required to be fulfilled by construction of decree as sought.

10. Sh. Sunil Magon, learned counsel for the Decree Holder took this Court through the record and urged that as against total consideration of ₹1375/-, as far back as in 1952, whenever the registration and stamp duty charges were demanded, the Decree Holder complied with it and deposited it on 30.03.1961. Learned counsel relied upon the observations of the learned Single Judge in the course of judgment, the findings on such aspect, as well as the findings of the Division Bench, and submitted that since there was no controversy as to the payment, requiring the Decree Holder to bear such charges all over again merely because the rates have gone up is not warranted. Having once paid the amounts, it was not only just and equitable but the necessary consequence of the decree which stood confirmed by the highest Court of the land, that the other amounts which were to be paid were to be borne by the Judgement Debtor. Learned counsel highlighted the findings of the Division Bench to the effect that the Judgement Debtor had colluded with third party trespassers to deny the Decree Holder possession of the property which compelled the filing of the suit.

11. As is evident, the controversy which is sought to be urged in the present appeal is as to the liability of the Judgment Debtor to bear the charges; it complains by citing Section 29 of the Indian Stamp Act, 1899 and the absence of any term in the agreement to sell, that it cannot be saddled

with the responsibility of bearing the expenses for conveyance and that rather the primary liability is that of the Decree Holder/vendee.

12. This Court notices that the impugned order clearly took note of the findings rendered in the suit substantially. In the course of its judgment dated 23.05.1996, this Court clearly stated as follows:

“When the first defendant had called the plaintiffs to give and take the sale deed in the normal course of human conduct, there would have been no hesitation on their part to take the sale deed because there was nothing further to be done by then. Shri Bhagat Ram had paid the full consideration and also Rs.131/- required for the registration and for stamp papers. The first defendant having failed to execute the sale deed is now trying to take advantage of its own wrongs. In law that can never be permitted.”

13. These findings were confirmed by the Division Bench. It held as follows:

“75. In the present case, we are of the view that equity is entirely in favour of the plaintiffs and against the appellant EICPL. The plaintiff's predecessor-in-interest Late Sh. Bhagat Ram paid the entire consideration including the registration charges to the appellant EICPL and there was no other financial obligation left for him to discharge qua the appellant. He had even been put in possession of the suit plot. It is not that the appellants were put to any prejudice on account of the non-registration of the sale deed since they had already pocketed the entire consideration with charges.”

14. This judgment of the Division Bench – dated 28.02.2013 (in RFA 23/1996 filed by the Judgment Debtor became final. The Supreme Court too declined to entertain the Special Leave Petition and dismissed it *in limini*.

15. It is quite evident from the above findings and observations that the Judgment Debtor never disputed receiving the charges which constituted

10% over and above the sale consideration at the relevant time. Quite pertinently, the Division Bench which ruled against the appellant was constrained to remark that it had even pocketed all the charges over and above the relevant consideration in 1961. In these circumstances, the question of the executing court adding to, varying or straying from the decree, in the opinion of the Court, does not arise at all. What the appellant Judgement Debtor is attempting to do as it is, through its application, is that it should be paid twice over for the deliberate and conscious omission in not fulfilling the terms of the contract and conveying the property to the Decree Holder. The original vendee could not, during his lifetime, secure the enjoyment of property he had fully paid for. Findings were recorded not only against the Judgement Debtor *vis-a-vis* the questions sought to be urged but also with regard to its conduct in as much as it apparently had colluded with third parties to fraud the vendee/deceased predecessor-in-interest's right to the property for which full consideration was paid in 1952 itself. The entire picture which emerges is not only dismal but abysmally shocking that a litigant has been able to successfully stall the judicial process for the last six decades and ensure that the binding contract under whose obligations it was bound to discharge were not enforced. To cap it all, it is urged that although the appellant Judgement Debtor received the entire amount towards registration and other charges, defaulted for more than 40 years so that it may be paid all over again. There can be no quarrel with the proposition urged by Sh. Vijay Kishan Jetly, learned counsel, as to the powers of the executing Court. This Court is conscious of what are the limitations of an executing Court. However, the question is the relevance of its submissions.

16. In the present case, after having once paid the requisite charges which

were to be recovered at the relevant time, the Judgment Debtor cannot now contend by relying upon authorities that the executing Court had exceeded its powers either by adding to, varying the decree. That the Court did not do so is something we are certain about. For the above reasons, we are of the opinion that the appeal has no merit. We notice that the appellant's applications were considered by the executing Court on sufficient occasions. This is the 14th hearing of the present appeal. In the circumstances, we are of the opinion that it would be appropriate that the appellant pays the respondent/Decree Holder a sum of ₹2 lakhs as costs. The appeal is dismissed with the direction to be complied with within four weeks from today.

S. RAVINDRA BHAT
(JUDGE)

DEEPA SHARMA
(JUDGE)

FEBRUARY 16, 2016
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