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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.F.A. 30/2012
PROTECH COATINGS PVT LTD Appellant
Through Mr. Madhukar Pandey, Ms. Damanjit
Kaur, Advs.
versus

RK JAIN & ANR Respondent
Through Mr. Pranesh Misra, Mr. Shubham
Sharma, Advs. R-II(i) to R-II(iv).
None for R1.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **31.01.2019**

The present EX.F.A. 30/2012 was filed by the appellant M/s. Protech Coatings Pvt. Ltd. through its director Mr. Puran Chand Rathi, seeking the setting aside of the orders dated 04.11.2011 and 27.05.2011 in execution proceedings bearing Ex. No. 79/08 of the Court of the learned ADJ (Central-07), Delhi. Vide the order dated 27.05.2011, the objections that had been filed by the decree holder Mr. Kimti Lal Jain, now arrayed on record in the present proceeding through his legal representatives as the respondents no. R-II(i) to R-II(iv), to the judgment and decree dated 04.05.2005 were dismissed and the objections that had been filed by the decree holder had been allowed and the sale transaction in relation to plot admeasuring 225 sq. yards situated at 45, Arihant Nagar, Punjabi Bagh, New Delhi entered into between the judgment debtor and M/s. Protech Coatings Pvt. Ltd. on

19.10.2007 was held to be null and void and set aside. Vide order dated 04.11.2011, another application in relation to the objections that had been filed, was also declined.

During the course of the present proceedings in view of the settlement having been made on 26.11.2018 vide the application CM APPL. 48580/2018 having been filed jointly on behalf of the appellant and the respondents seeking that the matter be referred to the Delhi High Court Mediation and Conciliation Centre in as much as there was a scope for settlement between the parties that a settlement has virtually been arrived at between them though the modalities thereof had yet to be worked out and that the said application having been allowed on 26.11.2018, the matter was referred to the Delhi High Court Mediation and Conciliation Centre with the mediation settlement dated 10.12.2018 having since been received.

In relation to the said mediation settlement, the statements of the appellant through its director Mr. Puran Chand Rathi examined as CW-5, the statement of the counsel Mr. Pranesh Misra at bar for the R-II(i) to R-II(iv) i.e. legal representatives of Mr. Kimti Lal Jain examined as CW1, the statement of Smt. Veena Jain as CW3 as LR of R-II i.e. R-II(i) as per the amended memo of parties placed at page 819, volume-IV of the record and the statement of Ms. Kavita Jain i.e. R-II(ii) another LR of Mr. Kimti Lal Jain recorded as CW4 and the statement of Mr. R.K. Jain, the respondent no. 1 to the appeal were all recorded on 29.01.2019.

Vide the mediation settlement dated 10.12.2018, it had been detailed therein to the effect that : -

“1. The Second Party and Late Sh. Kimti Lai Jain (now being represented through his LR's) are first cousin brothers and were owners of property bearing No. 45, Arihant Nagar, New Delhi admeasuring 225 sq.yards (188.13 sq.mtrs) (hereinafter referred to as the "said property") vide perpetual sub lease from Delhi Administration dated 25.07.1985.

2. That the Second party and Late Sh. Kimti Lai Jain (now being represented through his LR's) in a suit for partition bearing CS (OS). No. 211/2004 vide judgment and decree dated 4/11.05.2015 apportioned the said property into two equal shares and also empowered the Second Party to sell the entire property after 3 months to the First Party with whom he had already entered into Agreement to Sell by taking earnest money by way of two cheques one in the name of Second Party and other in the name of Late Sh. Kimti Lai Jain which was duly encashed by both, for an amount of Rs.2,00,000/- (Rupees Two Lakhs Only) each to pay the property tax, arrears and other miscellaneous expenses.

3. Thereafter disputes and differences arose between the parties and after a series of litigation an EX.F.A. 30/2012 was filed arising out of order dated 04.11.2011 and 27.05.2011 passed by Ld. ADJ Shri Pankaj Gupta, Tis Hazari Courts, Delhi in Ex. Petition No. 79/2008 titled "Kimti Lai Jain Vs. R.K. Jain" before the Hon'ble High Court of Delhi.

4. The present matter being EX.F.A. 30/2012 was referred to Samadhan (Delhi High Court Mediation and Conciliation Centre) vide an order dated 26.11.2018 passed by the Hon'ble Ms. Justice Anu Malhotra.

