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

+ EX.P.No.44/2017

KARUNA BHALLA

..... Decree Holder

Through: Mr. Raman Kapur, Sr. Adv. with Mr.
Gulshan Sharma, Adv.

Versus

RAJEEV BANSAL

..... Judgement Debtor

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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09.05.2017

EA No.216/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

EX.P. No.44/2017.

3. Execution is sought of the order dated 28th October, 2015 in CS(OS) No.2479/2015 and which order is re-produced hereinbelow:-

"1. Parties have entered into a settlement agreement before the Delhi High Court Mediation and Conciliation Centre on 2.9.2015. Parties have signed the settlement agreement. Accordingly, the suit is disposed of in terms of the settlement agreement and parties will be bound by the terms of the settlement agreement dated 2.9.2015.

2. Since the suit is withdrawn at the initial stage, plaintiff, in terms of Section 16-A of the Court Fees Act, 1870, will be entitled to refund of 50% of the court fees. Registry will issue necessary certificate in favour of the plaintiff.

3. *In case, any fresh disputes arise between the parties on the basis of the settlement agreement, any of the parties is at liberty to file appropriate independent proceedings, in accordance with law.”*

4. Execution is listed subject to office objection that the decree of which execution is sought has not been filed.

5. The question of preparation of the decree, as per the tenor of the order, does not arise as the suit was withdrawn.

6. The counsel for the decree holder refers to para 1 of the said order recording that “.... the suit is disposed of in terms of Settlement Agreement and parties will be bound by the terms of the Settlement Agreement....”

7. Undoubtedly so but the said words are followed by para 2, as per which the suit was withdrawn. Not only so, in para 3 it was provided that if any fresh dispute arises between the parties on the basis of the Settlement Agreement “appropriate independent proceedings” would be filed.

8. Though it appears inequitable to require the plaintiff / decree holder to file “independent proceedings” but the parties/counsels having not taken care at the time of disposal of the suit, this Court cannot, in violation of the language of the order treat the suit as having been decreed and not withdrawn and read the order dated 28th October, 2015 as conferring the status of a decree on the Settlement Agreement.

9. A perusal of the Settlement Agreement signed by the parties, their counsels and the advocate/mediator of the Mediation Cell of this Court shows the plaintiff to have agreed to withdraw the suit for

declaration/cancellation of sale deed dated 25th March, 2013 and other reliefs, on payment by the defendant to the plaintiff of a total sum of Rs.2,25,00,000/-, with Rs.1,50,00,000/- being payable on or before 31st December, 2015 and Rs.75,00,000/- being payable on or before 31st January, 2016, in full and final settlement of all claims of the plaintiff including with respect to the immovable property subject matter of the suit. Clauses 6(iv), (v), 7 and 8 of the Settlement Agreement are as under:

“6(iv). On receipt of the above settled amount, the First Party will withdraw the present suit and the parties will be left with no claim against each other in respect of present matter in dispute. It is clarified that any default by the Second Party of this settlement will give rise to continuation of suit proceedings before this Hon’ble Court.

6(v). It is agreed between the parties that the first party, including her husband and Mr. Chander Prakash, shall return all the cheques/documents, if any, to the second party and both the parties will not initiate any other proceedings/litigation against each other in respect to the present lis.

7. That in the light of the aforesaid terms, the suit filed by the first party shall be disposed off and the first party will be entitled for refund of the court fee deposited by him under section 16 of the Court Fees Act, 1870 read with Section 89 of CPC, 1908.

8. By signing this Agreement the parties hereto state that they have been left with no further claims or demands against each other and all the disputes and differences have been amicably settled by the Parties hereto through the process of Mediation.”

10. The plaintiff her counsel, however on 28th October, 2015 when the Settlement Agreement came before this Court, did not make any statement

in terms of the Settlement Agreement and on the contrary order aforesaid was passed.

11. Though the entire monies on receipt of which only the claim of the plaintiff against the defendant was to stand settled had not been paid and the suit was to be withdrawn only thereafter and was to continue in the event of default in payment, but the suit was withdrawn even before receiving the payment.

12. A better settlement in the circumstances would have been to, instead of providing for withdrawal of suit, to provide for a decree for recovery of money in terms of Settlement Agreement to be passed so that in the event of default it could be executed. To take care of the delay in payment, a provision for payment of interest and/or of the defendant being not entitled to deal with the property till such payment or to occupy the property (which was under construction) till the payment is made, could have been made. The mediators of the Mediation Cell of this Court, while mediating and drawing up of the Settlement Agreement, ought to take care of the implementation of the settlement arrived at. The attempt of the mediator should be to bind the parties by providing such default clauses as may discourage further litigation. A Settlement Agreement drawn up by the Mediation Cell of this Court should not be allowed to furnish a cause of action for further litigation, as has happened in the present case. To provide for continuation of the suit in the event of default, only allows an unscrupulous litigant to gain time under the garb of settlement and thereafter continue with the suit.

13. This is yet another instance where settlement agreements are found to have been drawn up by the Mediation Cell of this Court and which settlement agreements rather than serving the purpose of finishing the litigation once and for all, give rise to further litigation. A copy of this order be forwarded to the Mediation Cell of this Court for appropriate action.

14. The execution is found to be not maintainable. The plaintiff / decree holder shall have remedies in law.

15. At this stage, the counsel for the plaintiff/decreed holder requests for the matter to be passed over.

16. On passover, the senior counsel for the plaintiff/decreed holder has drawn attention to Section 89(2)(d) of CPC and to Rules 24&25 of Delhi High Court Mediation and Conciliation Rules, 2004 to contend that an order, as the order of which execution is sought is, is to be treated as a decree.

17. I am unable to agree. Without the counsel for the plaintiff/decreed holder having taken care on 28th October, 2015 to have the suit decreed, the counsel for the plaintiff in the face of the order as it stands cannot possibly urge that a decree was passed.

18. The senior counsel for the plaintiff/decreed holder states that the plaintiff/decreed holder will take steps to have the order dated 28th October, 2015 corrected.

RAJIV SAHAI ENDLAW, J.

MAY 09, 2017
'pp/bs/M'..