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

+ CS(OS) 1707/2014 and CC No. _____(to be numbered) (counter claim by defendant) and IA 132/2017 (u/O. 23 R. 3 CPC), IA 8739/2015 (u/O. 39 R. 2A r/w S. 151 CPC) and IA 3079/2016 (u/s. 151 CPC)

MAYURA KUMAR

..... Plaintiff

Through: Ms. Anita Sahani, Advocate

versus

PIYUSH KUMAR

..... Defendant

Through: Ms. Manjula Gandhi and Mr. S. Kumar,
Advocates

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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06.01.2017

This suit was instituted in May 2014 by the plaintiff wife against the defendant husband seeking the following reliefs :-

- “A. Pass a decree of declaration that the properties namely,*
- * properties – bearing plot no.207, Block A Swarn Nagari Greater Noida*
 - * Property bearing no.D-253, LGF Sarvodaya Enclave, New Delhi.*
 - * Property bearing no.KH-9/18/19, Jaunapur Tehsil Haus Khas, New Delhi.*
 - * Property bearing Plot No.126, Block C, Sector-108, Noida UP.*
 - * Property bearing Dunagiri #1, Uttarakhand approx. 88+ Nalis*
 - * Property bearing Dunagiri#2, Uttarakhand approx 79+ Nalis*
 - * Property bearing Dunagiri#3, Uttarakhand approx 2+ Nalis*

All the above properties belong to the plaintiff and defendant

together and that the defendant is holding the said properties in trust and in fiduciary capacity for the benefit of the plaintiff in terms of Section 4(3)(b) of Benami Transactions (Prohibition) Act.

B. Pass a decree of partition with regard to the

** Properties bearing plot No.207, Block A Swarn Nagari, Greater Noida*

** Properties bearing Plot no.42, Block A, Swarn Nagari, Greater Noida*

** Property bearing no.D-253, LGF Sarvodaya Enclave, New Delhi.*

** Property bearing No.KH-9/18/19, Jaunapur Tehsil, Hauz Khas, New Delhi.*

** Property bearing Plot No.126, Block C, Sector 108, Noida, UP*

** Property bearing Dunagiri # 1, Uttarakhand approx 88+ Nalis*

** Property bearing Dunagiri # 2, Uttarakhand approx 79+ Nalis*

** Property bearing Dunagiri # 3, Uttarakhand approx 2+ Nalis*

C. Pass an order of permanent injunction restraining the defendant, his servants, agents, assigns, etc. from dispossessing the plaintiff from the property namely Ananda Farm, KH-9/18/19, Gadaipur Main Road, Jaunapur, New Delhi where the plaintiff and the children of the parties are residing.

D. Pass an order of permanent injunction restraining the defendant from alienating or creating any third party rights in the properties namely

** Property bearing No. Plot No.207, Block A, Swarn Nagari, Greater Noida.*

** Property bearing no.Plot No.42, Block A, Swarn Nagari, Greater Noida.*

** Property bearing No.D-253, LGF Sarvodaya Enclave, New Delhi.*

** Property bearing No.KH-9/18/19, Jaunapur Tehsil Haus Khas, New Delhi.*

** Property bearing no.41135, Vaishali Ghaziabad*

- * Property admeasuring about 88+ Nalis at Dunagiri, Village Chari District Almora, Uttarakhand.*
- * Property admeasuring about 79.7/16+ Nalis at Dunagiri at Village Chari District Almora Uttarakhand*
- * Property admeasuring about 2+ Nalis at Dunagiri Village Chari District Almora Uttarakhand*
- * Property bearing Plot No.126, Block C, Sectort-108, Noida, UP.*

E. Pass an order of permanent injunction restraining the defendant, his assigns and agents from obstructing the travel of the plaintiff to USA to drop her sons at the Universities in USA.

F. Pass an order of permanent injunction restraining the defendant from entering the house where the plaintiff resides with her son Raghav Kumar and / or to create any obnoxious scene outside the house.

G. Pass an order of permanent injunction restraining the defendant from leaving the country without making financial arrangements for the plaintiff and his children.

H. Pass an order of mandatory injunction to complete the urgent paperwork and other required documentation of income tax returns to enable the children to get the financial aid from the respective Universities.

I. Pass an order of mandatory injunction directing the defendant to pay to the plaintiff an amount of Rs.25,00,000/- forthwith on account of payment of childrens' fees in the Universities in USA and their expenses for the first semester.