5. The Parties agreed that Ms. Puja Anand, Advocate would act as the Mediator in the matter of Mediation proceedings;

6. Comprehensive mediation session was held on 10.12.2018 and the Parties have, with the assistance of the Mediator and in the presence of their respective Counsels have voluntarily arrived at an amicable solution, resolving the above mentioned disputes and differences;

7. The Parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediator.

8. The following settlement has been arrived at between the Parties hereto: .

a. That an amount of Rs. 15,27,000/- (Rupees Fifteen Lakhs Twenty Seven Thousand Only) vide pay order No. 032329 dated 15.10.2007 drawn on Union Bank of India was deposited as part of the 50% of the sale proceeds of the said property by the Second Party since he was only dealing with the First Party with regard to sale of the said property. The said amount was deposited in case bearing No. M-71/07 titled as "R.K. JAIN VS. KIMTI LAL JAIN" before the Court of Ld. ADJ, Tis Hazari Courts, Delhi as per the judgment dated 04.05.2005 in suit no. 211/2004 wherein the Second Party was given the, authorization to sell the said property for himself and on behalf of Late Sh. Kimti Lai Jain. Since, the said pay order would have lapsed by flux of time, therefore, the First Party will get a fresh draft made for the said amount of Rs. 15,27,000/- (Rupees Fifteen Lakhs Twenty Seven Thousand Only) in favour of the Third Party (i.e. Smt. Veena Jain, being the mother of the part of the Third Party) out of whom two are minor girls (i.e. Riddhi and Siddhi) and Ms. Kavita being major.

b. That it is furthermore agreed between the parties that subsequent to the First Party giving a fresh draft of Rs.15,27,000/-(Rupees Fifteen Lakhs Twenty Seven

Thousand Only) in the name of Smt. Veena Jain (being the mother of the part of the Third Party) before this Hon'ble Court, the First Party shall apply for the withdrawal and refund of the P.O. bearing No. 032329 dated 15.10.2007 drawn on Union Bank of India for an amount of Rs.15,27,000/-(Rupees Fifteen Lakhs Twenty, Seven Thousand Only) lying in the Court of Ld. ADJ, Tis Hazari Courts, Delhi. That the Second and Third Party undertake to give their unconditional NOC .to the First Party for the said purpose.

c. That a draft in the name of Smt. Veena Jain (Third Party collectively) of Rs. 55,00,000/-(Rupees Fifty Five Lakhs Only) drawn on DCB Bank bearing no. 197473 dated 10.12.2018 is being handed over to the Third Party at the time of signing of this Settlement Agreement. The copy of the said draft is annexed herewith as Annexure-A. The Third Party acknowledges the receipt of the same.

d. That the First Party after Were signing of this Settlement Agreement becomes the owner of the said property and the Second and Third Party and their legal heirs, assignees, representative, nominees will not raise any claim, right, title or interest in the said property.

e. That the First Party had got the said property registered vide an Agreement to Sell dated 19.10.2007. That all the parties collectively and severally agree and undertake that the First Party is the absolute owner of the said property and in case in future there is a need for any documentation/registration then the Second and Third Party, their legal heirs/nominees/assignees/representatives etc. would tender all assistance to the First Party for the said purposes and the cos shall be borne by the First Party solely.

9. The parties agree and collectively pray to this Hon'ble Court to dispose off the present Ex.F.A. 30/2012 in terms of the present Settlement Agreement.

10. That the contents of this Settlement Agreement have been explained to all the parties in their vernacular language and have executed this Settlement Agreement after understanding the contents of same.

11. By signing this Agreement the parties hereto state that they have no further claims or demands against each other and all the disputes and differences have amicably been settled through the process of Mediation.

12. The Parties hereto confirm and declare that they have voluntarily and of their own free will arrived at this Settlement Agreement in the presence of the Mediator as well as their respective counsel.

13. That the Parties undertake before the Hon'ble Court that they are bound ' by the Settlement Agreement and to abide by the terms and conditions set out in the Settlement Agreement and not to dispute the same hereinafter in the future."

It was stated by the director of the appellant and by the respondent no.1 in his statement on 29.01.2019 and it is stated by the counsel for the R-II(i) to R-II(iv) that there is no opposition to the prayer made by the appellant in the present appeal and it was also stated by the LRs R-II(i) and R-II(ii) of the deceased Mr. Kimti Lal Jain, the parties of the *lis* that they all undertake to abide by the terms of the mediation settlement dated 10.12.2018 i.e. Ex.CW-1/A on which they have signed voluntarily of their

