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

+ **CS(OS) 2004/2011**

MR. MAN MOHAN KAPOOR Plaintiff

Through: Mr. Pritesh Kapur, Advocate.

versus

GAURAV KAPOOR & ORS. Defendants

Through: Mr. Anil Gera, Advocate.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **21.03.2016**

CS(OS) No. 2004/2011, I.A.No. 2154/2016 and CCP(OS) No. 24/2016.

1. Though this suit was listed for arguments with respect to I.A No. 2154/2016, during the course of arguments it transpired that there was a very limited issue for deciding the suit itself inasmuch as decision in the suit turned upon the interpretation of the admitted Will dated 14.6.1985 of late Sh. Jagat Ram Kapoor, who was the father of the plaintiff and grandfather of the defendant no.1 (now sole defendant). There were two possible interpretations of the Will dated 14.6.1985 of late Sh.Jagat Ram Kapoor, and

I am happy to note that counsels for both the parties have been ably and rightly instructed by the respective parties that the entire disputes in the suit by this consent order can come to an end by the suit property bearing no. D-1/12, Rajouri Garden, New Delhi situated on a plot of 460 sq. yards being sold to the highest buyer and the net sale proceeds be divided in the ratio of 45% for the plaintiff and 55% for the family of late Sh. Krishan Kapoor and which is now being represented by his sole legal heir-defendant no.1 Sh. Gaurav Kapoor.

2. Till the suit property is sold, the defendant undertakes to this Court that positively by 5.4.2016 defendant will clear any bills of the hospital where the plaintiff Sh. Man Mohan Kapoor is being treated subject to an outer limit of Rs. 20 lacs. If the bills of the hospital are less than Rs.20 lacs then the difference between an amount of Rs.20 lacs and actual hospital bills shall be deposited by the defendant with Ashiana Utsav Care Homes, Bhiwadi, Rajasthan and the amount will lie with the Care Home as a trustee of the amount only for being used for maintenance, up keep, medical expenses or any other expenses relating to the plaintiff Sh. Man Mohan Kapoor.

3. The undertaking of the defendant is accepted and defendant who is present in person shall be bound by his undertaking.

4. It is agreed that defendant will be entitled to sell the suit property provided the total sale proceeds will not be below Rs.14.5 crores. The defendant will take a formal approval from the Court or the counsel for the plaintiff before the sale deed is executed in favour of the buyer of the suit property. The 45% of the net sale proceeds of the suit property will be directly deposited in Court by the buyer. Defendant agrees that he will take earnest endeavours to ensure that the suit property will be sold as early as possible and preferably in the next three to six months.

5(i) Accordingly, the suit is decreed and disposed of with passing of a decree of 45% of the ownership of the suit property in favour of the plaintiff and which will be in the form of 45% of the net sale proceeds of the property not below Rs. 14.5 crores. The defendant will be entitled to 55% of the net sale proceeds. Whatever amount remaining with the plaintiff from the 45% of the net sale proceeds, at the time of plaintiff's death, after use of amounts from this amount for the purpose of the plaintiff, this remaining amount will be owned by the defendant Sh. Gaurav Kapoor.

(ii) The 45% of the net sale proceeds of the plaintiff will be deposited in this Court by the buyer, and, the defendant before execution of the sale deed will take approval from the Court or from the counsel for the plaintiff in writing. For arriving the net sale proceeds the amount of stamp duty charges, registration charges, drafting fee of lawyers of the sale deed and any other expenses incidental thereto towards executing and registering the sale deed will be deducted and this expenditure will include a sum of Rs.5 lacs which will be payable to Sh. Pritesh Kapur, Advocate for the plaintiff who as a counsel has devoted time in this case and which time will be further also devoted in this case including with respect to drafting and finalizing the sale deed.

6. Since the hospital where plaintiff is being treated is urgently asking for amounts for treatment of the plaintiff Sh. Man Mohan Kapoor, the sister of the plaintiff and who is the next friend of the plaintiff namely Ms. Radhika Lall, will pay the expenses of the hospital, but, such amount of expenditure up to Rs.20 lacs incurred by Ms. Radhika Lall for the hospital, will be refunded by the defendant to Ms. Radhika Lall on or before 5.4.2016

from the amount of Rs.20 lacs which the defendant has undertaken to pay today.

7. It is however clarified that though the suit is disposed of, however for the purpose of enforcing the undertaking of Rs.20 lacs as stated above to be paid by the defendant till 5.4.2016, the proceedings in the suit will remain alive. Also, proceedings will remain alive for finalizing the sale deed which will be executed of the suit property in case there is no agreement with respect to the draft sale deed to be executed of the suit property in favour of the buyer as between the counsel for the plaintiff and the defendant.

8. Since the suit is disposed of, all pending applications will stand disposed of, subject to the above observations with respect to any issue remaining pending of compliance of undertaking or with respect to any further aspects which will require compliance in terms of the present compromise order decreeing the suit.

9. Decree sheet be prepared.

VALMIKI J. MEHTA, J

MARCH 21, 2016

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