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

+ FAO(OS) 269/2017, CM Nos.36639/2017, 14264/2018 & 21136-37/2018

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Date of decision : 23rd May, 2018

VIRENDRA PRAKASH & ANR Appellants
Through : Mr. P.K. Agrawal, Ms. Mercy
Hussain and Ms. Tannya
Sharma, Advs.

versus

ISHAN EDUACTION RESEARCH SOCIETY. Respondent
Through : Mr. Ajay Saroya, Adv. along
with Mrs. Neetu Garg,
President of respondent.

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MR. JUSTICE C.HARI SHANKAR

JUDGMENT (ORAL)

GITA MITTAL, ACTING CHIEF JUSTICE

CM No.21136/2018

1. This application under Order XXIII Rule 3 CPC has been filed by the appellant, seeking leave to place on record a duly notarized and authenticated copy of Settlement Agreement dated 16th March, 2018 pertaining to settlement arrived before the Delhi High Court Mediation & Conciliation Centre.
2. For the reasons stated in the application, the settlement agreement is taken on record.
3. The application is allowed.

FAO(OS) 269/2017, CM Nos.36639/2017 & 14264/2018

1. Ishan Education Research Society has filed a suit for specific performance of an Agreement to Sell with respect to property no.C-184, Madhuban, Delhi – 110092 for a total consideration of Rs.5,01,00,000/-. Aggrieved by order dated 23rd August, 2018 passed on an application in CS(OS) 874/2010, the defendant in that suit, filed the present appeal.

2. On 31st January, 2018, with the consent of the parties, they were referred to SAMADHAN – Delhi High Court Mediation and Conciliation Centre. The mediation proceedings were successful and a Settlement Agreement dated 16th March, 2018 between the parties was duly executed. This Settlement is signed by the respondent as well as his counsel. On behalf of appellants, we are informed that they were, on the date of settlement, located in USA and as a result, their counsel Mr. P.K. Agrawal, on the instructions of the appellants, had signed the same.

The original Settlement Agreement has been placed before us.

3. Inasmuch as settlement terms were not signed by the appellants, CM No.14264/2018 under Order XXIII Rule 3 CPC was filed by the appellant/defendant confirming the terms of the said Settlement along with affidavits which were notarised by the public notary in the State of California.

4. Thereafter, CM 21136/2018 has been filed along with affidavits of the two appellants as well as copy of the Settlement Agreement dated 16th March, 2018 duly signed by the appellants. This Settlement Agreement has also been notarised by Notary Public in the State of

California and duly authenticated by the Vice Consul, Indian Embassy, USA.

5. The respondent is present in the Court and has seen original settlement agreement which has been filed along with CM 21136/2018 as well as the original Settlement Agreement dated 16th March, 2018. It is confirmed that the Agreements are identical. The terms and conditions therein were agreed upon in the Mediation Centre and signed by the respondent.

6. We find that the appellants have confirmed on record that the Settlement arrived at before the Mediation Centre was as per their instructions and the same stands confirmed by them. They have undertaken to remain bound by the terms of the Settlement.

7. It appears that appellant has also filed CS(OS) 598/2017 titled as *Virender Prakash v. Ishan Education research Society* on 15th October, 2014 in which summons have not been issued so far.

8. By way of the settlement dated 16th March, 2018, the parties have resolved not only CS(OS) 874/2010 but also CS(OS)No.598/2017.

9. In view of the above, the parties have voluntarily and *bona fide* arrived at a Settlement before the Delhi High Court Mediation and Conciliation Centre on 16th March, 2018 which has been signed by respondent as well as counsels for the parties. The same has been confirmed by the appellants by way of settlement agreement dated 16th March, 2018 filed along with CM 21136/2018.

10. The Settlement of disputes appears to have been entered into by the parties without any undue force, pressure or coercion and as such

there is no impediment for accepting the same and taking the same on record.

11. In view of the above, it is directed as follows:

- (a) The order dated 23rd August, 2017 in CS(OS)No.874/2010 is set aside and quashed.
- (b) It is directed that settlement is taken on record and CS(OS) 874/2010 shall stand decreed in terms thereof. The parties shall remain bound by terms of settlement.
- (c) The appeal is disposed of in terms of settlement dated 16th March, 2018 reached between the parties.
- (d) CS(OS) 874/2010 shall stand decreed in terms of the settlement dated 16th March, 2018.
The Registry shall draw up the decree sheet in the said suit.
- (e) CS(OS) 598/2017 shall stand disposed of in terms of settlement dated 16th March, 2018.
- (f) In as much as parties have resolved their disputes before the Mediation Centre, it is directed that the plaintiffs shall be entitled to refund of the court fees in both the cases i.e., CS(OS) 874/2010 and CS(OS) 598/2017. The Registry shall draw up necessary certificates in terms of Section 16 of the Court Fees Act, which may be issued to learned counsels for the parties.
- (g) In terms of the settlement, the respondent (plaintiff in CS(OS)No.874/2010) shall be entitled to release of amount of Rs.4.31 crores (deposited under orders of the

learned single judge vide order dated 5th May, 2010 in CS(OS)874/2010), together with all accrued interest thereon. The Registry is directed to release the said sum against completion of formalities, if any.

- (h) In terms of Clause 10 of the settlement agreement, the respondent (plaintiff in CS(OS)no.874/2010) shall be entitled to seek return of e-non-judicial stamp paper for Rs.28,92,000/- filed by it on the judicial record in CS(OS)874/2010 and liberty is given to use the same as part of total stamp duty payable on the sale deed to be executed in terms of the settlement agreement. The Collector of Stamps shall bear in mind that the amount of stamp duty deposited by the party who purchased it could not be used for the reason that no orders were passed for execution of the sale deed till now and further that disputes had arisen between buyer and seller which have been resolved only now.

This appeal as well as pending applications are disposed of in the above terms.

CM No.21137/2018

1. This application has been filed by the respondent seeking extension of time, pointing out that the terms of the settlement have been accepted by the court only today inasmuch as the appellants had to take steps for notarization of the agreement and thereafter the authorization by the Indian Embassy in United States of America.
2. It is submitted that as a result of this delay, the time which the

appellants would have had available after the settlement dated 16th March, 2018 was accepted by this court, has been substantially reduced by over two months.

3. It is submitted that though the respondent is reasonably hopeful of completing the transaction by the 31st of July 2018, as is envisaged, however, there is a possibility that the respondent may suffer a deficiency of Rs.35,00,000/- in arranging the funds which are payable to the appellants. The respondent has prayed for an extension of time of six weeks from 31st July, 2018 up to 11th September, 2018 for making payment of the balance amount in terms of the settlement dated 16th March, 2018.

4. The delay in recording of the settlement because of the appellants cannot be and has not been disputed. Mr. P.K. Aggarwal, Id. counsel for the appellants has submitted that therefore, the appellants would have no objection to the grant of extension of time for making payment in terms of the settlement dated 16th March, 2016.

The time for making payment in terms of the settlement dated 16th March, 2016 is accordingly extended by six weeks up to 11th September, 2018.

5. This application is allowed in the above terms.

Dasti.

ACTING CHIEF JUSTICE

C.HARI SHANKAR, J

MAY 23, 2018/aj