

\$~1

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

+ **FAO(OS) 461/2015**

SHRI GOPAL KRISHAN KAPOOR & ORS Appellants

Through: Mr.Akhil Sibal, Ms.BInal Gupta and
Mr. Abhay Anand, Advs.

versus

R S CHHABRA & ORS Respondents

Through: Mr.Preet Pal Singh, Adv.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

%

04.11.2016

Review Petition No.462/2016 in FAO(OS) 461/2015

1. The Review petition is filed to have a fresh look of the final judgment of this Court of 24.08.2016 on the ground that essential facts were overlooked. By that judgment the court had rejected the appeal against an order made by the learned Single Judge in the course of execution proceedings where, inter alia, an application under Section 28 of the Specific Relief Act had been moved by the appellant/judgment debtor.

2. Mr.Sibal arguing for the appellant/ review petitioner urges that the court did not take into consideration and factor in the true import of a letter addressed by the Land and Development Officer dated 11.11.2009 and furthermore overlooked the relief claimed by the

Local Commissioner's second report dated 18.11.2009.

3. It was urged that the premise on which the court recorded its conclusion in the main judgment is that the cooperation of the appellant/review petitioner was vital and essential and that the three reports filed by the Local Commissioner demonstrated their unwillingness to assist in the proceedings which disentitled them to equitable relief under Section 28.

4. As far as the L&DO's letter of 11.11.2009 goes, this was within the knowledge of the report and has been cited. The Local Commissioner appointed by the court took note of it. The said letter (of the L&DO) stated firstly that the appellants had not cooperated and then went on to explain the alternatives available which were (a) that the Local Commissioner could move the court for an appropriate order or (b) that the plaintiff i.e. respondent/deed holder could also seek alternatives administratively. The report of the Local Commissioner of 18.11.2009 had taken note of the said letter of the L&DO. The report after citing out the salient factual aspect, sought certain reliefs. The relief was for suitable directions vis-a-vis the execution of the conveyance deed. The review petitioner's endeavour is to suggest that these alternatives were not explored or even taken recourse of by the deed holder and in these circumstances, having regard to the long delay, the appellants were entitled to relief under Section 28 which this court wrongly denied.

5. This court is of the opinion that having regard to the limited jurisdiction under review proceedings, the first issue is whether in the materials sought to be relied upon there is an error on the face of the

record as is being argued. The court has expressly cited the report of the Local Commissioner dated 18.11.2009 and even extracted major parts of its content. The suggestion that the error or the relief in that report was overlooked is in the opinion of this court misplaced. The main judgement cites what according to the court was relevant to establish non-cooperation by the appellant/review petitioners. In this regard the extracts of the three reports of the Local Commissioner find place in para 26 and 27 of the judgment. The omission to mention or discuss the letter of 11.11.2009, in our opinion, does not amount to an error because para 7 of the Local Commissioner's second report dated 18.11.2009 deals with that letter.

6. Having regard to the above discussion, the court is of the opinion that there is no error on the face of the record nor is there sufficient cause to recall the order.

7. The review petition is, therefore, dismissed.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

NOVEMBER 04, 2016

mr