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

% *Date of Judgment: 1st August, 2018*

+ EFA(OS) 12/2018 & CM Nos. 27991-992/2018
RELIANCE COMMERCIAL FINANCE LTD Appellant
Through: Mr.Rajat Katyal, Advocate.

versus

SAMEER SETH & ANR Respondents
Through: Ms.Prabhsahay Kaur, Mr.Manav Gupta,
Mr.Salil Garg and Ms.Esha Dutta,
Advocates for respondents.

+ EFA(OS) 13/2018 & CM Nos. 27993-994/2018
RELIANCE COMMERCIAL FINANCE LTD Appellant
Through: Mr.Rajat Katyal, Advocate.

versus

SAMEER SETH & ANR Respondents
Through: Ms.Prabhsahay Kaur, Mr.Manav Gupta,
Mr.Salil Garg and Ms.Esha Dutta,
Advocates for respondents.

+ EFA(OS) 14/2018 & CM Nos.29155-29156/2018
RELIANCE COMMERCIAL FINANCE LTD Appellant
Through: Mr.Rajat Katyal, Advocate.

versus

SAMEER SETH & ANR Respondents
Through: Ms.Prabhsahay Kaur, Mr.Manav Gupta,
Mr.Salil Garg and Ms.Esha Dutta,
Advocates for respondents.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE SANGITA DHINGRA SEHGAL

G.S.SISTANI, J. (ORAL)

1. Present appeals have been filed under Order XXI Rule 58 of CPC read with Section 151 CPC read with Section 10 of Delhi High Court Act against the order dated 23.05.2018 passed by the learned Single Judge.
2. Notice. Counsel for the respondents accepts notice.
3. All the three appeals are directed against a common order dated 23.05.2018 passed by the learned Single Judge of this Court. Since the issue involved is short, all the three matters are being disposed of by a common order with the consent of the parties at the admission stage itself.
4. The appellant herein had extended financial assistance to the respondents in the year 2011. Three loan agreements were executed for a total sum of Rs.2,53,52,196/-, the amount so received were to be re-paid in monthly installments as fully described in the loan agreements. It is an admitted fact that the respondents did not maintain the financial discipline which led to the invocation of an arbitration clause. The arbitrator rendered an award on 07.04.2014 in the sum of Rs.3,92,00,000/-. No objections to the award were filed. As the amount awarded was not paid, the appellant herein was forced to file three execution petitions being Nos.359/2014, 360/2014 and 361/2014. It is not disputed that during the pendency of the execution petitions, appellant arrived at an amicable settlement with the respondents. In terms of the settlement, the respondents agreed to pay a sum of Rs.2,40,00,000/- as full and final settlement of the amount awarded subject to the condition that in case of default, the respondents would be liable to

pay the decretal amount. It is also not in dispute that the settlement was arrived at, on 23.09.2016.

5. Pursuant to the settlement, the respondents herein paid a sum of Rs.35,00,000/- on 30.09.2016, Rs.20,00,000/- on 23.12.2017 and Rs.85,00,000/- on 20.02.2018. As the entire amount was not paid the execution petitions were filed.

6. Before the learned Single Judge the appellant herein had prayed that since the respondents had defaulted, they should be directed to pay entire decretal amount. The learned Single Judge has noted that post revival of the execution petition, the judgment debtors had paid Rs.20,00,000/- on 23.12.2017 and Rs.85,00,000/- on 20.02.2018. To compensate the appellant herein for the delay in complying with the terms of the settlement, the learned Single Judge had directed the respondents for payment at a floating rate of interest @ 13.5% per month as per the terms of the loan agreement. For the entire period of default, the interest payable would be Rs. 14.50 Lakhs. The learned Single Judge had directed judgment debtors/respondents to make the payment of Rs.25,00,000/- to the decree holder/appellant herein towards compensation for the delay caused in complying with the terms of the settlement. It is this order, which is a subject matter of the present three appeals.

