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

+ **RFA 394/2017**

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Date of Judgment: 15th May, 2017

AMAR NATH

..... Appellant

Through: Mr. J.M Bari, Advocate with
Ms.Meenakshi Bari, Advocate.

versus

JEE RAM & ANR.

..... Respondents

Through: Mr. D.K. Sharma, Advocate.

**CORAM:
HON'BLE MR. JUSTICE VINOD GOEL**

VINOD GOEL, J. (ORAL)

1. Challenge in this appeal under Section 96 read with Order 41 Rule 5 of the Code of Civil Procedure, 1908, is the judgment dated 22.03.2011 and decree dated 10.05.2011 as rectified on 04.02.2017 passed by the court of learned Additional District Judge, Central-07, Delhi in Suit No.649/2008.
2. The suit of the respondents/plaintiffs, for possession against the appellant/defendant in respect of their property consisting of two rooms, latrine, bath-room and balcony on the first floor in the premises no. 64/1, Shakar Pur Khas, Delhi-110092, was decreed by judgment dated 22.03.2011 and decree dated 10.05.2011. A decree of permanent injunction was also granted in favour of the respondents/plaintiffs restraining the appellant/plaintiff from transferring any portion or parting away any portion of the suit

premises and from selling, transferring or delivering the possession to any third party or creating any third party interest, till the property is delivered to the respondents/plaintiffs. The appellant was also directed to pay mesne profit @ Rs.4,400/- per month to the respondents/plaintiffs w.e.f. 30.11.2007 till the possession of the property is handed over to them by the appellant along with pendente lite and future interest @ 9% per annum till the realization of the decretal amount and possession is handed over to the respondents/plaintiffs.

3. The appellant/defendant is the son of the respondents/plaintiffs.
4. The appellant/defendant challenged the impugned judgment and decree by RFA No. 355/2011 and that was dismissed in default by this court on 21.11.2013. The appellant/defendant filed CM No.932/2014 for restoration of the appeal, which was considered by this court on 22.04.2014. During hearing of the CM, it was pointed out that there was a settlement between the parties before the Executing Court in execution no. 13/14. The Executing Court vide order dated 21.03.2014 recorded that the appellant/defendant/judgment debtor had agreed to vacate the suit property on or before 01.10.2014 and made a part payment of Rs.60,000/- towards the decretal amount and the appellant had undertaken to pay the balance decretal amount of Rs.1,70,000/- in terms of the settlement. This court had taken on record the order dated 21.03.2014 passed by the Executing Court and accordingly CM No. 932/2014 for restoration of RFA No. 355/2011 was disposed of.
5. Subsequently, the appellant/defendant filed CM No. 34856/2016 in dismissed RFA No. 355/2011 under Section 151 of CPC for recalling

of the order dated 22.04.2014 on the ground that there was no lawful agreement between the parties within the meaning of Order XXIII Rule 3 CPC and therefore, despite an undertaking given by the appellant/defendant before the Executing Court and an amicable settlement between the parties, the appellant has a right to maintain the present appeal and the pending applications. Learned counsel for the appellant had relied upon the judgment of the Hon'ble Supreme Court in the case of **Sri Budhia Swain & Ors. Vs. Gopinath Deb & Ors., (1999) 4 SCC 396**, to contend that the court has inherent powers to recall its orders.

6. This court, vide order dated 23.09.2016, has dismissed the CM No. 34856/2016 and the relevant portion of order reads as under: -

“8. In the present case, none of the conditions for recall of the order dated 22.4.2014 as mentioned by the Supreme Court, exist. Here is a case where the appellant (Judgment Debtor) had appeared before the Executing Court through counsel and stated that parties had arrived at an amicable settlement. A perusal of the order dated 21.3.2014 passed by learned Addl. District Judge, Tis Hazari Courts, in Execution Petition No. 13/2014, reveals that the Court had facilitated the parties to settle their dispute and the statement of the appellant herein (Judgment Debtor) as also of the respondent herein (Decree Holder) were separately recorded to the effect that the parties had arrived at an amicable settlement whereunder the appellant had agreed to vacate the suit property on or before 01.10.2014. Further, the appellant had paid a sum of Rs.60,000/- to the respondent and had undertaken to pay the balance sum of Rs.1,70,000/- on or before 01.10.2014 and in case of default, pay interest @18% p.a. on the reducing balance, till final payment. It was also stated by the appellant that he had made the statement of his own free will, without any pressure or compulsion from any corner. Similarly, the statements of the respondents (Decree Holder) and their counsel were recorded wherein receipt of Rs.60,000/- from the appellant was confirmed and a request was made to the Execution Court to dispose of the Execution Petition in view

of the aforesaid statements, with liberty to file a fresh petition, in case of default.

