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$~7 & 16 *(common order)*

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

\+ **CS(OS) 185/2010**

VIRENDER KUMAR JAIN @ BOBBY ..... Plaintiff

Through: Ms. Sakshi Kotiyal, Adv. with Mr. Vaibhav Jain, Adv.

versus

RAVINDER KUMAR JAIN & ORS ..... Defendants

Through: Mr. Lalit Gupta, Adv. with Ms. Garima Goel, Adv. along with D-1 in person. Mr. Javed Khan, Adv. for D-10&11.

\+ **EX.P. 119/2016**

MR KESHAV CHAND JAIN AND ORS ..... Decree Holder

Through: Mr. Javed Khan, Adv.

versus

MR RAVINDER KUMAR JAIN AND ORS..... Judgement Debtors

Through: Mr. Lalit Gupta, Adv. with Ms. Garima Goel, Adv. along with JD-1 in person.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **06.10.2016**

CS(OS) 185/2010 and EX.P. 119/2016

1. The suit for partition and rendition of accounts at hand was filed in 2010 impleading eleven defendants. The plaintiff is the brother of defendants no.1 to 4. Defendants no.5 to 8 are the wives of defendants no.1 to 4. Defendant no.9 is the wife of the plaintiff while defendants no.10 and 11 are the legal heirs of the two deceased sisters of the plaintiff and defendants no. 1 to 4.

2. In the course of proceedings, on 21.05.2012 efforts then underway between the parties to resolve the dispute amicably were noted. On 26.07.2012, the court was informed by the counsel for defendants no.1 to 4 that their dispute with regard to the suit properties had been fully and finally settled between the parties for the reason that the plaintiff had accepted to take a specific share (described as basket no.4) from the estate of the predecessor-in-interest of the parties, leaving the balance (out of the five baskets in all) to the shares of defendants no.1 to 4. It appears from the proceedings recorded on the said date (26.07.2012) that the terms on which the parties were agreeable to settle the dispute fully and finally had not yet properly crystallized.

3. Against the above backdrop, when the matter came up on 19.03.2015 it was submitted before the court that a settlement had been arrived at between the parties whereunder, besides taking up the shares as mentioned above, the plaintiff and defendants no.1 to 4 had agreed to pay certain amounts of money to the legal heirs of their deceased sisters represented by defendants no.10 and 11 in these proceedings. To put it clearly, the defendants no.1 to 4 informed the court that they had agreed to jointly pay an amount of ₹8 crores, i.e. ₹4 crores each, to defendants no.10 and 11, by pooling together an amount of ₹2 crores each, to satisfy the claims of said legal heirs of their deceased sisters in the estate of the predecessor-in-interest of the parties. The said payment by defendants no.1 to 4 was to be made to the defendants no.10 and 11 within the outer limits of twelve months of the said order. Similarly, the plaintiff also submitted that since he did not have any liquidity as on date, his entire business having been earlier run by his siblings (defendants no.1 to 4), he was undertaking a responsibility to pay cumulative amount of ₹1 crore to defendants no.10 and 11 (*i.e.* ₹50 lacs

each) within outer limits of eighteen months of the said order, that too conditional upon his share (basket no.4) falling into his hands. The parties further informed the court that the general terms and conditions attached to the properties as on 21.05.2012 (date of drawing of the baskets wherein the cash and jewellery is excluded) would inure. At the same time, it was brought to the notice of the court that concerning a petrol pump at Rohtak Road, New Delhi in which respect the Indian Oil Corporation had granted license in favour of the predecessor-in-interest of the parties and which, in terms of the said settlement, were to fall in the share of defendants no.1 to 4 having been taken over by Indian Oil Corporation on account of certain defaults attributable to the plaintiff and his wife, some formalities required to be undertaken to secure re-allotment of the license from Indian Oil Corporation, the plaintiff and his wife (defendant no.9) having undertaken the responsibility to co-operate in requisite steps to be taken by defendants no.1 to 4.

4. The above noted submissions having been recorded, the learned Single Judge then dealing with the matter also accepted the submissions of the parties that there would be a need to appoint a facilitator/overseer "to oversee the modalities to be worked out for the implementation of the afore-noted settlement and the exchange of properties including preparation of documents in terms of the baskets allotted to each of the parties". Thus, Mr. Ravi Gupta, Senior Advocate was appointed as the facilitator/overseer. The parties were directed to appear before him for further proceedings.

5. The subsequent proceedings make it clear that the terms on which the parties were ready to resolve the dispute as noted in the order dated 19.03.2015 could not be acted upon. Some further disputes seem to have arisen rendering it a case of compromise which was, to say the least, still-

born. So much so, that the directions of the court for the parties to appear before the facilitator/overseer (described in the order dated 14.09.2015 as mediator) also could not result in any meaningful progress.

