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

\+ CM(M) 1371/2016 and CM Nos. 47781-82/2016

PREM BEHL & ANR ..... Petitioners

Through Mr.Sanjay Anand and Mr.Akshay Kapoor, Advocates for P-1.
Mr.Aditya Dewan and Ms.Noor Rampal, Advocates for P-2

versus

RANDHIR BEHL & ORS ..... Respondents

Through Mr.Mayank Wadhwa and Mr. Abhinav, Dang, Advocates for R-1
Respondent No.2-in-person.
Mr.Sachhin Puri, Sr. Advocate with Ms. Mehak Tanwar, Advocate for R-3.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% **09.03.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioners seek to impugn the order dated 04.04.2015 to the extent that the parties have been restrained from alienating and transferring their share inter se between themselves regarding the suit property being E-6, Defence Colony, New Delhi.

2. The parties are siblings and the controversy pertains to the partition of the said suit property. The parties during pendency of the suit entered into a memorandum of family settlement dated 10.09.1999. The settlement forms a

part of a consent decree which was passed by the court on 03.01.2011. As per the settlement, it has been agreed upon that after the demise of the mother, namely, Smt.Shakuntala Bahl, the property would be put on the market to be sold by the parties in order to liquidate their respective rights and interests.

3. Now, the present execution proceedings are pending. It is the stand of the petitioners and respondent No. 3 that despite several attempts to auction the property, the reserve price which has been fixed by the parties, namely, Rs.52.5 crores has not been crossed.

4. The grievance of the petitioners is that by the impugned order the trial court has restrained the parties to sell their shares to each other on the ground that it is likely to create hindrance and impediment in alienating the suit property in terms of the settlement between the parties.

5. Learned counsel appearing for petitioner No.1 submits that two of the parties, namely, petitioner No.2 and respondent No. 3 have agreed to sell their undivided share to petitioner No.1 for a consideration of Rs.8 crores each respectively.

6. Learned senior counsel appearing for respondent No.3 submits that his client is 74 years old and her husband has suffered some medical problem on account of which she is in urgent need of funds and cannot wait in eternity for liquidation of the property. Learned counsel for petitioner No.2 also makes the same submission. Learned counsel appearing for respondent No.1 submits that he has no objection to the inter se sale which is proposed by petitioner No.1.

7. However, respondent No.2 who appears in person has objected to the sale stating that the attempt is to introduce an outsider into the property

which he submits would be contrary to the terms of the settlement/undertaking.

8. A perusal of the impugned order would show that the trial court noted that the inter se sale would be contrary to the undertaking given on 16.01.2013. It also noted that till the entire property is sold as per the consent decree, the property has to be owned equally by each of the parties to the suit. It also noted that the auction process has started which is likely to conclude in May 2015. Hence, none of the parties can be allowed to even transfer their shares to each other.

9. As far as the order dated 16.01.2013 is concerned, a perusal of the same would show that all the parties have stated that they will not create any third party interest and will not create any hindrance in the sale of the property till the suit property is sold out. There is no undertaking given not to sell their respective shares inter se the parties.

10. The other ground on which the trial court had rejected the plea of the petitioners was that Auction Process has started and is likely to conclude in May 2015. I am told that Auction Process did not achieve any purpose and the property despite passage of nearly one and half year from May 2015, there is no progress in the auction.

11. Keeping in view the averments of the learned counsel for respondent No. 3 and petitioner No.2, namely, that they are in urgent need of funds, in my opinion, the sale as proposed by petitioner No.1 can be allowed. The sale would not in any manner impede the consent decree that has been passed between the parties on 03.01.2011 pursuant to the Memorandum of Settlement dated 10.09.1999. The only change would be that two of the parties who are having $1/5^{th}$ share would move out and petitioner No.1

would have 3/5 undivided share in the suit property. He would continue to be bound by the consent decree.

12. At this stage, learned counsel appearing for petitioner No. 1 submits that it is possible that petitioner No.1 or a family company in which 100% shares are owned by him, his wife and his two children may purchase the property.

13. The impugned order has wrongly and erroneously restrained the parties from making sale of their shares in favour of each other on the erroneous ground that the inter se sale of undivided share will obstruct execution of the decree. I modify the impugned order permitting the parties to affect inter se sale of their respective shares. It is clarified that in case petitioner No.1 purchases the property in favour of his family company, shareholdings of which are wholly owned by him, his wife and his two children, an undertaking by an affidavit will be given by the Company that it is bound by the Memorandum of Settlement/Consent decree and that it will abide by any further directions that the court may pass pursuant to the decree dated 03.01.2011.

14. In view of the above, the present petition and all pending applications stand disposed of.

JAYANT NATH, J

MARCH 09, 2017
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