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

% *Date of Judgment: 23rd April, 2019*

+ RFA(OS) 27/2019 & C.M.Nos.14576-78/2019
MANI DEVI & ORS. Appellants
versus
SUNIL KUMAR & ORS. Respondents

+ RFA(OS) 28/2019 & C.M.Nos.14580-14582/2019
SHALU GUPTA @ SHEELA Appellant
versus
SUNIL KUMAR & ORS Respondent

Present: Mr.Ravi Sikri, Sr.Adv. with Mr.Dhruv Kumra, Advocate for the appellants in item no.49.
Mr.Neeraj Malhotra, Sr.Adv. with Mr.Sunny Choudhary, Advocates for the appellant in item no.50.
Mr.Siddhartha Agarwal, Mr.Aditya Wadhwa, Ms.Debopriya Moulik, Ms.Anushree Malviya and Mr.Abhinav Sekhri, Advocates for the defendants in both the matters.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI
HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

C.M.14576/2019 in RFA(OS) 27/2019
C.M.14580/2019 in RFA(OS) 28/2019
(exemption from filing trial court record)

1. Exemptions allowed, subject to all just exception.
2. Applications stand allowed.

C.M.14578/2019 in RFA(OS) 27/2019
C.M.14582/2019 in RFA(OS) 28/2019
(exemption from filing court fee)

It is submitted that the court fee stands filed.

The applications are dismissed being rendered infructuous.

RFA(OS) 27/2019 & C.M.14577/2019 (delay)

RFA(OS) 28/2019 & C.M.14581/2019 (delay)

3. Both the appeals arise out of the common order dated 20.08.2018 passed by the learned Single Judge on applications being I.A.Nos.11019/2018 & 11020/2018 filed by the appellant seeking recall of the order dated 25.07.2018 on the ground that the settlement has been obtained by respondent no.1 by way of misrepresentation and fraud. The parties in the present appeals are brothers and sisters. Since both the appeals arise out of commons order, the arguments addressed are common and almost identical applications were filed before the Single Judge. Accordingly, the present appeals are also being disposed of by a common order.
4. For the sake of convenience, the parties are being referred to as per RFA (OS) 27/2019. Mrs.Shalini Gupta alias Mrs.Sheela filed a suit for partition and possession against the defendants who are all parties in the present appeal. In para 5 of the plaint, details of 11 properties were mentioned which according to the plaintiff form a part of the estate left behind by her late father Mr.Kailash Chand Goyal. It is a common stand that out of 11 properties, 6 properties being items no.5 to 10, in fact, do not form part of the estate of late Mr.Kailash Chand Goyal. Thus, the suit properties comprised of items no.1, 2, 3, 4 and 11 are as follows:

Sl.No.	Description of the property
1.	Plot No.J-3A, Green Park Extn., New Delhi
2.	Flat No.102, Building No.32/33, Kushal Bazar, Nehru Place, Delhi.

3.	Flat no.105, Building No.32/33, Kushal Bazar, Nehru Place, Delhi.
4.	Residential house bearing No.-RS-12, (Municipal No.379/1, Punjab Bazar) Kotla Mubarakpur, New Delhi.
11.	Agricultural land in revenue estate of Village Chauma in Khasra No. (area) – Khasra No.49/21/1 (5-13), 21/2 (2-7), 65/1 (8-0), 10 (8-0); 11 (8-0), 20 (8-0), 21/1 (6-0) total measuring 46-0 bighas.

5. A preliminary decree was passed on 05.10.2016 defining share of the parties as 1/10th each. A local commissioner was also appointed to suggest the mode of partition.
6. When the matter was listed before the Single Judge on 25.07.2018. The court was informed that the matter had been amicably resolved and cheques in the sum of Rs.1.70 crores in favour of the plaintiff and Rs.1 crore each in favour of the defendants no.4, 5, 6, 7 & 8 were handed over in Court. The defendant no.1 stated that the aforesaid cheques were good for payment and would be honored by the bank on presentation. Defendant no.4, counsel for the plaintiff and defendants no.5 to 8, on instruction from their clients, who were present in Court admitted and undertook to the Court that the relinquishment deed and other documents prepared by defendant no.1 would be executed in favour of defendant no.1 within a period of two weeks. The submissions and undertakings given by learned counsels were accepted by the court and it was observed that the parties would be bound by the same. At that stage, the counsel for the plaintiff withdrew the suit. Counsels for defendants no.1, 5 to 8 as well as defendant no.4 recorded their no objection to the same. As a token of acceptance of the order, the plaintiff , defendant no.1 as well as defendants no.4 to 8 were

directed to sign the order-sheet, which they did.

7. On 02.08.2018 two almost identical applications were filed by the plaintiff, defendants no.4 to 8 seeking recall of the order dated 25.07.2018 on the ground that the parties were coerced to enter into a settlement. They were under the impression that the settlement is only with respect to the property at Green Park and a fraud had been committed by the brother (defendant no.1) which they learnt when they were asked to sign a formal settlement, when the defendant no.1 subsequently changed the terms of the settlement and incorporated in the settlement and relinquishment deed the defendants no.4 to 8 have no share in the suit property. Both the applications were dismissed by the Single Judge by an order dated 20.08.2018, which is a subject matter of the present appeals. The submissions made before the Single Judge are reiterated before us by Mr.Ravi Sikri and Mr.Neeraj Malhotra, learned senior counsels appearing for the respective appellants. It is contended that the appellants were under the bonafide impression that the statement/settlement was with respect to only J-3A, Green park extension, Delhi as no person would accept a sum of Rs.1.7 crore (released to the plaintiff) and court Rs.1 crore to other defendants for large properties, which are valued at crores of rupees.
8. It is submitted that in fact, a fraud has played upon the sisters by the brother and prior to 25.07.2018 there were no talks of the settlement and which is evident from the fact that the date of the cheques is 25.07.2018 and even before the appellants could understand the terms of settlement, cheques were handed over, orders were passed and thus, it is prayed that the order of 20.08.2018 be set aside. Mr.Aggarwal,