9. Pertinently, the appellant is the son of the respondents and was allowed to live in the first floor of the suit premises. On his failure to vacate the same, the respondents had instituted a suit for possession, permanent injunction, recovery of damages and mesne profits against him in the year 2007. Vide judgment dated 22.3.2011, the said suit was decreed in favour of the respondents. Aggrieved by the said decision, the appellant had filed an appeal in this court. As the appellant had stopped appearing in the said appeal after 14.5.2013, the same was dismissed in default on 21.11.2013. In January, 2014, applications for restoration, condonation of delay etc. were filed by the appellant, but on 22.4.2014, in view of the amicable settlement arrived at between the parties in Execution Petition No.13/2014, the said applications were disposed of.

10. After conveniently continuing to occupy the suit premises for a period of two years on the strength of the settlement arrived at with the respondents, the appellant has the temerity to file the present application for seeking recall of the order dated 22.4.2014. In view of the fact that none of the conditions enumerated in the case of Sri Budhia Swain (supra) for recall/setting aside an order apply to the facts of the case in hand and further, considering the fact that the appellant was permitted to occupy the suit premises only on account of the settlement brokered between the parties in the execution proceedings, he is estopped from seeking recall of the order dated 22.4.2014.

11. The application is accordingly dismissed as being devoid of merits.”

7. It is submitted by the learned counsel for the appellant/defendant that the respondent/plaintiff had obtained the judgment dated 22.03.2011 and decree dated 10.05.2011 by practicing fraud upon the court and he has already paid Rs.60,000/- on 21.03.2014 before the Executing Court towards the decretal amount. He submits that the

plaintiffs/respondents had filed an application under Section 152 of Code of Civil Procedure for modification of the decree to incorporate the details of the property in question in the decree-sheet and after hearing both the parties, the application of the respondents/plaintiffs was allowed on 22.01.2016. Learned counsel for the respondent submits that the appellant then filed CM (M) 371/2016 challenging the order dated 22.01.2016 by which the learned Additional District Judge allowed the application of the respondents/decreed holders/plaintiffs to amend the decree. This CM (M) 371/2016 was dismissed as withdrawn on 25.04.2016. But in the present RFA, this fact has not been disclosed by the appellant.

8. Despite order dated 22.01.2016, amended decree was not drawn up by the learned Additional District Judge which led the plaintiffs/respondents to move another application before the trial court on 23.12.2016 and the trial court passed the order for preparation of the amended Decree on 04.02.2017 and on that day itself the amended Decree-sheet was prepared.
9. Learned counsel submits that the amended decree gives fresh cause of action to the appellant to file another RFA.
10. Learned counsel for the appellant has relied upon the judgments of the Apex Court titled as **P.R. Deshpande vs. Maruti Balaram Haibatti, (1998) 6 SCC 507**, and **Jagdish Lal vs. Parma Nand, (2000) 5 SCC 44**, which are not at all applicable to the facts of the present case. RFA No. 355/2011 filed by the appellant against the impugned judgment and decree has already been dismissed in default on 21.11.2013 and his CM No. 932/2014 for restoration has already become infructuous in view of the settlement between the parties and

undertaking given before the Executing Court on 21.03.2014. For these reasons second CM No. 34856/2016 of the appellant had been dismissed on 23.09.2016. The corrections which have been incorporated in the impugned decree are only clerical in nature and do not affect the substantive rights of the parties at all. The identity of the property in question was never disputed by the appellant. The settlement has already been acted upon as the appellant had made part payment of Rs.60,000/- before the Executing Court. Order dated 21.03.2014 passed by the Executing Court was taken on record by this court on 22.04.2014. CM (M) No. 371/2016 and CM No. 14517/2016 were filed by the appellant challenging the order dated 22.01.2016 by which decree was ordered to be amended, was dismissed as withdrawn on 25.04.2016.

11. The Apex Court in **Ravinder Kaur Vs. Ashok Kumar & Another, (2003) 8 SCC 289**, observed that Courts of law should be careful enough to see through such diabolical plans of the judgment debtors to deny the decree holders the fruits of the decree obtained by them.
12. It is noticed that the impugned judgment is dated 22.03.2011 whereas the decree is dated 10.05.2011. Learned Trial Court did not ensure that the description of the property is mentioned in the Decree Sheet. Order XX Rule 6 of CPC prescribes the contents of decree which reads as under: -

“6. Contents of decree. – (1) The decree shall agree with the judgment; it shall contain the number of the suit, the [names and descriptions of the parties, their registered addresses,] and particulars of the claim, and shall specify clearly the relief granted or other determination of the suit.

