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

+ EFA(OS) 37/2015, C.M. APPL.18800/2015 & 18802/2015

SONIA BHANDARI Appellant
Through : Sh. Subhiksh Vasudev, Advocate.

versus

H P STATE INDUSTRIAL DEVELOPMENT CORPORATION
LTD & ORS. Respondents

Through : Sh. Jitendra Kumar Singh, Advocate,
for Respondent No.1.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MS. JUSTICE DEEPA SHARMA

ORDER

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22.01.2016

The appellant's grievance is that without first determining whether she is a Judgement Debtor or legal heir, the Court should not have issued directions impugned in the present proceedings. Late Sh. R.K. Bhandari, the appellant's father-in-law was the owner of B-217, Greater Kailash Part-I, New Delhi [hereafter "G.K. property"] who had secured it through mortgage whilst borrowing money from the Indian Overseas Bank. Defaults on his part led to initiation of two legal proceedings – one, before the Debts Recovery Tribunal (DRT) and another before this Court in Suit No.3872/1992. A composite settlement was arrived at through which the borrower – late Sh. R.K. Bhandari agreed to pay ₹42 lakhs as against all outstanding dues which were subject matter of both proceedings. This was embodied in a joint application under Order XXIII Rule 3 CPC, allowed by the

Court and a decree was ordered in its terms on 12.09.2001, which is part of the record.

The appellant's contention is that she purchased the said G.K. property from Sh. R.K. Bhandari on 18.09.2001. Sh. R.K. Bhandari appeared to have borrowed amounts from the Himachal Pradesh State Industrial Development Corporation Ltd. (HPSIDC), which too initiated proceedings for the recovery of amounts due in the State of Himachal Pradesh. This culminated in a decree which was transferred for execution before this Court. It initiated execution petition being Ex. Pet. 293/2011. In the said execution proceedings, this Court issued an order attaching the G.K. property. The appellant preferred objections under Order XXI Rule 58 CPC, contending that she was the lawful owner of the property since the title passed on to her on 18.09.2001 and that she was not late Sh. R.K. Bhandari's legal heir since in law, her husband was the legal heir of late Sh. R.K. Bhandari. By the impugned order, the learned Single Judge, after considering the pleadings – which included the HPSIDC's reply – which is also part of the record in this appeal, directed the appellant *inter alia* to furnish income particulars for the last five years preceding the date of acquisition of the property; he also directed the appellant to disclose the source of funds at that time.

It is contended that the learned Single Judge could not have issued the impugned directions firstly because no notice was issued on the application, being EA 71/2013. More substantially, it is urged that without first determining the rights of parties under Order XXI Rule 58, CPC, the learned Single Judge could not have issued

directions which were more in the nature of those covered by Order XXI Rule 41 CPC.

This Court is of the opinion that so far as the first objection is concerned, the same does not merit consideration. The respondent Decree Holder was before the Court and had filed a reply. Therefore, it is deemed to be a case of accepted notice. As for the other arguments, given the nature of objections urged by the Decree Holder, the appellant's contention that the learned Single Judge's directions were premature, cannot be countenanced. Undoubtedly, there is no final determination yet on the objections urged under Order XXI Rule 58 CPC. However, there is nothing to preclude the learned Single Judge from issuing the directions that he did. It goes without saying that all contentions of the parties, including the appellant's objections on merit that she had acquired lawful title and that the Decree Holder's objections to such contentions would be considered on merits. It is open to the appellant to file such pleadings as may be necessary for her in support of the contentions that might be urged before the learned Single Judge in the execution proceedings in respect of the impugned order.

The appeal is dismissed but in the above terms.

S. RAVINDRA BHAT, J

DEEPA SHARMA, J

JANUARY 22, 2016/ajk