learned counsel for the brother, the contesting respondent submits that the parties signed the settlement with open eyes. Parties were initiating an out of court settlement, which is evident upon reading the order of 09.03.2018, copy of which is handed over in Court. Additionally, Mr. Aggarwal submits that even before the Local Commissioner, with a view to resolve the matter amicably, a draft Family settlement had been handed over by the plaintiff to the parties with respect to all the properties and the figure mentioned there was Rs.7.5 crores for the share of all the sisters. Thus, Mr. Aggarwal contends that the appellants were not taken by surprised. They were fully aware that the settlement pertained to all the properties and the payments were made and received as per the terms of the settlement. Additionally, Mr. Aggarwal submits that nothing survives in the matter as all the parties presented the cheques for encashment. The cheques stand duly encashed except in the case of Ms. Mamta Devi whose cheque was returned on account of her having written multiple account number etc. on the back side of the cheque and the plaintiff having encashed Rs.1.60 crores out of Rs.1.70 crores thus, the terms of the settlement stand duly acted upon,

9. We examined the contentions of learned counsel appearing for the parties. The appellants have to cross another hurdle and that is the delay of 177 days in filing the present appeals. The grounds for delay find mentioned in para 3 of the application which we reproduce below:

“3. That parties to the case are in close relation and upon learning the fraud played by the defendant no.1 upon the appellants, mother of the appellants was trying to resolve the dispute amicably in order to save the family relations.

4. That however, due to malafide intent and ulterior motives of the respondent No.1/defendant No.1, all the efforts made in this

regard went in vain; and in that process the delay occurred.”

10. The delay is sought to be condoned on the ground that being a family matter, the mother was interested that the matter be resolved and time was spent in trying to resolve the matter amicably. This application is opposed by the counsel for respondent no.1 on the ground that the application is vague, lacks material particulars and no details have been mentioned as to when the talks of settlement and other details took place. Mr. Aggarwal, submits that once, the application filed by the appellants stood rejected, there was no occasion for the plaintiff to entertain settlement talks. Thus, the application seeking condonation of delay should be dismissed.
11. We have extracted the ground set up by the appellant seeking condonation of delay. The only reason mentioned is that the mother of the appellant was trying to resolve the matter amicably to save the family relations. We find this ground to be hard to believe for the reason that after the order of 25.07.2018, the parties did not make any effort to resolve the matter but applications were filed in court; matter was contested; applications were dismissed. Moreover, there are no particulars to suggest as to whether any meeting took place where the meeting took place who participated in the meeting. In our view, the application is extremely casual in nature, lacks material particulars and is liable to be dismissed.
12. We have examined the matter on merits as well. The common stand of the appellants is that they were forced and coerced to enter into a settlement. They were under the bonafide impression that the settlement is with respect to J-3A, Green Park extension and without being made

to understand the terms of the settlement, the plaintiff was forced to withdraw the suit. Another ground raised was that the parties were taken by surprise, offer was made in court on the same date cheques were handed over and parties were forced to make a settlement and sign the order sheet. We find no force in the settlement made by learned senior counsels appearing for the appellants for the reason that not only the parties were present at the time of settlement, the counsels as well as the parties have signed the order-sheet. In case, the settlement was only with respect to the Green Park property, there was no reason to plaintiff to withdraw the entire suit. To say that they were taken away by surprise. Reading of the order would show that the parties were in fact, negotiating for a settlement prior to 25.07.2018 as well. Mr. Aggarwal, submits that the defendants had handed over to the plaintiff a family settlement in January, 2017 which was then handed over by the plaintiff to the local commissioner and forms part of the record of the Local Commissioner and filed before the Single Judge, which would also in fact suggest that the settlement offered and considered was composite in nature and not with respect to only one property. We also find that post the settlement having been arrived at on 25.07.2018, order-sheet having been signed by the parties and their respective counsels would show that the appellants were not without legal help or assistance and thus, it cannot be said that they were misled or coerced and fraud has been played upon them and the parties having signed the order-sheet, accepted the settlement, we are unable to find any infirmity in the view taken by the Single Judge. The appellant cannot be permitted to wriggle out of the settlement as on such grounds and moreover there

would be no finality in the matters even after there is a settlement. Another factor which cannot be lost track is that all the parties post the dismissal of their applications on 20.08.2018 have acted upon the terms of the settlement, cheques stand encashed and in the case of Ms.Mamta Devi, cheque stands presented. Once the terms of the settlement were acted upon, any act of coercion or fraud complained of stand condoned as the cheques were not deposited after seeking leave of the court nor the deposit of cheques was conditional in nature. We find no grounds to entertain the appeals on merits as well. Accordingly, the appeals and the pending applications being C.M.Nos.14577/2019 and C.M.14581/2019 are dismissed.

G.S. SISTANI, J

JYOTI SINGH, J

APRIL 23, 2019

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