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

% *Date of Order: 28.11.2018*

+ **C.R.P. 134/2018 & CM No. 26909/2018**

SHIV GANDHI

..... Petitioner

Through: Mr.P.D. Gupta, Sr. Advocate with
Mr.Abhishek Gupta, Advocate along
with petitioner in person.

Versus

TRUST HAFIZ NAZIR AHMED & ANR.Respondents

Through: Ms.Shashi Saxena, Advocate.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

1. The impugned order dated 17.04.2018 passed by the court of learned Additional District Judge-14, Central District, Tis Hazari Courts, Delhi ('ADJ') in CS DJ No.610539 of 2016, is the subject matter of challenge in this Civil Revision Petition.

2. The petitioner/plaintiff has been a tenant in occupation of a shop admeasuring 7.9' x 7.3' x 44.6' situated on the ground floor of property bearing no. 5772/1, Ward No.13, Main Road, Sadar Bazar, Delhi-110006 ('suit premises'), as shown in red colour in the site plan annexed with the plaint and bounded as under: -

North-Other's property.

South-Main Road, Sadar Bazar.

West-Shop No.5772 in occupation of Mohan Lal.

East-Other's Property.

The property was initially let out in the name of Laxmi Narain & Sons by one Mst. Noor Jahan Begum (mother of respondent no.2) at a rent of Rs.230/- per month. On the death of Sh. Laxmi Narain on 31.01.1997, the petitioner became the sole tenant in respect of the suit premises. After the death of Mst. Noor Jahan Begum in the year 1991, her elder son Naseem Ahmed, claiming to be the trustee of respondent no.1 i.e. the Trust, started collecting rent from the petitioner. Mr.Naseem Ahmed died in the year 2002 and thereafter respondent no.2 claiming himself to be the sole trustee of respondent no.1, started collecting the rent from the petitioner.

3. An application filed by the respondent no. 2 on 07.01.2002 under Section 19 of the Slum Areas (Improvement & Clearances) Act, 1956 seeking permission to initiate eviction proceedings against the petitioner in respect of the suit premises is pending adjudication. During the pendency of the petition, the parties entered into an Agreement to Sell dated 02.08.2008 in respect of the suit premises by which the petitioner had agreed to purchase the suit premises for a total sale consideration of Rs.24,00,000/-.

4. The petitioner filed a suit for specific performance of the contract against the respondents/defendants in respect of the said Agreement to Sell in this Court in exercise of its original jurisdiction. This suit, being CS(OS) 1757/2010, was later transferred to the court

of learned ADJ having suit no. 610539/2016 due to enhancement in the pecuniary jurisdiction of the District Courts in Delhi.

5. During the pendency of the above said suit, the parties have settled their dispute forming the subject matter of the civil suit and filed a joint application (Ex.C1) under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure, 1908 ('CPC') for recording of compromise and disposal of suit in terms thereof. The terms of the settlement are contained in Para 2 of their application Ex.C1, which reads as under: -

"2. That during the pendency of the present case the parties have amicably resolved all their disputes and have arrived at an amicable settlement.

3. That the defendant has agreed to execute sale deed in favour of the plaintiff on the terms and conditions mentioned below, however permission/no objection is required from the Court of Delhi Waqf Board to execute the sale deed of the suit property in favour of the plaintiff. The defendant has already filed petition for seeking the permission from court of Delhi Waqf Board and the same is pending and it is agreed between the parties that as and when the said permission is obtained/granted the defendant shall execute the sale deed qua suit property in favour of the plaintiff on the following terms and conditions;

i) That the defendants shall transfer by way of absolute sale of the suit property to the plaintiff for a total sale consideration of Rs.71,50,000/- (Rupees Seventy One Lac Fifty Thousand only) as and when the permission/no objection is granted by

the court of Delhi Waqf Board to the defendant to sell the suit property to the plaintiff.

ii) That the defendant acknowledges that it has already received a sum of Rs.6,00,000/- from the plaintiff on 02.08.2008 as part payment and plaintiff shall deposit further sum of Rs.10,00,000/- (rupees ten lakh only) in the Hon'ble court towards the sale consideration.

(iii) That it is agreed between the parties that the defendant shall only be entitled to get the said sum of Rs.10 lakh with interest on FDR released from the court after the execution of sale deed in favour of the plaintiff qua the suit property and the remaining amount of Rs.55,50,000/- (after deducting applicable Income Tax at Source) shall be paid by the plaintiff to the defendants at the time of execution and registration of the sale deed.

(iv) The necessary permission from the court of Delhi Wakf Board, required shall be obtained by the defendant in their own costs. However, the stamp duty, registration charges for the execution of the sale deed will be paid by the plaintiff.

(v) That the plaintiff was already in occupation/possession of the suit premises as a tenant and shall continue to occupy the same and as and when required permission is obtained from the court of Delhi Waqf board by the defendant to sell the suit property or the same is not required due to any change in the circumstances/rules and defendant is in position to execute the sale deed in favour of the plaintiff qua suit property, the defendant shall intimate the same to the plaintiff in writing and within 90 days thereof the plaintiff shall arrange the balance sale consideration of Rs.55,50,000/- (after deducting applicable Income Tax at Source) and which shall be paid by the

plaintiff to the defendant at the time of execution and registration of sale deed.

