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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **O.M.P. 989/2012 & I.A.19375/2012**

IQBAL SINGH

..... Petitioner

Through: Mr. Nitin Mishra and Mr. Tarun
Sharma, Advocates. (M:9810070377)

versus

LAXMI DEVI & ORS.

..... Respondents

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **17.09.2018**

1. The present Section 9 petition has been filed in order to give effect to the Settlement Award dated 11th May, 2010 passed by the learned Sole Arbitrator.
2. The brief background is that an agreement to sell was entered into between the Petitioner and the Respondents for sale of 50% share in 200 Sq. Metre plot at Rangpuri, Vasant Kunj, New Delhi. The agreed consideration was Rs.30,000/- per Sq. Metre. The total consideration was thus Rs.30,00,000/-. Earnest money of Rs.3,25,000/- was initially paid by the Petitioner to the Respondents.
3. The Respondents, however, did not execute the final sale deed. This led to a dispute between the parties. The Petitioner invoked the arbitration clause and in the proceedings before the Arbitrator on 18th November, 2009, the following order was passed.

“18.11.2009.

Sh. Amit Maan Advocate for the claimant and Sh. Tej Ram respondent in person with his son Sh. Jagdish Kumar appeared before the undersigned. Copy of the claim statement along with documents given to the

respondent Sh. Tej Ram. Sh. Tej Ram submitted that he does not want to file reply to the claim petition as the dispute regarding enhancement of rate of consideration does not more exist between the parties in as much as the claimant has agreed to enhance the rate of consideration from Rs.30,000/- per sq. mtrs. to Rs.40,000/- per sq. mtrs. and as such the respondent now has no grievance. Counsel for claimant requests to adjourn the proceedings for the parties to file joint application in the matter of such compromise as stated above by the respondent. The matter was adjourned for 02.12.2009 for the parties to file joint application on terms as per compromise.”

4. Thus, as per the above order, parties agreed that the consideration may be modified/increased from Rs.30,000/- per Sq. Metre to Rs.40,000/- per Sq. Metre.

5. Thereafter, the parties filed an application under Order XXIII Rule 3 CPC along with affidavits on 2nd December, 2009, submitting to the Arbitrator that the disputes have been settled. Accordingly, the Settlement Award was passed by the Arbitrator in the following terms.

“Conclusion:

As such I pass the settlement award u/s 30 of the Arbitration & Conciliation Act, 1996 directing the claimant to be ready with the balance sale consideration amounting to Rs.16,75,000/- payable to the respondent after the respondent secures conveyance deed in his favour from the DDA and at the time the respondent executes sale documents in favour of the claimant or his nominee and to comply with the terms of compromise dated 02.12.2009 within the time as stipulated therein.

This award is passed accordingly on this day 11th May, 2010 and signed copies whereof are being sent to both the parties with letter of intimation by registered post.”

6. Despite this Settlement Award having been passed and the Petitioner being ready and willing to pay the balance consideration of Rs.16,75,000/-

as per the increased price, the Respondents did not come forward for executing the sale deed. The Petitioner had already paid Rs.23,25,000/- out of the increased sale consideration. The Petitioner, thereafter, came to know through a representation to the DDA that the Respondents had presented a sale deed for registration in favour of a third party Mr. Mahanand Sharma – Respondent No.17. Extract of the letter written by the Sub-Registrar is set out below.

“To,
Sh. Iqbal Singh
S/o Karan Singh
VPO-, Mundka,
New Delhi.

Subject: Objection regarding registration of instruments in r/o Plot No.13, Block-B-1, measuring 200 Sq. mtrs Rangpuri, New Delhi

Reference: Your representation dated 23/09/2009.

Sir,
With regard to the subject and reference cited above, it is informed that an instrument styled as Sale Deed has been presented for registration by Shri Tez Ram S/o Late Shri Lakhu in favour of Shri Mahanand Sharma proofing no.1200 dt. 02/02/2009 in this office in respect of plot no.13 in Block-B/1 measuring 200 Sq. Mtrs. in Rangpuri, New Delhi.

In view of the above and the objection filed by you against the registration of any instruments etc. in respect of above mentioned property, it is required that any order of any Competent Authority/Court may be provided whereby the Sub-Registrar has been restrained from registration of above stated instruments. Such an order, if any may be submitted within 07 days of issue of this letter failing which necessary action deemed fit as per law will be taken in the matter without further intimation.”

7. The Petitioner, then apprehending that the property would change hands, filed the present section 9 petition seeking interim restraint order in the following terms.

*“It is therefore most respectfully prayed that in the interests of justice this Hon’ble Court may kindly be pleased to grant ex-parte ad-interim injunction in favour of the petitioner and against the respondents thereby restraining the respondents from selling, alienating, mortgaging, parting with possession or in any other manner creating third party rights in the subject property being plot no.13, Block B-1, admeasuring 200 sq. mts., Rangpuri/Malikpur Kohi (Nangal Dewat Rehabilitation site), Vasant Kunj, New Delhi as shown in red colour in site plan filed with the petition, during the pendency of the execution proceedings.
.....”*

8. Initially, vide order dated 9th November, 2012, this Court had protected the Petitioner by restraining the Respondents in the following terms.

*“.....
5. Till the next date of hearing, the Respondents are restrained from creating any third party interest, alienating in any manner whatsoever or parting with the subject property being Plot No.13, Block B-1, admeasuring 200 sq. mts., Rangpuri/Malikpur Kohi (Nangal Dewat Rehabilitation Site), Vasant Kunj, New Delhi (as shown in red colour in site plan filed with petition).
.....”*

9. Upon notice being issued, Respondent No.17 Mr. Mahanand Sharma replied, making various allegations against the Petitioner as also alleging that the agreement to sell dated 24th August, 2007 is not enforceable in the eyes of law.

10. The petitioner also filed an execution petition being Ex.P.325/2012 seeking execution of the Settlement Award dated 11th May, 2010. The said execution petition was transferred to the learned District Judge, Patiala House Courts, New Delhi vide order dated 17th April, 2017 in view of the increase in pecuniary jurisdiction.

11. The Respondents have not been appearing in the matter for the last several hearings, and only Respondent No.17 has appeared sporadically. None has appeared for the Respondents today. The Respondents, having chosen not to contest the matter, and the Settlement Award having been passed on the basis of application under Order XXIII Rule 3 CPC, the same in effect constitutes a decree and is binding on the parties. If any rights are allowed to be created in the property, the same would be in contravention of the decree already passed in this matter.

12. As per the settled law, a Section 9 petition is maintainable even after the passing of the award, as held in ***Sundaram Finance v NEPC AIR 1999 SC 565***. In view of the above, the OMP is disposed of with the direction that the interim order dated 9th November, 2012, extracted above shall continue to operate till the disposal of the execution petition and final satisfaction of the Settlement Award dated 11th May, 2010.

13. OMP is disposed of. All pending applications also stand disposed of.

PRATHIBA M. SINGH, J.

SEPTEMBER 17, 2018/dk