J. Pass an order of mandatory injunction directing the defendant to pay to the plaintiff the expenses on account of payment to the Universities and other miscellaneous expenses such as health insurance, travel expenses, living expenses, stationery and electronics expenses etc. till the completion of their education.

K. Cost of the suit may be awarded to the plaintiff.”

The defendant appeared to contest and submitted his written statement in August 2014 whereby he also submitted counter claim seeking the following reliefs :-

“(A). Them from obstructing the defendant / applicant from entering his property being Ananda Farm, situated at Village Jonapur, Tehsil Hauz Khas, New Delhi measuring 1 Bigha and 18 Biswas, and also from interfering with the peaceful possession of the property of the defendant / applicant being Ananda Farm, situated at Village Jonapur, Tehsil Hauz Khas, New Delhi measuring 1 Bigha and 18 Biswas, as detailed in para 11 (h) above and further prohibiting them from interfering with the day to day working of the defendant / applicant.

(B).Pass and pronounce a decree of mandatory injunction directing plaintiff / defendant and / or her servant, agents, representatives, nominees, assigns, etc. to restore and handover all important documents, passport, property papers and title deeds, company records, etc. taken by her from property Ananda Farm, situated at Village Jonapur, Tehsil Hauz Khas, New Delhi measuring 1 Bigha and 18 Biswas to the defendant / counter claimant.

(C).Pass and pronounce a decree of mandatory injunction against plaintiff / defendant and / or her servant, agents, representatives, nominees, assigns, etc. directing her / them to vacate the property of the defendant / counter claimant being Ananda Farm, situated at Village Jonapur, Tehsil Hauz Khas, New Delhi measuring 1 Bigha and 18 Biswas as detailed in para 11 (h) above.”

From the submissions and averments earlier made and also now brought on record, *inter alia*, through the joint application under

Order 23 Rule 3 CPC (IA 132/2017), it appears that the parties have also been involved in other litigation including proceedings arising out of Criminal case no.34/1/2015 under Section 12 of the Protection of Women from Domestic Violence Act, 2005, criminal complaint no.104/2015 lodged with Crime Against Women Cell, Saket and FIR no.300/2016 lodged in Police Station Fatehpur Beri, New Delhi.

During the pendency of these proceedings, on the request of the parties, they were referred to mediation centre at High Court (Samadhan) to explore the possibility of an amicable settlement of their disputes. The mediation process has resulted in a settlement agreement being entered upon by the parties on 29.12.2016. The original settlement agreement signed by both sides and their respective witnesses / counsel has come on record.

In the wake of the above noted settlement agreement dated 29.12.2016, both parties have come up with this joint application (IA 132/2017) under Order 23 Rule 3 CPC praying for the said compromise to be accepted and a decree in its terms to be passed besides order for refund of the court fee in accordance with the provisions of the Court Fees Act, 1870, leaving the parties to bear their own costs.

The application is supported by affidavits of the plaintiff as well as the defendant. The application, *inter alia*, states, that the compromise has been arrived at by the parties voluntarily out of their own free consent, without any force, pressure, coercion or undue influence from any side, it being lawful and not infringing any legal

rights of either side, each side also submitting an undertaking not to raise any objection of any nature whatsoever in future against the consent decree for which a prayer is made. The application further sets out the undertaking of the parties that they would not file any other case against each other and / or any other member of their respective families on account of the dispute arising out of their matrimonial relations except for the case for grant of divorce by mutual consent as has been agreed upon. The terms of settlement incorporated in the settlement agreement dated 29.12.2016 are set out in para 4 of the joint application as under :-

- “1. Defendant shall continue to be the owner of all the following immovable and moveable properties:-*
- i) Plot No.135, Sector-4, Vaishali, Ghaziabad, Uttar Pradesh.*
 - ii) Plot No.A-42, SwarnNagri, Greater Noida, Uttar Pradesh.*
 - iii) Plot No.126, Block C, Sector-108, Noida, Uttar Pradesh.*
 - iv) Premises at D-253, Lower Ground Floor, Sarvodaya Enclave, New Delhi.*
 - v) Two properties admeasuring about 88 Nalis (4.5 Acres) and another piece of land admeasuring about 79.7/16 Nalis (about 4 Acres) at Dunagari, Village Chari District Almora, Uttarakhand.*
 - vi) Small plot measuring about 225 sq. mtrs. in Dunagiri, Village Kholiabanjh, District Almora, Uttarakhand.*

And/ or any other property in the name of the Defendant or the companies including the investment in India Reit Fund, not mentioned in the present Settlement Agreement, shall continue to be owned by the Defendant and the said

companies, respectively exclusively and the plaintiff shall not claim any right, title or interest in the same and/or any other property/ies of the Defendant.

