

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

% **Date of decision: 15th October, 2018.**

+ **EX.F.A. 17/2018 & CM No.20367/2018 (for stay)**

CHARANJIT KAUR VIRK

..... Appellant

Through: Mr. Kirti Uppal, Sr. Adv. with Mr.
Ritvik Chawla, Adv.

Versus

PREMLATA SHARMA & ORS

..... Respondents

Through: Mr. Akshay Vyas & Mr. Rizwan
Aftab, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

1. This Execution First Appeal (EFA) under Order XXI Rule 58 of the Code of Civil Procedure Code, 1908 (CPC) impugns the order [dated 28th February, 2018 in Execution No.2885/2016 of the Court of Additional District Judge-05, South] of dismissal of objections filed by the appellant / objector to the execution sought by the respondent no.1 / decree-holder of a money decree against the respondents no.2&3 / judgment-debtors viz. Benchmark International and Mr. Gurdip Singh Virk, Proprietor of Benchmark International.

2. This EFA came up first before this Court on 16th May, 2018 when, on the contention of the senior counsel then appearing for the appellant / objector that only about Rs.3 lacs was remaining payable under the decree and the appellant / objector was the sole owner of the two properties attached in the execution and in which the respondent no.3 / judgment-debtor Gurdip

Singh Virk, who is the son of the appellant / objector, had no right, title or interest, notice was issued and the impugned order stayed.

3. The counsel for the respondent no.1 / plaintiff / decree-holder appears and on enquiry states that a sum of about Rs.15 lacs is due under the decree.

4. Though the senior counsel for the appellant / objector states that the same is disputed but does not have the computation in accordance with the decree. Even otherwise, it is not the task of this Court to compute the amount under the decree. It is also not the entitlement of the appellant / objector to contend so. It is only the respondents no.2&3 / judgment debtors who can make submissions in this regard.

5. In execution of the decree aforesaid, warrants of attachment of goods lying in the property No.A-36, Neb Velly, Neb Sarai, New Delhi and of attachment of rent of property No.A-2/6, Street No.6, Vasant Vihar, New Delhi were ordered to be issued. The appellant / objector objected to the same contending that all the goods in house No.A-36, Neb Velly, Neb Sarai, New Delhi were of the appellant / objector and not of the respondents no.2&3 / judgment-debtors and the rent of Rs.4 lacs per month being realized of property No.A-2/6, Street No.6, Vasant Vihar, New Delhi was under a lease deed executed between the appellant / objector and the Embassy of Tajikistan.

6. The Executing Court has dismissed the objections holding that the appellant / objector, in proof of her title to house No.A-36, Neb Velly, Neb Sarai, New Delhi, had filed only a Power of Attorney of her husband in her favour and not any document of title and in proof of title to property No.A-

2/6, Street No.6, Vasant Vihar, New Delhi, only the lease deed and no title document.

7. I have today also asked the senior counsel for the appellant / objector, who is the owner of property No.A-2/6, Street No.6, Vasant Vihar, New Delhi.

8. The senior counsel for the appellant / objector states that though he does not have complete instructions and has not seen the documents but has been instructed that there is some Family Settlement. On further enquiry, it is stated that the husband of the appellant / objector, who was the father of the respondent no.3 / judgment-debtor, was owner of both the properties and there has been a Family Settlement between the heirs of the father.

9. However, neither was any such Family Settlement pleaded in the objections nor have any documents been filed before the Executing Court or before this Court in this regard. Therefrom, it appears that the entire purpose is to delay the execution and the appellant / objector and the respondents no.2&3 / judgment-debtors, who are hand in glove, are not making a clean breast of the state of affairs. The attempt obviously is to fabricate documents, leaving nothing to satisfy the decree, especially since the respondent no.3 / judgment debtor has already left India.

10. The appellant / objector cannot on the one hand claim arms length distance from the respondents no.2&3 / judgment-debtors and on the other hand represent the interest of the respondents no.2&3 / judgment-debtors.

11. The appeal is in abuse of the process of the Court and is dismissed.
The execution to go on.

No costs.

RAJIV SAHAI ENDLAW, J

OCTOBER 15, 2018

‘gsr’