7. Mr. Rajat Katyal, learned counsel for the appellant submits that once the respondents had defaulted and did not make the payment in terms of the settlement, they would not be entitled to any benefit under the terms of the settlement. He submits that the respondents should be directed to pay the entire decretal amount being defaulters. It is also pointed out that the respondent did not seek any extension of time for making the payments and

it is only after applications seeking review of the order petition was filed the respondents made the balance payment. It is also contended that the appellant was also forced to institute proceedings under Section 13 of the Insolvency and Bankruptcy Act, 2016 against the respondents.

8. In support of his submissions he has placed reliance upon a judgment titled as ***“Parbati Debi and Others vs Mahadeo Prasad Tibrewalla” (1979) 4 SCC 761*** with regard to the fact that once the terms of settlement as agreed to between the parties were not adhered to the defaulters party would be liable to pay the decretal amount. Paragraph 7 reads as under:

“Coming to the third and the last point it may be mentioned that the settlement arrived at on June 17, 1953 was not an altogether renovation of the old decree. The amount due was quantified and the mode of satisfaction was prescribed giving liberty to the judgment debtors to satisfy the decree by conveying one of the two mortgaged houses and by paying a sum of Rs.35,000 in cash by raising the money by mortgage of the other house. The judgment-debtors did neither. The terms of settlement were silent as to what was to happen on the failure of the judgment-debtors to satisfy the decree in the manner agreed upon. In such a situation it was quite legitimate to assume that the parties intended that the decree holders would be entitled to realize the dues by execution of the original mortgage decree. Reading the terms of settlement in the context of the letter of the Solicitor of the judgment-debtors it is plain to us that the order dated June 17, 1953 had not the effect of passing a new decree in substitution of the old one. It had merely the effect of giving facility to the judgment-debtors for the satisfaction of the decretal dues. On their failure to do so they were liable to be proceeded with in execution of the original mortgage decree”.

9. Mr. Katyal, counsel for the appellant has also relied upon a judgment titled as ***“Sunil Mehra vs Rajinder Singh Gulati”*** 2007 SCC Online Bom 984. Paragraphs 11 and 15 reads as under:

“11. A full Bench of this Court in the case of (Woman Vishwanath Bapat v. Yeshwant Tukciram), A.I.R. (36) 1949 Bombay 97, held that a mortgage decree passed on award was made payable by certain fixed installments on or before the fixed dates. There was a default clause which was to operate on the failure to pay any two installments. When the judgment debtor having committed the defaults, the decree holder filed an application for sale of the mortgaged property and recovery of the entire amount including the penalty. The judgment debtor prayed for liberty to pay the installments and upon acceptance of the amount he should be relieved against the breach he had committed in payment of the installments on their respective due dates. The Civil Judge, Senior Division, in that case, took the view that the judgment-debtor should be relieved against the penalty subject to the conditions stated in the order. After discussing different views on this aspect, the Full Bench held as under:

“There are two conflicting views which have been taken by this Court on this question and the two protagonists of these two views are Sir John Beaumont and Sir Norman Lacleod, two learned chief Justices of this Court. Sir John Beaumont in (Burjorji Shapurji v. Madhavlal Jesingbhai), 58 Bom. 610: A.I.R. (21) 1934 Bom. 370 was considering a case where a certain amount was made payable under the decree and it was provided that if a certain amount was made payable under the decree and it was provided that if a certain amount was paid on the dates specified, then satisfaction was to be entered up. In default of payment on the due date, the full amount under the decree became payable. The judgment-debtor failed to pay the smaller amount on the due date and the decree-holder applied for execution and the question arose whether the delay in payment on the due date should be condoned and Sir John Beaumont took the view that what the decree-holder had done was to have made a concession to the judgment-debtor, the concession being that if he paid the smaller amount by a particular date, full satisfaction would be entered up, but in default of payment on the due date the

amount actually due under the decree would become payable, and the learned Chief Justice took the view that the provision for the payment of the full amount in default of payment of the smaller amount on the due date was not in the nature of a penalty and the Court could not relieve against the breach committed in the failure to pay the amount on the due date. At p. 617 the learned Chief Justice sets out the law which he says is not open to any serious question and what he says is this:

