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

+ **EFA(OS) 7/2018**

Date of decision: 25th May, 2018

SREELATA CHAUDHARI

..... Appellant

Through: Mr.Tanmay Mehta, Advocate with Ms.
Mercy Hussain, Advocate.

versus

LT. CO. (RETD) MAHAJIT CHAUDHURI & ANR ...Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE SANJIV KHANNA

HON'BLE MR. JUSTICE CHANDER SHEKHAR

SANJIV KHANNA, J. (ORAL):

This intra-Court appeal under Section 10 of the Delhi High Court Act, 1966 is directed against the order dated 13th April, 2018, whereby application E.A.(OS) No.351/2014 filed by the appellant in Execution Petition No. 197/2011 for modification of orders dated 24th January, 2014 and 13th March, 2014 has been dismissed.

2. We have heard counsel for the appellant, who submits that the orders dated 24th January, 2014 and 13th March, 2014 were passed in the absence of arguing counsel as the request of pass-over was not accepted. The appellant asserts that the compromise recorded in FAO (OS) No. 224/2010 on 1st March, 2011 had fixed timeline for sale of property No.1/16, Shanti Niketan, New Delhi (Shanti Niketan property) and these have not been

adhered to. Shanti Niketan property should not be sold but divided by metes and bounds. It is alleged that there has been drastic change in circumstances as property prices have crashed and consequently, direction for sale and that too through a local commissioner was unacceptable.

3. We have examined the contentions raised by the counsel for the appellant but do not find any merit in the same. The Single Judge on the question whether the order dated 24th January, 2014 was passed in the absence of the arguing counsel, in the impugned order dated 11th April, 2018, in our opinion, has rightly observed as under:-

“13. The first submission of Mr. Agrawal is that although his appearance is marked in the order dated 24.01.2014, in fact, he was not present and his associate had sought a pass over. I am not inclined to accept this submission of Mr. Agarwal as the records of the Court would reveal that he had appeared on 24.01.2014. It may also be noticed that post the passing of this order, it is not the case of the applicant/decreed holder that the matter was mentioned the same day or the Court was EX.P.197/2011 Page 11 of 12 informed that his consent had been wrongly recorded. In fact, on the next date of hearing on 13.03.2014, this Court recorded as under: “No buyer is present in Court. List the matter before the Joint Registrar on 03.04.2014 for finalizing the sale proclamation with respect to property bearing No.1/16, Shanti Niketan, New Delhi. The Joint Registrar will carefully follow the directions of the Division Bench passed from time to time in FAO(OS) No.224/2010. As and when necessary, the Local Commissioner will produce the original documents for scrutiny and inspection. Mr. Sharma, learned counsel for the judgment debtor No.2 states that he

would be moving an application before the Division Bench.

G.S.SISTANI,J.”

14. Even on the next date, there was no protest or opposition on the part of the applicant/decreed holder nor any steps were taken to bring to the notice of the Court that no consent was given on 24.01.2014. Thereafter, the matter was listed on 03.04.2014 before the Joint Registrar when none has chosen to appear in the matter. The submission, thus made by the learned counsel for the applicant/decreed holder is without any force and the same is rejected.”

4. We are in agreement with the said findings, for it is apparent that the application for modification of orders dated 24th January, 2014 and 13th March, 2014 were filed on or about 8th May, 2015. Thus, there was considerable delay indicative of acceptance, and then change of mind. Order dated 24th January, 2014 specifically records presence of Mr. P.K. Aggarwal, Advocate along with Ms. Mercy Hussain, Advocate. The said order reads as under:-

“It shall be open for all the parties to bring firm offers in Court for sale of property at Shanti Niketan. On the next date of hearing, the prospective purchaser (s) will bring a bank draft in the name of Registrar General of this Court in the sum of Rs.25.00 lakhs. In case parties are unable to bring any offer in the Court on the next date, it is agreed that the Court will initiate proceedings for finalization of sale proclamation of the suit property in accordance with law.

List on 13.3.2014

G.S. SISTANI, J.

JANUARY 24, 2014”

5. Thereafter, the case was taken up on 13th March, 2014 and the appellant was represented by a senior advocate on the said date. Order dated 13th March, 2014 reads as under:-

“No buyer is present in Court.

List the matter before the Joint Registrar on 03.04.2014 for finalizing the sale proclamation with respect to property bearing No.1/16, Shanti Niketan, New Delhi.

The Joint Registrar will carefully follow the directions of the Division Bench passed from time to time in FAO (OS) No.224/2010.

As and when necessary, the Local Commissioner will produce the original documents for scrutiny and inspection.

Mr. Sharma, learned counsel for the judgment debtor No.2, states that he would be moving an application before the Division Bench.

G.S. SISTANI, J

MARCH 13, 2014/sn”

6. Pertinently, on 13th March, 2014, no objection or contest to the order dated 24th January, 2014 was made. We accordingly agree with the learned single Judge that the application E.A. (OS) No. 351/2014 filed for recall of the said order is an afterthought and is an excuse to get over with the implied consent or without objection orders dated 24th January, 2014 and 13th March, 2014.

7. The impugned order on the second aspect refers to the consent order dated 3rd January, 2011 passed by the Division Bench in FAO (OS) No.

224/2010. Statements of the parties were recorded and it was, inter alia, agreed that property number B-59, Defence Colony, Delhi shall exclusively belong to Biswajit Chaudhuri, who, it is stated, has expired on 13th July, 2017. This appeal does not relate to this property. It was mutually agreed that the Shanti Niketan property, i.e. 1/16, Shanti Niketan, New Delhi would be sold and the sale proceeds would be shared amongst Lt. Col. Mahajit Chaudhuri, Dwipanjali Roy and Sreelata Chaudhuri and her family in the ratio of 28%, 30% and 42% respectively. Thereafter, several orders were passed in FAO (OS) No. 224/2010 including order dated 14th September, 2011 and 25th February, 2013 to ensure compliance of the compromise and implementation in letter and spirit. Thereafter, execution and implementation of the compromise degree was left to the single Judge, in the execution proceedings.

8. An application C.M. No.6104/2013 was filed before the Division Bench in FAO (OS) No. 224/2010 for setting aside the settlement, which was dismissed vide order dated 16th April, 2013, quoted in the impugned order.

9. In these circumstances, we are not inclined to accept the prayer made by the appellant that the settlement and that too partially for the Shanti Niketan property should be cancelled or treated as set aside or void. This would lead to mess and muddle, to the advantage of the party who has obstructed and created hurdles in the sale of Shanti Niketan property. It would set the clock back by 8 years if not more for all issues would get reopened. The contention of the appellant that the consent decree should be modified or amended because the Shanti Niketan property has not been sold within three months is fallacious and wrong as is clear from the orders

passed by the Division Bench in FAO (OS) No. 224/2010, even after three months. Application for setting aside the settlement was dismissed by the Division Bench on 16th April, 2013. In fact, every effort should be made for sale of Shanti Niketan property at the earliest. Orders dated 24th January, 2014 and 13th March, 2014 were passed in the said direction. We clarify that we have not examined the issue of legal representative of late Dr. Biswajit Chaudhuri. We may note that there are only two respondents to the present appeal, namely, Mahajit Chaudhuri and Dwipanjali Roy.

10. Recording the aforesaid, the appeal is dismissed. No costs.

SANJIV KHANNA, J.

CHANDER SHEKHAR, J.

MAY 25, 2018
MR/NA