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

Date of Order 30.05.2019

+ **CM (M) 558/2019**

ADITI CHAUHAN & ANR. Appellants

Through: Mr.R.P. Sharma, Advocate with
Mr.Vaibhav Mehra, Advocate along
with respondents in person.

versus

RAJANI CHAUHAN & ANR. Respondents

Through: Respondent no.1 in person.
Respondent no.2 is not present despite
service.

CORAM:

HON'BLE MR. JUSTICE VINOD GOEL

ORDER

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30.05.2019

VINOD GOEL, J. (ORAL)

1. Notice issued to the respondent no.2 received back with the report 'Premises found locked'. By an order dated 16.04.2019, this court ordered for issuance of the notice to the respondent no.2 by publication in two newspapers i.e. (i) The Hindustan Times (English daily), and (ii) "Hindustan (Hindi). The respondent no.2 was served by publication in both these newspapers on 27.04.2019 at the address i.e. Flat No.115, Jaina Apartment, Sector-14, Rohini, Delhi. This address was also furnished in the court on 24.04.2019. On 20.05.2019, this court ordered that an attempt be made to serve the

respondent no.2 again personally at the given address. However, notice issued to the respondent no.2 at the address i.e. Flat No.115, Jaina Apartment, Sector-14, Rohini, Delhi received back with the report 'premises found locked'. Hence, the respondent no.2 is served who has not turned up despite service.

2. The impugned order dated 22.03.2019 passed by the court of learned Principal Judge (North-West), Family Courts, Rohini, Delhi ('Principal Judge'), dismissing the application of the petitioners under Section 151 of the Code of Civil Procedure, 1908 ('CPC') filed in HMA No. 1057/2002, is the subject matter of challenge in this petition filed under Article 227 of the Constitution of India.

3. Brief facts of the case are that the marriage of the respondent no.1 with the respondent no.2 was solemnized as per Hindu rites and ceremonies on 24.11.1986 in Delhi. Out of the said wedlock, two daughters namely (1) Aditi Chauhan and (2) Asmita Chauhan were born on 15.03.1988 and 24.07.1992 respectively. Due to some temperamental differences between the respondent no.1 and 2, they started residing separately since 18.02.2001 and despite several attempts they could not reconcile. As a result, on filing of a joint petition under Section 13 (B) (1) and 13 (B) (2) of Hindu Marriage Act, 1955, a decree of divorce was passed by the court of learned Additional District Judge, Delhi on 10.01.2003 in HMA Petition No.1057/2002. At the time of decree of divorce, the respondent no.1 and 2 had agreed that the Flat No.7-C, Baba Banda Bahadur

Apartments, Sector-14, Rohini, Delhi shall be owned by their two daughters namely (1) Aditi Chauhan and (2) Asmita Chauhan. It was also agreed between them that the said flat shall not be sold by their daughters without their consent. By settlement the respondent no.1 was given the right to live in the said flat. It is noticed a Conveyance Deed in respect of the said flat was executed by the DDA on 25.10.2017 in favour of both the petitioners, who are the daughters of the respondents. It was duly registered on the same day with the Sub-Registrar-VII, Delhi at *Vasika No.13008*.

4. At the time of decree of divorce between the respondent no.1 and 2, both the petitioners namely (1) Aditi Chauhan and (2) Asmita Chauhan (now after marriage Asmita Grover) were minor being aged about 15 years and 11 years respectively. Obviously, the condition that the petitioners shall not sell the said flat without the consent of the respondents no.1 and 2 was agreed between them as both the petitioners were minor. After attaining the age of majority, both the petitioners have agreed to sell the said flat and entered into an Agreement to Sell in respect of the said flat with (1) Mr.Deepak Chauhan son of Sh. Rampal Singh and (2) Smt. Ritu Gupta, W/o Sh. Deepak Chauhan, both resident of F1U/99, Pitampura, Delhi on 26.12.2018 for a sum of Rs.90,00,000/-, out of which the petitioners have received a sum of Rs.9,00,000/- as earnest money and the Sale Deed was to be executed and registered by the petitioners in favour of the said vendee on or before 15.02.2019 after receipt of the balance sale consideration of Rs.81,00,000/-. This led the petitioners to file an

application under Section 151 CPC on 06.03.2019 before the learned Principal Judge for permission in the said HMA Petition No.1057/2002 (decided on 10.01.2003) to sell the said flat.

5. Both the petitioners appearing in person and their learned counsel submit that after selling the flat in question the petitioners intend to purchase a Penthouse bearing No.E-1203, E-Block/Tower, 12th Floor, admeasuring 3850 sq.ft. (Approx. 357.67 Sq.Mtr.) consisting of Five Bed Rooms, Five Toilets, One Drawing/Dining Room, One Kitchen, Two Family Lounge, One Powder Room, Utility and WC, Balconies and terrace in the complex known as “Tulip Ivory”, situated at Village Badshahpur, Sector-70, Gurgaon, Haryana from Sh.Sumit, S/o Late Sh. Chhatar Singh, R/o; VPO Badshahpur, Tyagi Street, Gurgaon, Haryana. They submit that in fact they have agreed to purchase the said Penthouse for a total sum of Rs.1,28,00,000/- and they have already paid a sum of Rs.5,00,000/- as earnest money to the vendor. Copy of the agreement dated 04.01.2019 is on the record.

6. In the circumstances, since the property in question i.e. Flat No.7-C, Baba Banda Bahadur Apartments, Sector-14, Rohini, Delhi was already given by the respondents no.1 and 2 to the petitioners on 10.01.2003, they became the owner of the flat in question; Conveyance Deed dated 25.10.2017 was also executed in their favour by the DDA; and they have already attained the age of majority, there is no requirement at all in law by the petitioners to obtain permission

of the court or consent from the respondents no.1 and 2 to sell the said flat to anyone. The only condition that would remain is that the respondent no.1 shall have a right to live in the said flat. However, the respondent no.1 who is present in person, states that she has no objection at all if the said flat is sold by the petitioners. Both petitioners submit that their mother i.e. respondent no.1 is a joint buyer with them as per the agreement dated 04.01.2019 by which they intend to purchase the pent house at Gurgaon.

7. The petition is disposed of accordingly in above terms.

8. *DASTI.*

VINOD GOEL, J.

MAY 30, 2019

"shailendra"