(vi) That defendant shall withdraw the eviction petition E.No.10/2015 filed by the defendant against the plaintiff in respect of the suit property under section 14(1)(e) of Delhi Rent Control Act pending adjudication in the court of Sh.Gajender Singh Nagar, ARC, Delhi with liberty to file fresh if need arises and shall also withdraw suit No.06/2014 pending in the court of Ms.Harshita Vatsyan, Ld. C.J., Delhi.

(vii) That in case permission is finally refused the defendant may refund the entire amount received by him without interest and thereafter claim rent from the plaintiff.

(vii) That it is agreed between the parties that defendant shall not be entitled to claim/adjust any amount towards rent/occupation charges from the plaintiff for the period after 2.8.2008.

(x) That both the parties and/or their legal heirs including beneficiary, as the case may be, shall remain bound by the terms of the aforesaid compromise.

4. That the above said compromise has been entered into between the parties voluntarily, out of their own free will without any pressure or coercion from anybody. Both the parties have assured each other that they are duly authorized and competent to enter into the above compromise in respect of the suit property and shall keep each other indemnified, in case, any of their representation turns out to be false.”

6. Pursuant to this application, statements of the parties were recorded by the learned ADJ separately on 02.04.2018. However, by

the impugned order dated 17.04.2018, the learned ADJ did not allow the application Ex.C1 for recording of compromise for the reason that *'Keeping in view the fact that the parties to the suit have deliberately concealed in the application the fact of execution of sale-deed already in favour of the plaintiff and that the defendant no.2 shall only be entitled to execute the sale-deed after obtaining permission to sell the shop in question from the Ld. District Judge or to the court empowered in this behalf, the sale-deed already executed by the defendant no.2 on behalf of defendant no.1 (Wakf) in favour of the plaintiff is invalid. Hence, the joint application (Ex.C-1) for recording of compromise can not be allowed.'*

7. Learned counsel for the parties contend that the factum of the execution of the sale deed is already on record. Both of them pointed out towards the order sheet dated 23.03.2015 to the effect that *'It is submitted that the matter has been amicably settled between the parties and defendant has executed sale deed also but certain formalities are yet to be completed and request for an adjournment. At request, adjourned for 8th May, 2015 for report of settlement/plaintiff evidence'*. It was also brought to the notice of the learned ADJ by the learned senior counsel on 23.09.2017 that *'it is stated by ld. counsel for the plaintiff that Wakf Board has refused to give the permission for selling the property and an Appeal against that order is pending before the Ld. Applet (sic) Tribunal Wakf Board and it will take some time for decision of that Appeal and a long date may be given. He has also placed on record photocopy of sale deed*

executed in favour of the plaintiff. In facts, put up for further proceedings on 06.02.2018.'

8. They contend that thus the fact of execution of the sale deed dated 19.02.2015 by the respondent no.2 on behalf of the respondent no.1 in favour of the petitioner was never concealed from the court. They submit that the sale deed, which was executed after paying a stamp duty worth Rs.4,29,000/- has become infructuous as more than three years have elapsed. Therefore, a fresh sale deed is required to be executed. They also submit that the transaction shall be complete only if the required permission is granted by the Delhi Waqf Tribunal ('Tribunal'). Para 3 of the application Ex.C1 records that *'That the defendant has agreed to execute sale deed in favour of the plaintiff on the terms and conditions mentioned below, however permission/no objection is required from the Court of Delhi Waqf Board to execute the sale deed of the suit property in favour of the plaintiff. The defendant has already filed petition for seeking the permission from court of Delhi Waqf Board and the same is pending and it is agreed between the parties that as and when the said permission is obtained/granted the defendant shall execute the sale deed qua suit property in favour of the plaintiff on the following terms and conditions.'*

9. The factum of the execution of the sale deed dated 19.02.2015 executed by the respondent no. 2 on behalf of respondent no.1 in favour of the petitioner, is already on record as reflected in the order

sheets dated 23.03.2015 and 23.09.2017. As admitted by learned counsel for both the parties that the sale deed has become redundant since the unregistered sale deed dated 19.02.2015 is more than three years old which could not be registered for want of permission from the Delhi Waqf Board. Both the learned counsel submit that the application for permission to execute and register the sale deed has been rejected by the Delhi Waqf Board and the matter is still pending before the 'Tribunal'. In these circumstances, subject to the 'Tribunal' granting permission to execute and register the fresh sale deed by the respondent no.2 on behalf of respondent no.1, the compromise Ex.C1 dated 27.03.2018 is taken on the record and the suit stands disposed of in terms of the compromise Ex.C1 accordingly. It is made clear that a fresh sale deed shall be executed and registered in favour of the petitioner only after the 'Tribunal' has granted the permission to sell. Unless and until the terms and conditions of compromise are complied with by the parties and permission is granted by the 'Tribunal', the petitioner shall not have any title of ownership in the property in question.

10. The petition along with application being CM No.26909/2018 is disposed of accordingly.

(VINOD GOEL)
JUDGE

NOVEMBER 28, 2018
"shailendra"