2. Plaintiff shall become the absolute owner of the property "Ananda Farm" situated at Kh-9/18/19 Gadaipur Main Road Jaunapur New Delhi 110030. Defendant shall sign/ execute all the necessary documents for the purpose of mutation/ registration of the property "Ananda Farm" situated at Kh-9/18/19 Gadaipur Main Road Jaunapur New Delhi 110030, in the name of the Plaintiff, on or before 10th December 2017 in terms of the Decree passed by this Hon'ble Court, whereafter Defendant shall not claim any right, title or interest in the same and/or any other property/ies of the Plaintiff.

3. The Defendant shall be at liberty to continue or wind up the Companies as deemed fit by him. The plaintiff shall resign/ retire from the business entities/ companies Info Edge Solutions Pvt. Ltd. and Info Edge Rocks Pvt. Ltd., and will sign/execute document(s) got prepared by the defendant for the purpose to legally step out of the same on or before 30th January, 2017 and shall have no liability whatsoever in this behalf except paying the Capital Gain tax and all other taxes such as income tax and dividend tax, if any, on account of sale of the Company property namely A -207 Swarn Nagari Greater NOIDA, UP in terms of order dated 8.8.2014 and 16.12.2014. The Plaintiff will also get the company accounts satisfactorily audited in this respect. The Plaintiff will also sign / execute all necessary documents pertaining to the affairs of the companies, past or present, required for getting the same filed before appropriate authorities, after the Defendant has signed the same. The Plaintiff shall cease to avail any benefit out of the Company and/or its accounts with immediate effect.

4. The Plaintiff shall pay the Capital Gain Tax and other statutory taxes/interest/penalties, if any, on account of

sale of Company property at A-207,SwarnNagari, Greater NOIDA, UP in terms of orders dated 8.8.2014 and 16.12.2014.

5. *The Plaintiff shall pay to Single River Infrastructure and Land Developers Pvt. Ltd. the amount as agreed between the plaintiff and Single River Infrastructure and Land Developers Pvt. Ltd. on account of liability of the defendant on or before 30th June 2017, so that the award dated 04.02.2016 in Arb. P. No. 333 of 2010, is completely satisfied.*

6. *That the Plaintiff shall bear the Capital Gain tax liability and other statutory taxes/interest/penalties, brokerage, if any, on account of sale of plot No. bearing No. A-112 Swarn Nagari Greater NOIDA, UP.*

7. *That the plaintiff shall pay an amount of Rs.30,00,000/-(Rupees Thirty Lakh) to the defendant towards existing other liability.*

8. *That the Plaintiff shall bear the expenses for registration and mutation of the property "Ananda Farm" situated at Kh-9/18/19 Gadaipur Main Road Jaunapur New Delhi 110030.*

9. *That the liabilities as mentioned herein above in Para 4 to 7 shall be born out of the sale proceeds of the plot bearing No. A-112 Swarn Nagari Greater NOIDA, UP, for which both the parties will be at liberty to bring the purchaser paying highest sale consideration and the same shall be payable in the following manner:*

First to Capital Gain Tax and other statutory taxes/interest/penalties, if any, on account of sale of Company property at A-207,SwarnNagari, Greater NOIDA, UP.

Second to Single River Infrastructure and Land Developers Pvt. Ltd. the amount as agreed between the plaintiff and

Single River Infrastructure and Land Developers Pvt. Ltd., so that the award dated 04.02.2016 in Arb. P. No. 333 of 2010, is completely satisfied.

Third to tax liability and brokerage fee on account of sale of plot No. bearing No. A-112 SwarnNagari Greater NOIDA, UP.

Fourth to defendant an amount of Rs.30,00,000/- (Rupees Thirty Lakh) towards other existing liability.

It is however clarified that the aforesaid transactions shall be transparent between the parties, the Plaintiff will inform about the same to the Defendant and in case of any shortfall in meeting the above liability, the defendant shall bear and pay the same.

