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

+ RFA 221/2015 & CM No. 6237/2015 (Stay)

MADHU SARKAR & ANR. Appellants
Through: Mr Vijay Sansaniwal, Adv.

versus

M/S ALUPAN COMPOSITE PANELS PVT. LTD. Respondent
Through: Mr Yeeshu Jain & Ms Jyoti Tyagi, Adv.
with Mr Sameer Hasan, A.R.

CORAM:

HON'BLE MR. JUSTICE RAJIV SHAKDHER

ORDER

% **11.01.2016**

1. I had, vide order dated 29.10.2015, recorded in detail the problem involved in the appeal being disposed of in terms of the settlement agreement dated 22.09.2015 arrived at between parties with the intercession of the Delhi High Court, Mediation & Conciliation Centre. The order passed on that date is extracted hereinbelow:

“....1. Yesterday Ms. Megha Gurnani sought time to obtain instructions from her client on the aspect as to whether or not a settlement had been reached in the mediation proceedings. Ms. Megha Gurnani today, seeks a discharge in the matter.

2. On the other hand, learned counsel for the respondent states that a settlement has been arrived via the intercession of Delhi High Court Mediation & Conciliation Centre (in short the Centre). The settlement, which has been arrived at between the appellant and respondent, is placed on record, and is dated 22.9.2015.

3. Counsel for the respondent informs me that under the settlement, the appellants are required to pay a sum of Rs. 10

lacs to the respondent, and towards that obligation, a sum of Rs. 5 lacs has already been paid vide cheque bearing no. 000001 dated 22.09.2015, drawn on HDFC Bank. A photocopy of the said cheque is appended as Annexure-B to the settlement agreement, at page 296 of the paper book.

3.1 It is thus the submission of the learned counsel for the respondent that the balance sum of Rs. 5 lacs is required to be paid by the appellants.

3.2 Learned counsel for the respondent says that since, at the stage when notice was issued in the captioned appeal, the appellants were directed to deposit a sum of Rs. 5 lacs in court, the said sum, which stood deposited thereafter, should be released, towards satisfaction of the obligation undertaken by the appellants, under the settlement agreement.

4. I have perused the settlement agreement dated 22.09.2015. Though the settlement is arrived at between the appellants (who are referred to as the first party), and the respondent (who is referred to as the second party), the obligation to pay the sum of Rs. 10 lacs, under the settlement agreement, in terms of paragraph 6, appears to be that of the respondent and not that of the appellants.

5. Learned counsel for the respondent says that this is an error, which has crept in the settlement agreement and this is sought to be demonstrated by reference to the copy of the cheque, purportedly, issued by the appellants, as indicated above, in favour of the respondent for a sum of Rs. 5 lacs.

6. The difficulty with which one is faced, is that, the appellants have not given any instructions to their counsel, who had sought time on the previous date i.e. 28.10.2015. As a matter of fact, Ms Megha Gurnani, who appears for the appellants, has sought to seek a discharge in the matter, a fact which is noted at the very outset.

7. In these circumstances, Ms Megha Gurnani is directed to file an application to seek discharge. She will append with the application, communication, if any, sent to the appellants, to

give instructions, especially, in the circumstances set out above.

8. The Registry, on the other hand, will issue a court notice to the appellants, without insistence on process fee. The representative of the respondent, who appended his signatures on the settlement agreement dated 22.09.2015, shall also remain present in court on the next date of hearing.

9. List on 07.12.2015.....”

2. Mr Vijay Sansaniwal, who had entered appearance on behalf of the appellants, on the previous date i.e. 21.12.2015, has brought to court a Vakalatnama on behalf of his client i.e. Ms Madhu Sarkar, who is impleaded as appellant no.1. The record shows that appellant no.2 is a proprietorship concern, going by the name of M/s Alshine Glazing.

3. As would be evident from the observations made on 29.10.2015 by me, the settlement entailed, according to the respondent, payment of Rs. 10 lacs by the appellants, out of which a sum of Rs. 5 lacs was paid on 22.09.2015. The respondent had sought release of the sum of Rs. 5 lacs, which was deposited in this court by the appellants pursuant to the order dated 08.04.2015, passed by this court. This settlement could not be accepted as indicated in the order dated 29.10.2015, as the settlement agreement, curiously, and as it now appears on account of an inadvertent error, recorded that the respondent had to pay a sum of Rs. 10 lacs to the appellants rather than the other way. It is for this purpose that I had issued notice to the appellants.

4. Learned counsel for the appellants says that he has instructions from the appellants to convey to the court that a typographical error has crept in the settlement agreement.

4.1 Accordingly, learned counsel for the appellants says that the sum of Rs. 5 lacs, deposited with the registry of this court, be released in favour of the respondent.

5. Based on the statement made by the counsel for the appellants, I am inclined to direct accordingly. The registry will release the sum of Rs. 5 lacs, along with accrued interest, if any, in favour of the respondent.

6. In these circumstances, as is evident, there is nothing that needs adjudication in the captioned appeal and the accompanying application. Consequently, the appeal and the application are disposed of in terms of the order passed today and the settlement arrived at between the parties.

RAJIV SHAKDHER, J

JANUARY 11, 2016

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