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

\+ **EX.F.A. 5/2017**

% **4th May, 2017**

CANARA BANK ..... Appellant

Through: Mr. Baldev Malik and Mr. Arjun Malik, Advocates.

versus

M/S LUTHRA INDUSTRIES & ORS. ..... Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not? **YES**

VALMIKI J. MEHTA, J (ORAL)

C.M. Appl. No. 10598/2017 (for exemption)

Exemption allowed, subject to all just exceptions.

C.M. stands disposed of.

EX.F.A. 5/2017 and C.M. Appl. No. 10597/2017 (for stay)

1. This execution first appeal is filed by the appellant/decree holder/bank impugning the judgment of the executing court dated 21.1.2017 which has dismissed the execution petition filed by the appellant/bank on two counts. The first count for dismissing of the execution petition is that there is settlement and satisfaction of the decree in terms of One Time Settlement (OTS) offer accepted by the appellant/bank and the second count is that a decree cannot be

executable against an immovable property, inasmuch as, the immovable property is a residential property and hence exempted from attachment in Delhi under Section 60(1) (ccc) of the Code of Civil Procedure, 1908 (CPC). Reference to the judgment debtors in this case is reference to the legal heirs of original judgment debtor no. 2/defendant no. 2/Mr. Rajindra Kumar Malhotra.

2. Admittedly, the appellant/bank received a sum of Rs.6,25,000/- in terms of the OTS offer given by the judgment debtors. This OTS offer to the appellant/bank was accompanied by an amount of Rs. 6,25,000/- and which was deposited with the appellant/bank/decree holder. Though, the case of the appellant/bank is that the said OTS offer was rejected vide letter of the Head Office dated 28.7.2016 sent to the concerned branch at the New Delhi address, and which was further communicated by the appellant/bank to the judgment debtors vide its letter dated 5.11.2016, however, it is seen that if the OTS offer was rejected by the appellant/bank, then the appellant/bank also had to straightaway refund or at least offer to return/refund the amount of Rs.6,25,000/- which was deposited with the appellant/bank by the judgment debtors. Admittedly, there is no communication of the appellant/bank to the judgment debtors that the amount of Rs.6,25,000/- deposited as OTS now stands released or that

amount be taken back by the judgment debtors. Once that is so, the appellant/bank cannot have its cake and eat it too i.e the appellant/bank cannot reject the OTS offer and yet retain the OTS amount. In any case, retaining of the amount without returning the same or offering to return the same will amount to settlement because for settlement not to have become final, the amount should have been returned or offered to be returned to the judgment debtors, and which is not the case.

3. I would also like to note that the letter of the appellant/bank dated 5.11.2016 relied upon by counsel for the appellant/bank does not state that the OTS offer of the judgment debtors is rejected and this letter only states that the judgment debtors must improve the offer as regards the OTS.

4. In view of the above discussion, therefore, I do not find any illegality in the impugned judgment holding that the appellant/bank received an amount of Rs.6,25,000/- as settlement and which has become final.

5. The second issue is whether the immovable property which is sought to be attached and sold in execution of the subject judgment and money decree dated 13.4.2004 is capable of attachment and sale in execution of the money decree. The immovable property in

question is B-1/495, Janakpuri, New Delhi-100058. It is undisputed that in Delhi because of Section 60(1)(ccc) CPC, as applicable to Delhi, one residential house of a judgment debtor in which the judgment debtor is staying and which is not mortgaged to the creditor/bank cannot be sold in execution of the money decree.

6. Learned counsel for the appellant/bank, however, relies upon the judgment of the learned Single Judge of the Punjab and Haryana High Court in the case of ***K.L. Bawa Vs. M/s Basant Textiles, AIR 1982 Punjab and Haryana 275*** to argue that it has been held by the learned Single Judge of the Punjab and Haryana High Court with respect to similar case of Section 60(1)(ccc) CPC that a legal heir of a judgment debtor will not get the benefit of the provision of Section 60(1) (ccc).

7. With utmost respect I cannot agree with the ratio of the judgment in the case of ***K.L. Bawa (supra),*** inasmuch as, the reasoning contained in the said judgment is incongruous even on a plain reading because on the one hand the ratio of the judgment is that since a judgment debtor is defined under Section 2 Sub-Section 10 CPC only to mean a person against whom a decree has been passed and that since a legal heir is not a person against whom a decree has been passed, and

hence a legal heir would not have the benefit of Section 60(1)(ccc) CPC, however how is it that the money decree which has to be/is executed against the legal heir is on the basis that the legal heir is a judgment debtor. It is because a legal heir is a judgment debtor that a money decree is sought to be executed against the judgment debtor. I, therefore, respectfully disagree with the ratio in the case of ***K.L. Bawa (supra)*** and hold that a legal heir against whom a money decree is sought to be executed is very much a judgment debtor and accordingly such legal heir would also have the benefit of Section 60(1)(ccc) CPC.

8. In view of the above, there is no merit in the appeal and the same is hereby dismissed.

MAY 04, 2017 **VALMIKI J. MEHTA, J**

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