“If there is an agreement to pay a sum of money by a particular date with a condition that if the money is not paid on that date a larger sum shall be paid, that condition is in the nature of a penalty against which a Court of equity can grant relief and award to the party seeking payment only such damages as he has suffered by the non-performance of the contract. But if, on the other hand, there is an agreement to pay a particular sum followed by a condition allowing to the debtor a concession, for example, the payment of a lesser sum, or payment by installments, by a particular date or dates, then the party seeking to take advantage of that concession must carry out strictly the conditions on which it was granted, and there is no power in the Court to relieve him from the obligation of so doing.”

6. In this case also the decree provides for the payment of a particular sum. It proceeds to confer a concession upon the debtor, viz. If he pays the decretal amount by certain installments, then he need not pay the full decretal amount at once. But if he fails to pay those installments on their respective due dates, then the concession disappears and he is under an obligation to pay the full amount and what we are now asked by the Government Pleader to do is to relieve the judgment-debtor from his obligation to pay the installments on their respective due dates, he having obtained the concession as a result of undertaking that obligation.

7. Sir John Beaumont also considered the same question in an unreported judgment, (Pari Chimanlal Dholidas v. Chimanlal Bhudardas Shah)”, First Appeal No.244 of 1939, decided by Beaumont C.J., And Sen J., on 29th November, 1940. There he points out that there is no general power in Courts of equity to disregard agreements which it thinks unjust and he also points out that at the present time the rules of equity are almost as well settled as rules of the common law and he

sounds a note of warning that more harm than good would be done by allowing Courts to interfere with agreements made between the parties merely because the Court may think a particular agreement unfair. The principle enunciated by him applies not only to consent decrees but also to decrees passed by the Court in invitum. Whereas in the case of a consent decree, it is the question of the sanctity of contract, in the case of a decree it is the question of a solemn adjudication by the Court of the rights of parties.

11. A point has also been urged as to whether the decree-holder waived the breach by accepting payments. The facts show that from 1938 till 11th October, 1943, the decree-holder accepted payments from time to time from the judgment-debtor. On the default having taken place admittedly the whole decretal amount became due and payable and there is nothing to show on the record that the decree-holder accepted these payments not towards what was due to him under the decree but in waiver of the breach committed by the judgment-debtor. As a matter of fact, the learned Judge below has found as a fact that these payments were not accepted as a waiver of the decree-holder's right and we see no reason to differ from that finding of fact."

15. The reliance placed by the learned Counsel for the appellant upon the judgment of this Court in the case of (Marketing and Advertising Associates Pvt. Ltd. v. Telerad Private Ltd.), 1969 B.C.I. 37: A.I.R. 1969 Bom 323 is of no help as that judgment has no application to the facts of the present case. There the Court was primarily concerned with the scope of section 148 of the CPC regarding the power relating to extension of time fixed by a consent order. In paragraph 4 of that judgment, the Court noticed that it was neither a final order nor in the nature of a conditional decree and thus the Court retained the power to extend the time. In our considered view, the judgment of the learned Single Judge of this Court thus has no application to the facts of the present case.

It is amply clear from the aforenoticed facts that the appellant had taken an advantage/concession in terms of the compromise decree which was passed by the Court in furtherance to the agreement between the parties dated 8th December, 2004. Admittedly, the appellant has committed default and he is liable to face the consequences of the default

