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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **FAO(OS) 279/2016, C.M. APPL.35680/2016 & 40834/2016**
SHIV SAHNI Appellant
Through : Sh. Amit Bhagat and Ms. Sonali
Chopra, Advocate.

versus

RENEE KHANNA & ANR Respondents
Through : Sh. Vikas Dhawan, Sh. Satyabrata
Panda and Sh. Sambit Nanda, Advocates., for
Respondent No.1.
Sh. Sanjeev Mahajan, Advocate, for LR's of
Respondent No.2.

CORAM:
HON'BLE MR. JUSTICE S. RAVINDRA BHAT
HON'BLE MR. JUSTICE NAJMI WAZIRI

ORDER
% **30.03.2017**

1. This appeal is directed against an order of the learned Single Judge dated 02.08.2016 [hereafter "the first impugned order"] and a subsequent order of 22.08.2016 [hereafter "the second impugned order"] in the course of CS(OS) 3392/2014. By the first impugned order, the learned Single Judge rejected the appellant's suit as well as the defence set-up by it in CS(OS) 3392/2014. The learned Single Judge framed issues for trial and by way of purely interim arrangement directed the appellant to either vacate the suit property (the substantial portion whereof is under his occupation) or in the alternative, in the event of his defence – the challenge to the gift deed

of his mother failing, suffer a charge @ ₹16 lakhs per month with effect from 01.08.2016 till the respondent plaintiff, i.e. Ms. Renee Khanna was put in possession of her share at the stage of the final decree in the suit filed by her.

2. The first impugned order narrates the circumstances under which such a direction was recorded, i.e. the rival versions of the parties as to the rent the property was likely to fetch. The appellant had contended that the likely rent for the premises would not be more than ₹4 lakhs per month whereas the respondent plaintiff – in CS(OS) 3392/2014 had, on the other hand, contended that the rent would not be more than ₹32 lakhs per month. It then recorded as follows:

“19. Prima facie finding the defence of Mr. Shiv Sahni to the suit for partition to be vexatious, statement of Mr. Shiv Sahni present in the Court has been separately recorded.

20. As per the said statement, Mr. Shiv Sahni and Mr. Jayant Sahni are in possession of property No. 15, Nizamuddin East and Ms. Renee Khanna is out of possession.

21. To prevent Mr. Shiv Sahni taking vexatious defence to the suit for partition to perpetuate his possession, the letting value of the property has been enquired.

22. While the counsel for Mr. Shiv Sahni as expected states that he has no idea, the counsel for Ms. Renee Khanna states that the property is capable of fetching rent of Rs.32 lakhs per month and if Mr. Shiv Sahni vacates the property, he can be paid his share of rent at

the said rate.

23. *The counsel for Mr. Shiv Sahni states that it is not convenient for Mr. Shiv Sahni to vacate, but under instructions from Mr. Shiv Sahni present in Court, states that Mr. Shiv Sahni agrees that in the event of Mr. Shiv Sahni failing in his defence of the challenge to the gift deed of the mother, the amount calculated @ Rs.16 lakhs per month with effect from 1st August, 2016 till the time Ms. Renee Khanna is put in possession of her share shall be a charge on Mr. Shiv Sahni's share in the property, whatsoever it may be.”*

3. The appellant sought a review of the order, contending that he had never consented or agreed to suffer a charge @ ₹16 lakhs per month for the property and that such a suggestion had never been made or recorded. The review was rejected by the learned Single Judge on 22.08.2016, *inter alia* in the following terms:

“6. *Be that as it may, the counsel for the plaintiff is not correct in his contention that he had not consented to the arrangement of which now review is sought. The order was dictated in the presence of the counsel for the plaintiff on 2nd August, 2016. The counsel for the plaintiff now appears to be having a change of mind.*

7. *It was enquired from the counsel for the plaintiff on 2nd August, 2016 that since prima facie the defence of the plaintiff to the suit for partition appeared to be vexatious, how the plaintiff would compensate his sister Ms. Renee Khanna for depriving her of the property or fruits thereof by delaying the decree for partition by raising such an issue.*

8. *The counsel for the plaintiff had on that day stated that the rent of the property would be less than Rs.3/4*

lacs per month which was the rent of the similar properties in Sundar Nagar (and which he reiterates today also) though he did not know the exact prevalent rent of the suit property and that can be the criteria for compensation.

9. *The counsel for the sister Ms. Renee Khanna on that date had stated that the property is capable of fetching rent of Rs.32 lacs per month and if the plaintiff Mr. Shiv Sahni vacates the property, he can be paid his share at the said rate.*

10. *It was in the aforesaid scenario that the counsel for the plaintiff under instructions from Mr. Shiv Sahni present in Court had stated that in the event of Mr. Shiv Sahni failing in the challenge to the Gift Deed, Mr. Shiv Sahni shall pay an amount calculated at the rate of Rs.16 lacs per month (since the other brother Mr. Jayant Sahni is also in possession of the property) to the sister Ms. Renee Khanna.*

11. *The counsel for the plaintiff states that the rate of Rs.16 lacs per month is very high.*

12. *The counsel for the sister Reene Khanna appearing on advance notice reiterates the offer today also.*

13. *The counsel for the sister Ms. Renee Khanna also states that in fact on the basis of said consent of Mr. Shiv Sahni and his counsel, other applications which were also for consideration had become infructuous and no order was passed thereon and the plaintiff cannot be permitted to dishonestly withdraw his consent.”*

4. It is argued by learned counsel for the appellant firstly that

consent was never given for the charge created by the impugned order of 02.08.2016. Learned counsel points at the fact that the appellant's statement which was recorded contains no mention of the likely rent, much less the charge sought to be created. Therefore, submitted learned counsel, the question of recording consent did not arise. Learned counsel also argued that the averments in the review petition clearly prove the submission that the appellant's contentions had not been taken into account nor was his consent ever elicited, much less given. It was pointedly highlighted that the appellant's counsel vehemently denied that the likely rental of the entire premises was in the range of ₹32 lakhs per month and that the clear averments in the review petition was that such a suggestion (by the respondent/plaintiff) was preposterous.

5. It was lastly urged that the order was in fact not recorded that day. However, as to when it was recorded, learned counsel had no explanation.

6. At the outset, the Court notices that the review petition itself was preferred almost three weeks after the making of the order. The review petition is silent as to the allegation made in the course of hearing today that the order was not recorded on the day it was made. These two facts, in the opinion of the Court, are significant and throw light as to what really transpired. The provisions of the Civil Procedure Code (CPC) are decisive in that there cannot be an appeal against a consent order; instead, the remedy or forum available to the aggrieved suitor is to prefer a review which affords a second

opportunity to the same authority or Judge who made the primary order. In this case, that opportunity was availed of. Learned Single Judge went into and examined the contentions thoroughly. The absence of any categorical statement that the order was not made on the day it was recorded, i.e. 02.08.2016 or that the appellant did not understand the purport of the order when dictated, in the opinion of the Court, undermines the appellant's contentions utterly. Besides, the learned Single Judge got an opportunity to take a second look at the order in the light of the contentions which was sought to be advanced even today. There was no doubt in his mind that consent as recorded was in fact given. In these circumstances, it would be unfair for the Court to delve into the proceedings and arrive at its own conclusions – as is sought to be suggested. For the foregoing reasons, this Court finds no merit in the appeal; even otherwise it is not maintainable. It is accordingly dismissed along with the pending applications.

S. RAVINDRA BHAT, J

NAJMI WAZIRI, J

MARCH 30, 2017/ajk