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

Date of decision: 5th November, 2019.

+ **CM(M) 461/2019 and CM APPL. 13050/2019**

PARAG P TRIPATHI Petitioner

Through: Mr. Lalitaksh Joshi and Mr. Rishabh
Kapur, Advocates (M: 9730630681).

versus

MUKESH KAPIL & ANR Respondents

Through: Mr. J.C. Mahindro and Ms. Sapna S.
Kapil, Advocates for R-2 (M:
9810138091).

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WITH

+ **CM(M) 465/2019 and CM APPL. 13059/2019**

NEELIMA TRIPATHI Petitioner

Through: Mr. Lalitaksh Joshi and Mr. Rishabh
Kapur, Advocates (M: 9730630681).

versus

MUKESH KAPIL & ANR Respondents

Through: Mr. J.C. Mahindro and Ms. Sapna S.
Kapil, Advocates for R-2 (M:
9810138091).

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (oral)

1. The present petitions have been filed pursuant to the order dated 22nd February, 2019 wherein time was again granted to the Judgment Debtors/Respondents (*hereinafter*, “*Judgment Debtors*”) to file replies to the application under Section 151 CPC moved by the Decree

Holder/Petitioner in CM(M) 461/2019 and the Decree Holder/Petitioner in CM(M) 465/2019 (*hereinafter, collectively referred to as “Decree Holders”*). The Decree Holders have approached this Court due to the incessant delay that has been caused by the Judgment Debtors in the disposal of its applications, though the decree which is being executed by the Executing Court has attained finality and repeated judgments have been passed against the Judgment Debtors by various Benches of this Court.

2. This litigation has had an extremely chequered history. It relates to the first floor of property bearing No. 14, Bazar Lane, Bengali Market, New Delhi (*hereinafter, “suit property”*) where the Decree Holders had entered into an agreement to sell with the builder. A settlement was entered into in various connected petitions and was recorded on 3rd October, 2001 by the Id. Single Judge of this Court. A modification of the said order was also directed on 2nd November, 2001. The decree which has been passed in terms of the settlement in CS(OS) No. 627/1997 and connected petitions, has been filed in the compilation handed over by the Id. counsel for the Decree Holders at page 6. The sale deed was to be executed after the suit property was converted from leasehold to freehold, which took place in 2007.

3. It is the case of the Decree Holders that they approached the owner for execution of the sale deed after it was converted to freehold, in terms of the settlement agreement dated 1st October, 2001, however, since the sale deed was not executed, two execution petitions were filed in 2010. In the execution petitions, two orders dated 4th September, 2013 and 4th October, 2013 were passed. The original decree, as also the orders passed in the execution petitions, were challenged before a Id. Division Bench of this Court. The appeals i.e., FAO(OS) 476/2013, FAO(OS) 495/2013 and RFA

(OS) 47/2014, filed by the Judgment Debtors, were disposed of by a common judgment on 1st September, 2016. In the said judgment, the Court observed in paragraph 14 as under: -

“14. Thereafter, the lease-hold rights in the land in question was converted into free-hold by and under a registered Conveyance Deed dated August 06, 2007. Thence, as per the terms of the Settlement Agreement dated October 01, 2001, sale-deed were to be executed in favour of the purchasers of the Builder’s portion in the property, which had been reconstructed by then.”

4. The Id. Division Bench also records that the collaboration agreement and the settlement have not been challenged by the Judgment Debtors. Para 19 of the order reads as under: -

“19. The appellant did not challenge either the Collaboration Agreement dated February 17, 1992 or the Settlement dated October 01, 2001 in the course of the execution proceedings. The appellant never questioned the decree passed in the suits filed by respondents No.1 and 2, which decrees were the result of the compromise between the parties and as per the orders/decrees dated October 03, 2001.”

5. Various challenges were also raised in respect of the terrace and *mumty* having not been constructed, which was recorded in paragraph 23 of the judgment. The allegations of fraud have also been dealt with. The Court also records that the Judgment Debtors have been chronic litigants before the Court who multiply the proceedings only with the view of harassing the Decree Holders. Finally, all the appeals were dismissed by the Id. Division Bench.

6. The execution petitions were thereafter transferred to the District Court, owing to the increase in pecuniary jurisdiction. In the execution

petitions, order dated 25th May, 2018 was passed, wherein the Executing Court records the history of the proceedings. The Court thereafter proceeds to direct as under: -

“3. I have gone through the file. I have gone through the orders dated 04.09.2013; 04.10.2013; order dated 01.09.2016 (in RFA (OS) 476/2013) and judgment dated 10.12.2013 passed in CS (OS) 2095/2013. The objections raised by the Ld. Counsel for the JDs have already been dealt with by the High Court of Delhi where the execution petition was earlier pending. The suit filed by the JDs stating therein that the alleged settlement was obtained by fraud, was dismissed on 10.12.2013. Hence, the contention of Id. Counsel for JDs that the plea of fraud can be raised at any stage is without any merit in the facts and circumstances of the present case as the same has already been decided. The judgment - Banwari Lal (supra) is not applicable to the facts of the present case.

