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IN THE HIGH COURT OF DELHI AT NEW DELHI

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RFA (OS) 47/2019

VINAY CHHABRA

..... Appellant

Through: Mr. Anil Sharma and Mr. Kumal
Nath, Advocates.

Versus

JUDGE CHAWLA & ORS.

.....Respondent

Through: Mr. Rajat Aneja, Mr. Shrey Chathly
and Ms. Bandana Grover, Advocates
for R-1.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE VINOD GOEL

ORDER
13.05.2019

VINOD GOEL, J: (ORAL)

C.M. No.22683/2019 & 22685/2019 (for exemption)

Allowed, subject to all just exceptions.

The applications stand disposed of.

C.M. No.22684/2019 (for delay)

1. This is an application seeking condonation of two days in filing the appeal. Learned counsel for the respondent states that he does not wish to file a reply to the application.
2. For the reasons stated in the application, the delay of two days in filing the appeal is condoned.
3. The application is disposed of.

R.F.A. (OS) No.47/2019 & C.M. No.22682/2019 (for stay)

1. The appellant/defendant No.1 has preferred the present appeal against the impugned judgment and decree dated 15.02.2019 passed by the learned Single Judge in CS (OS) No.520/2016 by which the said civil suit was decreed against him.

2. The impugned judgment and decree were passed by the learned Single Judge on the consent given by the learned counsel for respondent No.1/defendant No.1. The operative part of the judgment reads as under :-

“13. The counsel for the plaintiff, at this stage, without prejudice to the rights and contentions of the plaintiff and under instructions of the plaintiff present in Court, to put an end to the controversy, offers Rs.15,00,000/- to the defendant No.1 by demand draft in favour of the defendant no.1 against delivery of possession of the property.

14. The counsel for the defendant no.1 is agreeable to the aforesaid proposal.

15. Resultantly, a decree is passed, in favour of the plaintiff and against the defendant no.1, (a) of recovery of possession of the second floor comprising of the rear portion of the terrace of the second floor i.e. third floor comprising of whatsoever construction may be existing thereon, as well as above thereon of property No.11-B, Rajender Park New Delhi; (b) of declaration as null and void, the sale deeds (i) dated 14th July, 2011 registered as document no.6797 in Book no.1, Volume 14272 at pages 179 to 188 on 19th July, 2011 with respect to the roof of the second floor i.e. third floor of the property and (ii) dated 22nd July, 2009 registered as document no.5212 in Additional Book No.1, Volume No.13280 at pages 186 to 194 on 22nd July, 2009 with respect to the aforesaid property and of cancellation thereof; and, (c) of

permanent injunction restraining the defendants, jointly and severally, from hereafter dealing with the property with respect whereto the decree for possession has been passed.

16. It is, however, made clear that the plaintiff shall be entitled to delivery of possession from the defendant no.1 against payment by way of demand draft in favour of defendant no.1 of a sum of Rs.15,00,000/- and the defendant no.1 to simultaneously deliver to the plaintiff the original sale deeds aforesaid of which cancellation has been ordered.

17. The plaintiff, on the basis of this judgment and decree, shall be entitled to approach the concerned Registrar/Sub-Registrar with whom the sale deeds are registered, for recording the cancellation thereof in the records of the Registrar/Sub-Registrar.

18. The parties are left to bear their own costs.

19. The counsel for the defendant no.1 states that the defendant no.1 is residing in the subject property and needs time to shift out.

20. The defendant no.1 is granted three months' time from today to vacate the property, whereafter the plaintiff shall be entitled to execute the decree.

21. The counsel for the plaintiff, at this stage, draws attention to the order dated 25th October, 2016 directing the plaintiff to deposit Rs.70,00,000/- in this Court, to secure the interest of the then defendant no.4 to this suit namely Tejinder Singh Yadav, and states that since the plaintiff has already settled with the said Tejinder Singh Yadav, the plaintiff is entitled to refund of the said amount.

22. The counsel for the defendant no.1 has not opposed.

23. The counsel for the plaintiff, on enquiry, states that under the settlement with Tejinder Singh Yadav, the said amount has been ordered to be returned to the plaintiff.

24. The amount of Rs.70,00,000/- deposited in this Court pursuant to order dated 25th October, 2016

*together with interest, if any, accrued thereon be refunded to the plaintiff.
Decree sheet be prepared accordingly.”*

3. Learned counsel for the appellant contends that the counsel Mr. Vaibhav Mehra, who had appeared for the appellant had no authority to make any statement to accept any amount or to handover the property and the concession given by the learned counsel was without any authority. He contends that the counsel for the appellant who appeared before the learned Single Judge has neither informed the appellant about the alleged offer extended by the learned counsel for respondent No.1/plaintiff nor taken any instructions from him. He submits that Sh. Vaibhav Mehra, Advocate has acted beyond instructions of the appellant. He submits that the statement given by the learned counsel before the learned Single Judge was mala fide which cannot bind the appellant.

4. The learned counsel for respondent No.1/plaintiff contends that the plaintiff had purchased the suit property from respondent No.3/defendant No.3 by registered sale deed dated 21.06.2007 which is prior in time to the sale deed dated 22.07.2009 executed by respondent No.3/defendant No.3 in favour of respondent No.2/defendant No.2 and the sale deed dated 14.07.2011 executed in favour of the appellant by respondent No.2/defendant No.2.

5. We have heard the learned counsel for the parties.

6. The appellant/defendant No.1 has nowhere pleaded that the sale deed in his favour executed by respondent No.2/defendant No.2 (dated

14.07.2011) or the sale deed executed by respondent No.3/defendant No.3 in favour of respondent No.2/defendant No.2 (dated 22.07.2009) is prior in time.

7. It is nowhere pleaded in the grounds of appeal by the appellant/defendant No.1 that he has taken any action against his lawyer Mr. Vaibhav Mehra, who represented him in the civil suit for making statement without obtaining any authority or instructions from him either to the Bar Council or in any Court of Law. He has not even indicated having issued any notice to his previous counsel Mr. Vaibhav Mehra seeking his explanation to make statement on his behalf before the learned Single Judge on 15.02.2019.

8. Section 96 (3) of the Code of Civil Procedure, 1908 puts a bar to challenge a consent decree by way of appeal. Section 96 (3) reads as under :-

“(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”

11. The scope of challenging a consent decree was explained by the Hon'ble Supreme Court in ***Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566*** that the remedy available to a party who wants to challenge the said consent decree is to approach the court which had recorded the compromise and made a decree in terms of it and establish that there was no compromise. The Supreme Court held in ***Pushpa Devi Bhagat (supra)*** as under :-

“Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and

made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made.

12. Therefore, we do not find any reason to interfere with the impugned judgment and decree dated 15.02.2019. Consequently, this RFA (OS) 47/2019 along with CM APPL. 22682/19 is dismissed with no order as to costs.

(VINOD GOEL)
JUDGE

(HIMA KOHLI)
JUDGE

MAY 13, 2019
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