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

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Date of Order: 01st August, 2019

%+ EFA(OS) 6/2018 & C.M.16806/2018

M/S HOTEL MARINA & ANR.

..... Appellants

Through: Mr.S.K.Maniktala, Mr.Udit Maniktala
and Mr.Vinod Kumar, advts.

versus

VIBHA MEHTA

..... Respondent

Through: Mr.Kirti Uppal, Sr.Adv. with
Ms.Meenakshi Sood and Ms.Bhagya
K.Yadav, Advts.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MS. JUSTICE JYOTI SINGH

G.S. SISTANI, J. (ORAL)

1. The present appeal is directed against the order dated 09.03.2018 passed by a learned Single Judge of this Court whereby the learned Single Judge has adjourned the execution petition while imposing heavy cost of Rs.50,000/- upon the appellant, which now stands paid. The appellant is primarily aggrieved by certain observations, which have been made in the impugned order although it is not disputed that the execution petition is yet to be decided. The appellants filed an execution petition and sought execution of judgment and decree dated 03.03.2006 passed by a learned Single Judge of this Court.
2. Learned counsel for the appellant submits that the Single Judge has observed in para 9 that on being asked as to under which clause of the compromise the plaintiff/judgment debtor was required to execute

documents, the counsel for the decree holder had sought an adjournment. Observations in para 9 of the order dated 09.03.2018 read as under:

“9. However, upon being asked to show the clause of the Compromise under which the judgment debtor / plaintiff was required to execute the documents, the counsel for the decree holders seeks adjournment.”

3. Learned counsel for the appellant submits that during the pendency of the suit, the parties had entered into an amicable settlement by way of an application being I.A.6376/2006 under Order XXIII Rule 3 CPC, which was filed duly signed by the parties and their counsels. The settlement deed has not been challenged by any of the parties. He further draws attention of the Court to clause ‘g’ of compromise deed, which we reproduce below:

“g) The plaintiff undertakes to this Hon’ble Court that from time to time she shall at the request of Defendant No.8 sign and execute any and all documents, papers and deeds required to give effect to the terms of this Agreement including the Dissolution Deed.”

4. Mr. S.K. Maniktala, learned counsel appearing for the appellants submits that clause ‘g’ of the compromise deed would show that the plaintiff/judgment debtor agreed to sign and execute any and all documents, papers, deeds including the dissolution deed required to give effect to the terms of the agreement, however, counsel for the appellant concedes that the counsel, who appeared on behalf of the decree holder, did not bring this clause to the notice of the Court. It is contended that the observation so made would have far reaching consequences on the rights of the appellant. Learned counsel is also

aggrieved by the observations made in para 12 of the impugned order.

5. Mr.Kirti Uppal, learned senior counsel appearing on behalf of the respondents, submits that the present appeal should be dismissed as the order in question by which an adjournment has been granted with cost of Rs.50,000/-, which stands paid is not an appealable order. Counsel further submits that the main execution petition is yet to be heard. Mr.Uppal also submits that the respondent was to execute documents in terms of clause 'g' subject to clause (iii) of the compromise deed. Clause (iii) (a), (b), (c), (d) and (e) of the settlement deed are reproduced as under:

“(iii) Upon the said payment,

(a) The Plaintiff shall cease to have any share in the Defendant No. 1 Firm and shall also have no claim or demand upon the said Firm.

(b) The plaintiff shall have retired from the Defendant No. 1 firm with effect from 1st April 2006 or earlier when payment is made.

(c) The plaintiff shall have no subsisting dispute or difference with any of the defendant firms and all its partners all disputes and differences shall be deemed to be fully and finally, unconditionally and absolutely satisfied.

(d) The share of the plaintiff shall stand transferred to the Defendant No. 8 automatically and without requirement of doing of any act or omission or commission on the part of any of the parties thereto. The defendant No. 8 shall be the sole and absolute owner of the 8% share held by the plaintiff in the Defendant No. 1 firm until now.

(e) The rights of the plaintiff in tenancy of the Defendant No.1 firm in respect of Hotel Marina at premises No.G-9, Connaught Place, New Delhi shall stand surrendered to the surviving partners of the Defendant No.1 firm and the plaintiff shall have no subsisting right or interest in the tenancy. It shall be open for the surviving partners of the Defendant No.1 firm to apply to the landlord for deletion of the plaintiff as a co-tenant in respect of the said premises.”

6. In response to the submissions made by senior counsel appearing on behalf of the respondent, learned counsel for the appellant submits that in case it is clarified that the observations so made are only tentative and the final order would be passed upon hearing the parties uninfluenced by the observations, the present appeal may be disposed of. He further submits that to show his bonafide on account of protracted litigation between the parties, a sum of Rs.2 crores stands deposited in the Registry of this Court as far back as in May, 2006 pursuant to the orders of the Single Judge. He submits that once the amount stands deposited, the onus is on the plaintiff/judgment debtor to comply with the terms of the settlement and further Clause (iii) is to be read harmoniously and intelligently and once the money stood deposited, the judgment debtor upon complying with terms of settlement would be free to withdraw the money, which is disputed by Mr.Uppal.
7. We have heard learned counsels for the parties.
8. Although the order dated 09.03.2018 passed by the learned Single Judge requires no clarification as the execution petition and the pending

application were simplicitor adjourned, it seems that the counsel who was present in the Court on behalf of the decree holder could not assist the Court and did not point out clause 'g' of the compromise deed, leaving the Court helpless.

9. We have no hesitation in saying, without expressing any opinion on the merits of the matter, that when the execution petition and application are heard, all the grounds urged by both the parties, would be considered and any observation made in the impugned order dated 09.03.2018 would not stand in the way of either of the parties.
10. With the above observations, the appeal and C.M.16806/2018 are disposed of.
11. Parties shall appear before the learned Single Judge on 17.12.2019, the date already fixed.
12. No costs.

G.S.SISTANI, J

JYOTI SINGH, J

AUGUST 01, 2019

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