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

+ **FAO(OS) 404/2015 & CM No...../2016**

MOHANJIT SINGH

..... Appellant

Represented by: Mr.Amit Sibal, Sr.Advocate
instructed by Mr.Alok K.Agarwal and
Mr.Gaurav Tanwar, Advocates

versus

M/S SUNSHINE INDIA PVT LTD & ORS

....Respondent

Represented by: Mr.Sudhir K.Makkar, Advocate with
Ms.Minakshi Singh, Mr.Rohan Malik
and Mr.Varun Pandia, Advocates for
R-1

FAO(OS) 405/2015 & CM No.16716/2016

BHAI MANJIT SINGH (HUF) & ANR

..... Appellants

Represented by: Mr.Amit Sibal, Sr.Advocate
instructed by Mr.Suresh Dobhal,
Mr.Shohit Chaudhary and Mr.Yugank
Goel, Advocates

versus

M/S SUNSHINE INDIA PVT LTD & ORS

..... Respondents

Represented by: Mr.Sudhir K.Makkar, Advocate with
Ms.Minakshi Singh, Mr.Rohan Malik
and Mr.Varun Pandia, Advocates for
R-1
Mr.Alok K.Agarwal, Advocate with
Mr.Gaurav Tanwar, Advocate for R-2
to R-4

**CS (OS) 2501/2011, CC No.22/2014 and IA Nos.16121/2011,
507/2014, 4576-77/2014**

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M/S SUNSHINE INDIA PVT. LTD.

..... Appellant

Represented by: Mr.Sudhir K.Makkar, Advocate with
Ms.Minakshi Singh, Mr.Rohan Malik
and Mr.Varun Pandia, Advocates

versus

BHAI MANJIT SINGH (HUF) AND ORS.

..... Respondents

Represented by: Mr.Amit Sibal, Sr.Advocate
instructed by Mr.Suresh Dobhal,
Mr.Shohit Chaudhary and Mr.Yugank
Goel, Advocates

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

% **03.05.2016**

1. Registry is directed to number the two applications filed in Court under Order 23 Rule 2 and 3 read with Section 151 of the Code of Civil Procedure. Concededly, reference to Rule 2 of Order 23 is misplaced. The applications bring on record a compromise entered into in writing by the parties requiring the two appeals as also CS (OS) No.2501/2011 to be disposed of by passing a decree in the suit.
2. Since on a mention made in the forenoon session that settlement between the parties embraces the dispute in the suit, as directed, the Registry has listed the suit before us.
3. All litigating parties to the suit including members of Bhai Manjit Singh (HUF) have filed affidavits duly deposed before the Oath Commissioner in support of the applications. A memorandum of understanding dated May 03, 2016, duly signed by all the litigating parties

has been filed along with the two applications.

4. Having perused the two applications we are satisfied that a lawful agreement by way of a compromise has been arrived at between the parties and thus the two applications need to be accepted and in terms thereof CS (OS) No.2501/2011 to be decreed.

5. It being a part of the compromise that all adverse remarks made in the impugned order dated May 20, 2015 be expressly expunged so as to denude the parties to rely thereupon in future, we note reasons why we need to pen a few paragraphs concerning said aspect of the settlement for the reasons as we read the impugned order, so integral to the reasoning of the learned Single Judge they are, it may not be possible to save the impugned order after expunging the offending expressions used. But, in respect thereof a clarification could be recorded.

6. Sunshine India Pvt. Ltd. instituted a suit seeking declaration, mandatory injunction and specific performance. The foundation of the suit was a registered document captioned as 'agreement to sell' dated July 29, 2005 executed by Bhai Manjit Singh (HUF) through its Karta, Ms. Maheep Manjit Singh. It records that for a consideration of ₹9.25 crores property bearing Municipal No.61, Golf Link, New Delhi, ad-measuring 1641.70 square yards owned by the HUF would be sold to the plaintiff. It records that the sale consideration in sum of ₹8,99,14,974/- has been received and the purchaser put into possession of the subject property. In the written statements filed albeit using different expressions, essentially the same stand was taken. The stand was that the registered agreement to sell is not what it purports to be. It is a pretence. The factual basis of the stand was the pleading that one Ashok Burman, a patriarch of the Burman family was a

good friend of Bhai Manjit Singh (HUF) whose companies owed debts to third parties and to satisfy the said debts Ashok Burman arranged for money to be directly paid to said third parties from the coffers of the plaintiff company. It is in this context that the words '*sham*', '*frivolous*' and '*fictitious*' etc. were used in the written statements.

7. In the suit, IA No.17960/2011 invoking the inherent powers of the Court under Section 151 of the Code of Civil Procedure was filed praying that during pendency of the suit a direction be issued to the land owning agency i.e. L&DO to grant a no objection certificate in the name of the plaintiff to effect construction on a plot in accordance with the sanctioned plan, upon an express understanding that the plaintiff would not claim any special equity if permitted to be construct on the land forming subject matter of the suit.