6. On 15.01.2016, the court was informed that "four out of five brothers being plaintiff and defendants no.1 to 4" were agreeable to "in-principle" settlement of 1/5th share of each of the brothers, this being with respect to the properties "which could really be divided being either of the parents or purchased from the properties of the parents which were sold". The order does not clearly indicate if the fifth brother (it is not even clear who the said fifth brother was) also in agreement with the said "in-principle settlement". Learned counsel Shri Lalit Gupta, Advocate for defendants no.1 to 4 submits that though order dated 15.01.2016 is not so specific, since he represents all the four defendants (defendants no.1 to 4), he would like to clarify that the said settlement was acceptable to all the five brothers including the plaintiff.

7. Be that as it may in the proceedings dated 15.01.2016, the learned Single Judge then seized of the matter further noted that "some differences for actual division" had to be sorted out. It was also noted that the rights of defendants no.10 and 11 (*i.e.* legal heirs of deceased sisters) would "also be adequately safeguarded if any final compromise is arrived at between the brothers in the spirit of give and take". The court also noted in the said very order of 15.01.2016 that any affected parties to the present litigation on account of inclusion of their properties would also have "notice of hearing at the stage of finalization of compromise and disposal of the suit".

8. Subsequent proceedings indicate that parties informed (on 29.02.2016) that settlement was not possible and "the matter will have to be decided on merits". At the same time, defendants no.1 to 8 raised the issue of maintainability of the suit itself.

9. The execution petition (Ex.P.119/2016) has been preferred by defendants no.10 and 11 seeking execution of the order dated 19.03.2015 whereunder the plaintiff on one hand and defendants no.1 to 4 on the other, had given an undertaking and agreed to pay the amounts of money as specified above.

10. Having regard to the proceedings of 19.03.2015 and what was submitted in its wake on the subsequent dates, particularly the submissions made on 29.02.2016 wherein the parties jointly submitted that the settlement was not possible and the matter would have to be decided on merits, in which submissions even defendants no.10 and 11 were clearly a party, they being duly represented by counsel on the said date and they not having taken any exception thereto, it is clear that no executable compromise, much less an executable decree came to be recorded or passed by the proceedings of 19.03.2015. At the most, borrowing the expression from the proceedings of 15.01.2016, it was "in-principle settlement" to which some more flesh had to be added. The terms were still not clear and/or crystallized which is why a facilitator/overseer had also to be appointed. In a case of this nature where the estate of the deceased predecessor-in-interest of the parties is vast and includes/involves a number of properties, modalities had to be worked out in clear terms for partition and vesting of clear title in the names of rightful claimants. Since no such modalities could be worked out or put on paper in the form of a formal family settlement, the submissions made to, or observations recorded by, the court in the proceedings of 19.03.2015 can hardly be said to be a judgment or a decree which could be put to execution.

11. With the above position vis-a-vis the order of 19.03.2015 having been clarified for removal of all doubts, the execution petition being Ex.P.119/20106 cannot be proceeded further. It is consequently dismissed.

12. A copy of this order passed on the file of CS(OS) 185/2010 shall be placed on the file of Ex.P.119/2016.

IA No.8328/2013 (by the plaintiff);
IA No.10003/2015 (by defendants no.1 to 8 for clarification);
IA No.14747/2015 (by the plaintiff for amendment of baskets);
IA No.17683/2015 (by defendant no.10 for modification);
IA No.23124/2015 (by defendants n.1 to 8 for directions); and
IA No.23288/2015 (by the plaintiff) in CS(OS) 185/2010

13. From the submissions of the parties at the hearing, it is clear that these interim applications, i.e. IA No.8328/2013 IA No.10003/2015, IA No.14747/2015, IA No.17683/2015, IA No.23124/2015 and IA No.23288/2015 relate or arise out of the observations made in the order dated 19.03.2015 which, as has been clarified above, is not executable settlement or decree. In these circumstances, these applications cannot survive. They are disposed of accordingly.

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14. There are a number of other interim applications pending. The learned counsel on both sides seems to be clueless about said applications or their import. The plaintiff shall come with a short synopsis of all the pending applications intimating the priority in which the said applications need to be taken up for consideration and disposal. If any other interim application has remained pending which also requires to be disposed of in the light of above observations/directions respecting the order dated 19.03.2015, it shall be so clearly indicated in the synopsis.

15. The pending applications and the issue of maintainability shall be taken up for consideration on the next date of hearing.

16. Be re-notified on 08.03.2017.

-Sd/-

R.K.GAUBA, J.

OCTOBER 06, 2016/vk

THE SEAL OF DELHI HIGH COURT NEW DELHI

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