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

+ EX.P. 153/2014 and EA (OS) 1022/2014

M/S ADVENTURE SECURITAS PVT LTD Decree Holder

Through: Ms. Nandni Sahni and Ms. Pavani Goel,
Advocates

versus

M/S BARTRONICS INDIA LTD & ANR Judgement Debtors

Through: Ms. Shubham Mahajan, Adv. for JD-1
Ms. Eshita Barwah and Mr. Y.P. Singh for Mr.
Gaurang Kanth, Advocates for JD-2

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **14.12.2016**

As per notification dated 08.12.2016, the 12th December, 2016 was declared as holiday on account of *Milad-Un-Nabi* or *Id-E-Milad*, the case is taken up today.

This execution petition seeks enforcement of the decree dated 13.03.2013 passed pursuant to the judgment dated 13.03.2013 on the file of CS(OS) 958/2012 which had been preferred by the execution petitioner (hereinafter also referred to as the plaintiff) impleading two defendants, one of them being M/s. Bartronics India Ltd. C/o. Corporate Office, Door No.8-2-120/77/4B, Road No.2, Banjara Hills, Beside NTR Bhavan, Hyderabad-500034 (judgment debtor) impleaded as defendant no.2 in addition to Osiris Digital Media Pvt. Ltd. C/o. Delhi Office, 33, Subham Apts., Sector-12, Pocket-4, Dwarka, New Delhi-110075, impleaded as defendant no.1.

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The suit had prayed for recovery of ₹71,58,059/- alongwith interest and had also prayed for certain other reliefs in the nature of declaration and injunction (permanent and mandatory).

It appears from the certified copies of the orders passed in the civil suit that the plaintiff and defendant no.2 (i.e. the decree holder and the judgment debtor) jointly moved interim applications i.e. IA 4164/2013 (under Section 89 CPC) and IA 4165/2013 (under Order 23 Rule 3 CPC) informing the court that they had agreed to resolve the controversy between two of them. The application was accompanied by deed of agreement dated 26.02.2013 which was executed on the letterhead of the defendant / judgment debtor, its copies having been filed at page 31 of the paper book at hand. In terms of the said deed of agreement dated 26.02.2013, the judgment debtor herein had agreed to pay and the decree holder (plaintiff) had agreed to receive an amount of ₹70 Lakhs *"on receipt of the security deposit funds from the MCD"*. Though in the said deed of agreement signed by the authorised representatives of the plaintiff and defendant no.2, it was so indicated that the payment to be made in its terms would be *"on behalf of both the defendants"* and further that it had also been agreed that both sides will not raise any further claim thereafter, when the said application under Order 23 Rule 3 CPC came up for consideration before the court on 13.03.2013, it was pointed out by the counsel for defendant no.1 that the said party (defendant no.1) had not authorised defendant no.2 (the judgment debtor) to settle the dispute on its behalf and thus, the settlement was not binding on it. In the wake of these submissions, the plaintiff (decree holder) and defendant no.2 (judgment debtor), through counsel, submitted to the court that they concurred that the

compromise decree would be only against defendant no.2 and not against defendant no.1. In this light, the suit against defendant no.1 was treated as withdrawn. The court accepted the compromise presented jointly by the plaintiff and defendant no.2 as "lawful" and granted a decree in its terms.

The present execution application was filed on 07.05.2014 seeking enforcement of the decree, *inter alia*, referring to proceedings arising out of arbitration petition no.207/2012 which had been taken out by the judgment debtor invoking Section 11 of the Arbitration and Conciliation Act, 1996 against Municipal Corporation of Delhi (MCD) in respect of its claim for refund of the security deposits arising out of the contract awarded by MCD in its favour. A copy of the order dated 21.02.2013 passed by this court on the said arbitration application, thereby appointing a sole arbitrator for arbitral proceedings on the said dispute between the judgment debtor on one hand and MCD on the other has been submitted. It is the submission of the decree holder in the present proceedings that the facts relating to the pending dispute qua refund of the security deposit were withheld and concealed by the judgment debtor even though the arbitration petition had been preferred in 2012 and, therefore, fraud has been played to secure a compromise decree in terms of the deed of agreement dated 26.02.2013 leading to the judgment and decree dated 13.03.2013.

In the execution petition, the decree holder has impleaded Commissioner, South Delhi Municipal Corporation as a party, reflecting it in the array as judgment debtor no.2. On being asked, the learned counsel for the petitioner fairly conceded that given the fact that the MCD was neither a party to the civil suit from which the

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present execution petition arises nor there is a decree passed against it, it could not have been impleaded as a judgment debtor in these proceedings. Thus, the Commissioner, South Delhi Municipal Corporation stands discharged from these proceedings, its name being struck off.

The question as to whether a fraud was played on the decree holder cannot be gone into or adjudicated upon by this executing court. The decree in terms of judgment dated 13.03.2013 has not yet become executable as the security deposits on receipt of which the judgment debtor would owe payment in its terms to the decree holder are yet to come in the hands of the judgment debtor, what with the said claim being subject matter of the ongoing arbitral proceedings.

In these circumstances, the decree cannot be enforced or executed at this stage against the judgment debtor. However, it is directed that the judgment debtor shall notify the decree holder immediately upon receipt of the payment of the security deposits so that the decree holder may take appropriate steps.

The learned counsel for the execution petitioner now submits that she may be allowed to withdraw the execution petition, without prejudice to her contentions about fraud having been played by the judgment debtor, and instead approach the appropriate forum for appropriate relief in such regard.

The execution petition and the pending application are, accordingly, dismissed as withdrawn.


R.K. GAUBA, J