8. Needless to state it fell for consideration before the learned Single Judge whether the plaintiff had made out a very strong prima-facie case entitling the plaintiff to alter the status quo with respect to the suit property, which admittedly was a vacant piece of land when the application was filed for the reason the existing structure on the land was dilapidated and demolished by the plaintiff.

9. Faced with the fact that money had flown from the coffers of M/s.Sunshine India Pvt. Ltd. and the fact that the registered agreement to sell contained acknowledgements thereof and as scribed, evinced the same to be an agreement to sell, motivated on the reasoning that except for a paltry sum of less than ₹26 lacs the entire sale consideration was paid, the learned Single Judge has used expressions such as '*false*', '*dishonest*', '*ulterior motive*', '*unscrupulous*', '*u-turn*', '*turned turtle*', '*not trustworthy*',

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'frivolous', 'shamelessly' and 'wriggle out' in various paragraphs of the order dated May 20, 2015 to describe the conduct of the defendants.

10. It would be difficult to expunge these expressions from the impugned order and let the remainder remain for the reason it would make the sentences unintelligible.

11. But we find the said expressions totally unwarranted and the interpretation of the law concerning Section 91 and 92 of the Indian Evidence Act totally misplaced.

12. We need not make a catalogue of the various judgments wherein, concerning a document, used as a noun the word '*sham*' has been recognized to bring out that the document is not what it purports to be and is a pretence; the real transaction being something else. One such judgment be noted to suffice. It is reported as (1982) 1 SCC 4 Gangabai Vs. Chhatabai. A party is entitled in law to take the plea that a document is a sham document, the word '*sham*' being the name given to a document and hence a noun.

13. Whether such a defence would ultimately succeed or not is a matter of evidence. Thus, sans evidence, it would be impermissible to use the descriptors used by the learned Single Judge to describe the conduct or the personality of a party.

14. We accordingly declare that the aforementioned expressions which certainly negatively impinge upon the character, reputation and honour of the defendants, are misplaced.

15. The view taken by the learned Single Judge that such a defence is incapable of being proved because Section 91 and 92 of the Evidence Act prohibit evidence to be led is clearly contrary to the known tenets of law of

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evidence.

16. Learned counsel for the parties state that aforesaid observations would suffice to satisfy para 7 of the settlement agreement dated May 03, 2016.

17. The settlement between the parties envisages the plaintiff to pay a sum of ₹10 crores in the name of Bhai Manjit Singh (HUF). It contemplates ₹3 crores to be paid upfront and in respect thereof a bank draft in said sum in the name of Bhai Manjit Singh (HUF) drawn on HDFC Bank Ltd. has been handed over in Court today and received by learned counsel for the appellants. Receipt is agreed to be issued separately. As per the settlement balance sum of ₹7 crores would be deposited in the name of Registrar General of this Court, to be invested in a fixed deposit.

18. Learned counsel for the respondent has shown to us a bank draft in favour of the Registrar General of this Court in sum of ₹7 crores drawn on HDFC Bank Ltd. Learned counsel would deposit the same in the concerned branch of this Court to which the file shall be sent by the Dealing Assistant tomorrow morning. The deposit may be made tomorrow.

19. The sum of ₹7 crores together with accrued interest thereon shall be received by Bhai Manjit Singh (HUF) upon execution of a document of title (be it a sale deed or a direct conveyance deed by L&DO) in the name of M/s.Sunshine India Pvt. Ltd. Upon said event happening, on an application filed to be jointly signed by the parties, the amount along with accrued interest shall be released by the Registrar General in favour of Bhai Manjit Singh (HUF).

20. Tax deducted at source would be to the benefit of Bhai Manjit Singh (HUF).

21. In view of the compromise between the parties the two appeals need

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not be decided on the merits concerning the final direction issued by the learned Single Judge, which order even otherwise ceases to operate in law in view of the fact that the settlement has resulted in the suit being decreed.

22. Needless to state all interim orders merged finally in the decree passed.

23. A word of caveat. Such directions in the impugned order which get incorporated in the settlement by virtue of reference thereto would be treated as transposed in the settlement and forming part of the decree.

24. CS (OS) No.2501/2011 and CC No.22/2014 are decreed in terms of the compromise, meaning thereby the decree drawn up shall annex the memorandum of understanding dated May 03, 2016 as a part of the decree.

25. Since CS (OS) No.2501/2011 and CC No.22/2014 are being decreed in terms of the settlement, the parties need not file similar application in the suit and the Counter Claim for a decree to be passed.

26. All pending applications in the appeals and the suit are disposed of as infructuous.

27. Parties shall bear their own costs all throughout.



PRADEEP NANDRAJOG, J.



MUKTA GUPTA, J.

MAY 03, 2016

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→ fresh CM 33752/16 - v/s 151 CPG - Joint application on b/o the parties for Directions