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own accord without any duress or pressure from any quarter. It has also been indicated through the terms of the mediation settlement dated 10.12.2018 i.e. Ex.CW-1/A brought forth through the statement of the director of the appellant, the statement of the respondent no.1 and the statements made by the R-II(i) and R-II(ii) and by the counsel for the R-II(i) to R-II(iv) that in terms of the said mediation settlement, a sum of Rs.55 lakhs vide demand draft bearing No. 197473 dated 10.12.2018 drawn on DCB Bank Limited had already been handed over to Smt. Veena Jain at the time of the recording of the mediation settlement dated 10.12.2018 i.e. Ex.CW-1/A, photocopy of which demand draft is on record as Ex.CW1/C. It is also indicated to the said settlement recorded on 29.01.2019 that in terms of mediation settlement dated 10.12.2018 i.e. Ex.CW-1/A, clause-8 a. thereof qua a sum of Rs.15,27,000/- that had been deposited vide the Demand Draft no. 032329 dated 15.10.2007 drawn on Union Bank of India and deposited case bearing No. M-71/07 titled as "R.K. JAIN VS. KIMTI LAL JAIN" as part of the 50% of the sale proceeds in the Court of the learned ADJ concerned as per judgment dated 04.05.2005 in suit No. 211/04, in terms of the settlement arrived at between the parties, a sum of Rs.15,27,000/- in the form of demand draft was handed over on behalf of the appellant to the R-II(i) Smt. Veena Jain vide Demand Draft no.223275 dated 29.01.2019 drawn on DCP Bank Limited, Karol Bagh, New Delhi, photocopy of which is Ex.CW1/B and in view thereof it was stated on behalf of the R-II(i) and R-II(iv) that there was no opposition of the said respondents to give an unconditional no objection certificate to the appellant herein in relation to

the rights qua the plot admeasuring 225 sq. yards situated at 45, Arihant Nagar, Punjabi Bagh, New Delhi i.e. the property in suit and that the respondents had left with no rights in the said suit. In terms of clause 8 d. of the said mediation agreement, it was agreed between the parties to the said mediation settlement that the first party i.e. the appellant herein pursuant to the signing of the said settlement agreement Ex.CW1/A becomes the owner of the property and that the others to the said settlement and their legal heirs, assignees, representatives, nominees would not raise any claim, right, title or interest in the said property. In terms of clause 8 e., it had been collectively and severally agreed between the parties that the appellant would be the absolute owner of the said property and in case in future there is a need for any documentation / registration then the second and third party, their legal heirs / nominees / assignees / representatives etc. would tender all assistance to the appellant for the same and the cost would be borne by the appellant solely. In terms of clause – 9 of the said settlement agreement, all the parties also sought that Ex.FA 30/2012 be disposed of in terms of the said settlement agreement.

On a condition of the statements of the Director of the appellant, the respondent no.1 Sh. R.K. Jain, the respondent no. II(i) Ms. Veena Jain and Ms. Ridhi Jain R-II(iii) and Ms. Sidhi Jain R-II(iv) and the respondent no. II(ii) Ms. Kavita Jain and on a consideration of the statement made by the counsel for the R-II(i) to R-II(iv) taking into account that Ms. Ridhi Jain R-II(iii) and Ms. Sidhi Jain R-II(iv) are minors qua whom Smt. Veena Jain was appointed as natural guardian / next friend vide proceedings dated

17.01.2018 and on a perusal of the mediation settlement Ex.CW1/A, there being no illegality in the same and taking into account that the statements as stated by the parties to the present *lis* have been made voluntarily of their own accord without any duress or pressure from any quarter and also the fact that they have arrived at a settlement Ex.CW1/A dated 10.12.2018 voluntarily of their own accord without any duress or pressure from any quarter, there is no impediment to accept the mediation settlement that has been received, which is thus taken on record and EX.F.A. 30/2012 is thus disposed of in terms of the said mediation settlement Ex.CW1/A dated 10.12.2018 with the said EX.F.A. 30/2012 being allowed in terms of the said mediation settlement Ex.CW1/A dated 10.12.2018 with the impugned orders dated 04.11.2011 and 27.05.2011 in execution proceedings bearing Ex. No. 79/08 of the Court of the learned ADJ (Central-07), Delhi being set aside with directions that the parties of the mediation settlement Ex.CW1/A dated 10.12.2018, who are also parties to the present *lis*, shall remain bound by their statements made in the Court in terms of mediation settlement Ex.CW1/A dated 10.12.2018 and thus consequentially by the terms of the said mediation settlement Ex.CW1/A dated 10.12.2018.

In terms of Section 16 of the Court Fees Act, 1870, the matter having been settled pursuant to a mediation settlement Ex.CW1/A dated 10.12.2018 between the parties, the court fees paid in the *lis* is directed to be refunded to the parties to the *lis* by the Collector concerned.

In terms of the mediation settlement Ex.CW1/A dated 10.12.2018 and the statement made by the parties CW1 to CW5, the amount of

Rs.15,27,000/- deposited vide pay order No. 032329 dated 15.10.2007 drawn on the Union Bank of India in the Court of the learned ADJ concerned qua suit No. 211/04 in M-71/07 is allowed to be released to the appellant.

ANU MALHOTRA, J

JANUARY 31, 2019/MK