(2) The decree shall also state the amount of costs incurred in the suit, and by whom or out of what property and in what proportions such costs are to be paid.

(3) The Court may direct that the costs payable to one party by the other shall be set off against any sum which is admitted or found to be due from the former to the latter.”

13. Order XX Rule 9 of CPC directs that when the suit is for recovery of immovable property, it must mention description of such property, which reads as under: -

“9. Decree for recovery of immovable property. – Where the subject-matter of the suit is immovable property, the decree shall contain a description of such property sufficient to identify the same, and where such property can be identified by boundaries or by numbers in a record of settlement or survey, the decree shall specify such boundaries or numbers.”

14. Order XX Rule 7 of CPC provides that the decree shall bear date the day on which the judgment was pronounced and it reads as under: -

“7. Date of decree. – The decree shall bear date the day on which the judgment was pronounced, and, when the Judge has satisfied himself that the decree has been drawn up in accordance with the judgment, he shall sign the decree.”

15. The learned Additional District Judge has failed to mention the description of property in terms of Order XX Rule 6 and Rule 9 of CPC. Instead of mentioning the same date of judgment i.e. 22.03.2011 in the decree sheet, learned Additional District Judge has put the date as 10.05.2011. She also signed it on the first page at the bottom above the name of Advocate. The succeeding learned Additional District Judge has ordered to rectify the decree sheet vide order dated 22.01.2016 in M.A.No. 33/2015 and ordered to mention the description of property in the decree-sheet, but decree-sheet was

not rectified. This troubled the decree-holders/plaintiffs/respondents to move another application before the same learned Additional District Judge and only then amended decree sheet was ordered to be prepared on 04.02.2017 and the amended decree sheet was prepared on that day.

16. In **Ravinder Kumar (supra)**, the Apex Court observed that errors on the part of Judicial Forums only encourage frivolous and cantankerous litigations causing law's delay and bringing bad name in the Judicial system.
17. A litigant who pollutes the stream of justice or who touches pure foundation of Temple of Justice with tainted hands is not entitled for any indulgence and should be dealt with heavy hands. The identity of the property has never been in question and by amending the decree only the description of the property were mentioned. The appellant had already filed RFA No. 355/2011, which was dismissed in default on 21.11.2013 and the CM No. 932/2014 for restoration of the said RFA No. 355/2011 was disposed off as nothing survived therein due to the settlement, which was arrived at between the parties before the Executing Court on 21.03.2014. By settlement, the appellant had given an undertaking to vacate the property on or before 01.10.2014 and pay the arrears. The order dated 21.03.2014 passed by the Executing Court was taken on record by this court on 22.04.2014. Despite undertaking, the appellant/defendant has failed to deliver the possession of the plaintiffs/respondents. Instead of vacating the property in question, he filed another CM No. 34856/2016 for recalling of the order dated 22.04.2014 pleading that there was no lawful agreement which was dismissed by this court on 23.09.2016.

In order to remain in occupation of the property in question by avoiding the judgment and decree of the trial court, the appellant has filed the present second RFA. Subsequently, the appellant filed CM No. 34856/2016 in RFA 355/2011 to recall order dated 22.04.2014 pleading that there was no lawful agreement between the parties. This was dismissed by this court on 23.09.2016. When amended decree sheet was prepared on 04.02.2017 he has filed the present RFA, which is gross misuse of the process of the court and is dismissed with exemplary cost of Rs.25,000/-.

18. It is pointed out that the execution filed by the respondents/decreed holders/plaintiffs is pending before the learned Additional District Judge for 25.05.2017. The appellant is delaying the delivery of possession of the suit property to the plaintiffs/respondents on one pretext or another or by initiating frivolous litigations. Under Section 151 of the Code of Civil Procedure, it is provided that nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court.
19. In view of the inherent power of the court, this court is not powerless to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the court. Therefore, it is directed that the Judgment Debtor/Appellant/defendant shall handover peaceful vacant possession of the suit property to the Decree Holders/Respondents/Plaintiffs prior to the next date in Execution i.e. 25.05.2017. In case possession is delivered by the appellant cost shall not be payable. In default, the Executing Court shall ensure the delivery of possession to the respondents/decreed holders/plaintiffs

without any further delay. Copy of this order be also sent to the Executing Court for compliance.

VINOD GOEL, J.

MAY 15, 2017
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