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IN THE HIGH COURT OF DELHI AT NEW DELHI

Decided on:- 13th April, 2018

\+ C.R.P. 122/2012 & CM No. 5125/2014

SHYAM SHANKAR GOELA THROUGH RAJIV GOELA ..... Petitioner

Through: Mr. Anish Dayal, Ms. Anjali Agarwal & Ms. Rupam Sharma, Advs.

versus

UDAY SHANKER GOELA ..... Respondent

Through: Mr. S.K. Gupta, Adv.

\+ C.R.P. 150/2012 & CM N. 8981/2013

UDAY SHANKER GOELA ..... Petitioner

Through: Mr. S.K. Gupta, Adv.

versus

SHYAM SHANKER GOELA THROUGH LRs.... Respondents

Through: Mr. Anish Dayal, Ms. Anjali Agarwal & Ms. Rupam Sharma, Advs.

CORAM:
HON'BLE MR. JUSTICE R.K.GAUBA

ORDER (ORAL)

1. These two revision petitions relate to the order dated 01.06.2012 passed by the Additional District Judge, as the executing court in execution proceedings registered as execution case no. 47/2010. The

first captioned petition was filed by the party which was entitled under a compromise decree recorded on 26.03.2010 to purchase 50% share in the subject property i.e. property bearing no. 100, Ward no.3, Gali Gandhi, Tilak Bazar, Delhi - 110006, the petitioner of the second captioned petition being the party bound by the said compromise decree to execute the sale deed in favour of the former. As per the terms of settlement which was accepted as the compromise decree, the consideration payable in the sum of Rs. 14 lakhs out of which the latter had concededly received an advance of 10% to the extent of Rs. 1,40,000/- by cheque dated 22.03.2010. The sale deed was to be executed by 21.04.2010 when the balance amount of consideration of Rs.12,60,000/- was to be paid.

2. It is clear that sale deed was not executed on 21.04.2010. The petitioner of the first captioned petition, thus, took out execution proceedings (execution case no. 47/2010). It is after hearing the opposite party i.e. the petitioner of the second captioned petition, that the executing court, by order dated 01.06.2012, directed the first captioned petitioner to deposit an amount of Rs. 12,60,000/- with interest @ 12% per annum w.e.f. 22.04.2010 till the date of the said order by bank draft/pay order in favour of the opposite party within one month of the said order, such amount to be released to the opposite party which was directed, in turn, to execute the sale deed in favour of the former in terms of the agreement dated 05.03.2010 within 15 days of such deposit.

3. The first captioned petition was brought to raise the grievance with regard to the levy of interest @ 12 % per annum over and above the balance sale consideration, the prime submission of the petitioner being that the executing court had gone beyond the decree and, therefore, such part of the directions could not be enforced. Though the petition would not say so, it has come out at the hearing that the petitioner of the first captioned case had filed an application for review, *inter alia,* on the grounds that there was no default on his part, there having been exchange of two communications, they being dated 20.05.2010 and 25.05.2010 which, per the submissions, would indicate the said petitioner had always been ready and willing to proceed ahead with the execution of the sale deed by tendering the balance consideration which had been duly arranged within time. The review petition, however, was rejected by order dated 03.08.2012 primarily on the ground that there was no error apparent on the face of the record.

4. During the pendency of the first captioned petition, the opposite party brought the second captioned petition, the prime argument raised being that since the sale deed was to be executed on 21.04.2010, it was not within the jurisdiction of the executing court to allow enlargement of time and issue directions by the impugned order for sale deed to be executed even though with the revised terms of the interest having been levied. In the submission of the second captioned petitioner, the execution proceedings themselves were not maintainable against the above backdrop, the deal represented by settlement which was made rule of the Court on 26.03.2010 having fallen through.

5. During the pendency of these proceedings before this Court, the petitioner of the second captioned petition died on 14.03.2013. It is on account of the said event that application (CM No. 8981/2013) was filed invoking the provision contained in Order XXII Rule 3 of the Code of Civil Procedure, 1908 to bring on record his legal representatives. The petitioner of the first captioned matter did not file such an application immediately. An application (CM No. 5125/2014), however, was filed with a delay of 104 days, invoking the provision contained in Order 22 Rule 4 CPC read with Section 5 of Limitation Act, by the prayer made in the said application, the first petitioner having joined the prayer for substitution of the opposite party by his legal representatives.

6. It is the contention of the learned counsel representing the legal heirs of deceased Uday Shanker Goela, the respondent in first captioned petition, that the proceedings in the first matter have abated. It has to be borne in mind that these petitions have been filed in the context of an order which was filed in execution proceedings. Having regard to the overall facts and circumstances of the case, the delay is condoned. The legal representative of Uday Shankar Goela, is substituted in his place in both the matters. The amended memo of parties which have been filed shall be taken on record. This disposes of the pending applications (CM No. 5125/2014 in C.R.P. 122/2012 and CM No. 8981/2013) in C.R.P. 150/2012.

7. After some hearing, the learned counsel for the petitioner in C.R.P. 122/2012 submitted, on instructions, that he may be allowed to

withdraw the revision petition as the petitioner is now ready and willing to abide by the directions of the executing court in the order dated 01.06.2012. He further conceded that since almost six years have lapsed, the matter having remained pending in this Court in these proceedings, the liability of the petitioners who are to purchase half of the interest in the subject property from the opposite party, would include the responsibility to bear the liability towards interest till the date of due compliance and consequently they are ready and willing to bear interest @ 12% per annum w.e.f. 22.04.2010 till the date of deposit of such amount with the executing court so that it becomes available to be released to the opposite party to require it to abide by the obligation placed at their door by the said order dated 01.06.2012.

8. Having heard the learned counsel for the petitioner in the second matter, this Court finds no merit in the contentions raised before this Court. The issue as to whether time was of the essence of the terms of settlement leading to the compromise decree, or as to whether the execution proceedings were not maintainable against the above backdrop of facts, was never raised before the executing court and it cannot be allowed to be raised in the manner sought to be done for the first time before this court. The petition, *i.e.,* CRP. 150/2012 is thus, dismissed.

9. The first captioned petition *i.e.* C.R.P. 122/2012 is dismissed as withdrawn. The petitioners of the said matter are bound by the undertaking with regard to responsibility to bear the liability towards interest upto the date of deposit of the principal amount as determined

in the impugned order, it having been voluntarily undertaken by the said petitioners, and, being fair, just and equitable.

10. The net result of the above conclusion of the two revision petitions, is that the order dated 01.06.2012 (as partially modified above) will have to be taken to the logical end by the executing court in letter and spirit.

11. As jointly requested by both sides, it is directed that the parties shall appear before the executing court on 15th May, 2018.

12. Both petitions and the pending applications are disposed of in above terms.

R.K.GAUBA, J.

APRIL 13, 2018
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