10. It is agreed between the parties that the Original title deeds of the properties mentioned in paragraph 1 herein shall be handed over to the Ld. Mediator by the plaintiff on 06.01.2017, to be kept in trust. The Ld. Mediator has agreed to offer his kind offices for this purpose. The Defendant shall be at liberty to identify one of the properties, if required to be liquidated, and the Mediator shall hand over the original title deeds of the said identified property to the defendant with prior intimation to the Plaintiff. The remaining original title deeds of the properties shall be handed over to the Defendant at the time of transfer of the property "Ananda Farm" situated at Kh-9/18/19 Gadaipur Main Road Jaunapur New Delhi-110030. In case the defendant is required to produce any of the Title deeds before any authority, it is left to the wisdom of the Mediator to make it possible with intimation to the plaintiff.

11. That the plaintiff shall withdraw the complaint case No. 34/1/15 in the Court of ACMM District Courts Saket Under Section 12 Of The DV Act and Complaint No. 104/15 at The Crime Against Women's' Cell (CAW) Saket on or before 15th January, 2017.

12. *Parties shall file a Petition for grant of divorce by mutual consent (first motion) on or before 15th January, 2017 and the Petition for grant of divorce by mutual consent (Second motion) shall be filed simultaneously at the time of transfer of the property "Ananda Farm" situated at Kh-9/18/19 Gadaipur Main Road Jaunapur New Delhi 110030.*

13. *The property "Ananda Farm" situated at Kh-9/18/19 Gadaipur Main Road Jaunapur New Delhi 110030, shall be transferred in the name of the Plaintiff on or before 10th December 2017, in terms of the Decree passed by this Hon'ble Court.*

14. *That defendant shall sign the Petition for Quashing the FIR No. 0300 under section 498A and 403 of IPC registered on 1.6.2016 lodged in PS FatehPur Beri, Mehrauli New Delhi and the Plaintiff shall co operate and sign the necessary document for no objection to the quashing of the said FIR No. 0300 at the time of signing the Petition for grant of divorce by mutual consent (second Motion). If required, the Plaintiff shall also appear before the appropriate Court, Forum, etc. for the said purposes.*

15. *The Parties further agree that they as well as their heirs, successors, executors, assigns, nominees, etc., shall remain bound by these terms and conditions.*

16. *The Parties further agree not to interfere in the life, business and property/ies of the other party and their family and associates.*

17. *Parties shall be entitled to refund of court fees paid by them in the present suit, in terms of law.*

18. *By signing this Agreement the parties hereto state that they have no further claims or demands against each*

other and all the disputes and differences in this regard have been amicably settled by the Parties hereto through the process of Mediation.

19. That the parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the settlement agreement and not to dispute the same hereinafter in future. Parties further undertake not to file any new cases against each other in future. Any violation of any of the terms settled hereinabove shall amount to Contempt of Court and the parties retain their right to approach the Hon'ble Court for the legal remedy as available to them.

20. That since the parties agree that the marriage between the parties has irretrievably broken down and that there is no possibility of any reconciliation and under no circumstances, either of the parties shall withdraw their consent for grant of divorce by mutual consent.

21. The Parties undertake to strictly comply with terms and conditions of this Settlement Memorandum and to sign and verify the necessary petitions, applications, undertakings, affidavits, etc. to be moved before appropriate forum/authority/tribunal/court to give effect to the terms of this settlement, even in future.

22. It is further agreed that in case the terms and conditions recorded in this Settlement were/are not given effect to and/or implemented and/or any Party fails to appear before any court of law to give effect to the Settlement, the aggrieved Party may approach the concerned Court for compliance of the terms and conditions of this Settlement at the risk and cost and even as an attorney of the other party.

23. The Parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement.

24. *No part of this Settlement could be amended/ altered/ modified unless agreed by both the Parties, in writing.”*

Having heard both sides and perused the record, this court is satisfied that the compromise arrived at for a consent decree, as prayed for jointly, has been entered upon voluntarily without any undue influence, fear or coercion. Thus, a compromise decree in terms of the settlement as set out above is hereby passed with directions that both sides shall be bound by their respective commitments and undertakings leaving them to bear their own respective costs. The original settlement agreement now marked as Ex. PA shall form part of the judgment /decree.

The parties shall have the liberty to take out such further proceedings in accordance with law as are necessary to effectuate the consent decree.

The court fees earlier paid on the suit, and on the counter claim, shall be refunded in accordance with law.

Decree sheet shall be drawn up accordingly.

The suit, counter claim and the pending applications stand disposed of in above terms.

A copy of this order be given *dasti* to the parties.

R.K.GAUBA, J

JANUARY 06, 2017

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