4. DH has placed on record a copy of proposed sale deed. I have gone through the same. The proposed Sale Deed is, in accordance with the orders passed by the Court. DH is directed to deliver to the court the Sale Deed on proper stamp paper. This court hereby appoints Sh. Mohan Singh Soudhey, Reader of this Court, to execute the Sale Deed. The execution of the Sale Deed be made in terms of the Order XXI Rule 34 CPC.

5. The Sale Deed on proper stamp paper be filed within a week and, thereafter, it be registered with the competent authority within 15 days.”

7. This order was challenged by the Judgment Debtors in CM(M) 710/2018 which was thereafter withdrawn on 26th November, 2018. A perusal of the above order shows that the Judgment Debtors had preferred an SLP challenging the Id. Division Bench’s judgment dated 1st September,

2016. CM(M) 710/2018, challenging the order dated 25th May, 2018, was withdrawn with liberty to pursue remedies before the Id. Supreme Court. SLP (C) Diary No. 7337/2017 was preferred but the same was finally dismissed due to steps not being taken by the Judgment Debtors to cure defects in the petition.

8. In view of the order dated 26th November, 2018 in CM(M) 710/2018 read with the orders dated 24th November, 2017 and 5th January, 2018, passed in the SLP, the order dated 25th May, 2018 has attained finality.

9. The Decree Holders thereafter moved an application seeking clarification of the order dated 25th May, 2018 so that the officer appointed is permitted to execute the sale deeds or, in the alternative, two separate officers are appointed. This application was preferred in January, 2019 and thereafter, opportunities for reply were granted to the Judgment Debtors. The application continues to remain pending. Ld. counsel for the Decree Holders submits that the long chequered history of this litigation shows that despite the settlement decree attaining finality and the execution petition being allowed in favour of the Decree Holders, the sale deeds are not being executed and repeated applications and objections are being raised by the Judgment Debtors.

10. On the other hand, Mr. J.C. Mahindro, Id. counsel appearing for Judgment Debtor No. 1, submits that the decree sheet itself has not been drawn by this Court, as is evident from two RTI replies dated 30th May, 2011 and 9th September, 2015, which have been placed before the Court. He submits that in the RTI replies, the High Court has confirmed through the Public Information Officer that the decree sheet was not drawn up in AA 12/96 and CS(OS) Nos. 627/97, 628/97, 1180/97, 1188/97, in view of non-

payment of the court fee. The second submission of Mr. J.C. Mahindro, ld. counsel, is that the stair case/*mumti*, as per clause 6 of the settlement agreement, has not been constructed.

11. While Mr. Mahindro was addressing his submissions, his client began to interject, raise her voice and make unfounded allegations. Ld. Counsel however, immediately intervened and apologised on behalf of his client. The matter was then heard fully from both sides. Ld. Counsel further submitted that Execution Petition No.55/2011 was filed by the Judgment Debtors, which was dismissed by this Court, vide order dated 22nd October, 2013, on the ground that no decree sheet has been drawn as yet.

12. On the other hand, ld. counsel for the Decree Holders submits that the two decrees have already been drawn by the Court and has placed on record the decree sheets which have been shown at page 6 and page 44 of the compilation. This Court has perused the same and it is clear that the decree sheets have, in fact, been drawn up after 2011. Even as per the RTI Reply dated 9th September, 2015, on 19th December, 2014, it is clarified that after filing the stamp duty/court fee, decree sheets were prepared in CS(OS) Nos. 627/97 and 628/97. There is a difference between the petition having been decreed and the drawing up of the decree sheet. The drawing up of a decree sheet is really a procedural task which does not take away the decree itself passed by the Court.

13. Insofar as the stair case/*mumti* construction is concerned, the same has been considered by the ld. Division Bench in its judgment dated 1st September, 2016. The Executing Court cannot go behind the decree. Further, the order dated 25th May, 2018 has already attained finality inasmuch as the challenge to the said order has been withdrawn by the

Judgment Debtors.

14. The only relief being sought by the Decree Holders is that the officer appointed by the Court for execution of the sale deed should execute the sale deed in both the execution petitions on behalf of both judgement debtors. The order of the trial court is clear and can only mean that the sale deed has to be executed on behalf of both judgement debtors. However since the decree holders sought clarification, which has led to further delays, the same is clarified by this Court. A perusal of the order dated 25th May, 2018, passed in execution petition Nos. 243/2017 and 244/2017, shows that the same officer has been appointed in both the matters. Since the Judgment Debtors' builder is not appearing before the Court, the officer would be executing the sale deed on behalf of both the Judgment Debtors in favour of both the Decree Holders. Accordingly, it is directed that the officer appointed shall execute the sale deed on behalf of both judgement debtors, in favour of both the Decree Holders. The formalities of stamp paper etc., for the same shall be completed by the Decree Holders before the Executing Court.

15. Parties to appear before the Executing Court on 20th December, 2019. As per Mr. J.C. Mahindro, Id. counsel, there is no Presiding officer in the said Executing Court. Parties are accordingly permitted to approach the District Judge for appropriate marking of the case, in such a situation.

16. The petitions and all pending applications are disposed of in the above terms.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 05, 2019/MR