by which the entire decretal amount has become due and payable giving right to the respondent to execute the decree as such. The Court has rightly rejected the plea of the appellant for grant of extension and consequent acceptance of installments despite default. The Court could only alter the terms and conditions agreed between the parties by consent of the parties and not on a unilateral plea taken by the appellant. Merely because the agreed terms were titled as "Minutes of decree on admission" would not change the substance of the document. As already noticed, the minutes of the decree dated 8th December, 2004, were result of negotiations between the parties and were recorded without intervention of the Court. This was a document executed by the parties and signed by their respective counsel by way of an agreement setting all the disputes in the subject-matter of the suit. This agreement provided different terms and condition including the consequences of default. It is categorically stated that in the event the appellant failed to pay to the respondent a sum of Rs.12 lakhs by monthly installments of Rs. One lakh in terms of Clause 2(b), then the entire decretal amount of Rs.12 lakhs with interest at the rate of 18 percent per annum from the date of filing of the suit till payment and costs would be satisfied. It was for the appellant to pay the amount without default to take advantage of the compromise. Having committed defaults, he essentially must bear the consequences as agreed between the parties. After detailed discussions, the learned Single Judge has rightly come to the conclusion that the request of the appellant for grant of extension could not be accepted to and the notice of motion was accordingly dismissed. We are unable to find any error of law or jurisdiction in the approach of the learned Single Judge and resultantly dismiss this appeal, being without merit."

10. Ms. Prabhsahay Kaur, learned counsel appearing for the respondents submits that the respondents had taken a loan of Rs.2,53,52,196/- and have paid Rs.3,18,68,978/-. She further submits that the respondents had filed an affidavit before the learned Single Judge explaining the hardship being faced by them and also giving reasons for not adhering to the terms of the

settlement within the time allowed. She further submits that although the appellant was entitled to interest for the delay of payment which would amount to Rs.14,50,000/-, the respondents have paid double the amount amounting to Rs.25,00,000/-. However, the appellant continued to seek the pound of flesh and thus, submitted that there is no infirmity in the order passed by the learned Single Judge which requires interference by this Court.

11. We have heard the learned counsel for the parties.

12. The basic facts which have been narrated above are not disputed. It is also not disputed that post settlement, respondents did not adhere to the timelines as per the terms of the settlement. It is also not in dispute that the respondents did not seek extension of time in making the payments. Subsequently, the respondents have paid not only the amount as settled between the parties but also paid an additional amount of Rs.25,00,000/-. In the case of Parbati Debi and others (supra), the question which came into consideration before the Supreme Court was that, in case there was no stipulation regarding the implication of non-adhering to the terms of the settlement or if terms of the settlement were silent as to what was to happen on the failure of the judgment-debtors to satisfy the decree in the manner agreed upon. It is not necessary in such a situation for the Court to say that it would be legitimate to assume that the parties intended that the decree holder would be entitled to release of dues by execution of the original mortgage decree. There is no quarrel to the proposition sought to be urged by the counsel for the respondents. However, in the present case pursuant to the settlement, the respondents had paid a sum of Rs.1,35,00,000/- to the appellant herein on 13.09.2016. The balance payment was of Rs.1,5,00,000/- was also received and accepted by the decree holder during the pendency of

an application which had been filed by the appellant seeking revival of the execution petition.

13. Mr.Katyal, counsel for the appellant also relied on the judgment in the case of Sunil Mehra (supra) a decision rendered by the Bombay High Court, which is somewhat to the same effect, where the parties had entered into settlement and the defaulting party was to pay a sum of Rs.12,00,000/- on monthly installments of Rs.1,00,000/- per month. However, only two installments had been paid.

14. In the present case, the learned Single Judge has taken a note of the fact that an amount of Rs.1,35,00,000/- was paid on 30.09.2016 and thereafter the parties had entered into a settlement. Post settlement dated 23.09.2016, substantial payment of Rs.35,00,000/- was paid to the appellant on 30.09.2016 and thereafter Rs.20,00,000/- and Rs.85,00,000/- on 23.12.2017 and 20.02.2018.

15. The Single Judge took into account that the appellant would be entitled to interest at 13.5% for the period of delay which would amount to Rs.14.50 lakhs, but directed the respondents to pay double the amount i.e. Rs.25 lakhs.

16. Having regard to the peculiar facts and circumstance of the case, we find no infirmity in the approach of the Single Judge and order so passed, the appellants have been well compensated for the delay.

17. The appeals are dismissed.

G.S.SISTANI, J

SANGITA DHINGRA SEHGAL, J

AUGUST 1, 2018/afa