$~18

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

\+ EX.P. 6/2020

JUGAL KISHOR RATNU ..... Decree Holder

Through: Mr. Jagjit Singh, Mr. Preet Singh and Mr. Vipin Chaudhary, Advs.

Versus

MEENA TEVARY & ORS. ..... Judgement Debtors

Through: Mr. Ravi Gupta, Sr. Adv. with Mr. Shadab Khan and Ms. Anshu Davar, Advs. with JDs No.2&3.

CORAM:
HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **05.02.2020**

1. The counsel for the decree holder (DH) and the senior counsel for the judgment debtors (JDs) state that applications for withdrawal of the respective complaint cases have been filed in the concerned Courts and are listed tomorrow and in accordance with the applications, the respective complaint cases will be withdrawn. It is further stated that with respect to the complaint case filed by the DH, the learned Magistrate has observed that only the High Court can quash the First Information Report (FIR) registered. The counsel for the DH has handed over to the counsel for the JDs, an affidavit of the DH, to be annexed to the petition to be filed in the High Court by the JDs, for quashing of the FIR. The DH present in Court in person undertakes that he will not renege on his promise to cooperate in quashing of the subject FIR.

2. The senior counsel for the JDs has been heard on the aspect of amount, if any to be deducted, out of the amount payable by the DH to the JDs, on account of delay by the JDs in delivery of possession, in accordance with the decree under execution.

3. The counsel for the DH states that as per the decree, the possession was to be delivered on 20th December, 2019 and the premises have been vacated and keys thereof deposited in this Court on 3rd February, 2020 and the DH is entitled to an amount of Rs.45,00,000/- for the period from 20th December, 2019 to 3rd February, 2020 @ Rs.1,00,000/- per day in accordance with the decree.

4. The senior counsel for the JDs has drawn attention to the documents filed by the JDs yesterday i.e. 4th February, 2020, being the WhatsApp messages exchanged between the parties and the orders in the proceedings being O.M.P.(I)(COMM) 511/2019 filed by Sanjeev Narang against the DH and in which there is an order of *status-quo* against the DH and which order was dealt with by the undersigned in the order dated 27th January, 2020 in this execution proceedings.

5. On perusal of WhatsApp messages, even if it were to be believed that the DH, till 2nd January, 2020 was not willing to take possession owing to the proceedings initiated by Sanjeev Narang, it is evident that with effect from 2nd January, 2020 it was the JDs who were using the proceedings initiated by Sanjeev Narang to delay the delivery of possession. I have already on this aspect dealt in detail in the order dated 27th January, 2020 and need to reiterate the same is not felt.

6. The counsel for the DH states that for the delay from 2nd January, 2020 to 3rd February, 2020, an amount of Rs.34,00,000/- is payable by the JDs to the DH.

7. The senior counsel for the JDs, under instructions, has fairly offered that the dispute can be disposed of by making the JDs liable for a sum of Rs.20,00,000/- and which amount can immediately be withdrawn by the DH from the Escrow of Rs.50,00,000/- created in this Court for the benefit of the JDs.

8. The counsel for the DH has contended that the DH had deposited Rs.50,00,000/- in the Escrow account by 20th December, 2019 and had also got the demand drafts in favour of the JDs prepared for Rs.2,37,50,000/- each and was thus out of pocket and even otherwise has had to fight a long battle.

9. It is also contended that the consequences of delay were provided for in the decree at the instance of the JDs and the JDs should not be permitted to wriggle out for a lesser liability. It is also contended that the amounts so payable by the JDs cannot be withdrawn from the Escrow account which is for fulfilment by the JDs of other conditions for the benefit of the DH. However, the counsel for the DH has, under instructions, for the sake of settlement, offered a figure of Rs.25,00,000/-.

10. It is deemed appropriate to finish off the matter by determining the amount payable by the JDs to the DH for delay in delivery of possession, at Rs.22,50,000/-.

11. The keys as well as the demand drafts for Rs.2,37,50,000/- deposited in this Court to remain in the custody of the Court Master.

12. The JDs to, today itself get a demand draft for a sum of Rs.22,50,000/- prepared in the name of the DH and the counsels to, at 1500 hours, appear and against delivery by the JDs of the demand draft of Rs.22,50,000/- in favour of the DH, to the counsel for DH, the demand drafts of Rs.2,37,50,000/- lying deposited with the Court Master be delivered to the counsel for the JDs and the keys lying deposited with the Court Master to be delivered to the counsel for the DH.

13. Both parties to also, by 1500 hours, file their respective affidavits disclosing their present address.

14. The execution proceedings are closed as satisfied.

RAJIV SAHAI ENDLAW, J.

FEBRUARY 05, 2020

'bs'..