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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(OS) 503/2016 & I.A. Nos.1299/2017 (u/O XXXIX R 10 CPC),
9834/2017 (u/O VII R 14 CPC)

SHAKTI RESIDENCY PVT LTD Plaintiff

Through Mr. Harish Malhotra, Sr. Adv. with
Mr. A. Maitri, Adv. & Ms. Radhika,
Adv.

Versus

SANJIV ANAND & ANR Defendants

Through Mr. Dinesh Garg & Ms. Rachna
Agrawal, Advs.
Mr. Arvind Nigam, Sr. Adv. with Ms.
Kamini Jaiswal, Mr. Jatinderpal Singh
& Ms. Rani Mishra, Advs. for D-2.

AND

+ **EX.P. 81/2019 & Ex.Appl.(OS) Nos.510/2019 (u/O XXI R 13**
CPC), 513/2019 (Directions) & 685/2019 (Objections by JD)

RANI SHARMA Decree Holder

Through Mr. Arvind Nigam, Sr. Adv. with Ms.
Kamini Jaiswal, Mr. Jatinderpal
Singh & Ms. Rani Mishra, Advs.

Versus

SANJEEV ANAND Judgement Debtor

Through Mr. Dinesh Garg & Ms. Rachna
Agrawal, Advs

AND

EX.P. 117/2019 & Ex.Appl. (OS) Nos.1006/2019 (u/O XXI R 12 &
46 CPC), 1007/2019 (u/O XXI R 53 CPC) & 201/2020 (Objections
by JD)

SHAKTI RESIDENCY PVT. LTD. Decree Holder

Through Mr. Harish Malhotra, Sr. Adv. with
Mr. A. Maitri, Adv. & Ms. Radhika,
Adv.

Versus

RANI SHARMA

..... Judgement Debtor
Through Mr.Arvind Nigam, Sr. Adv. with Ms.
Kamini Jaiswal, Mr. Jatinderpal
Singh & Ms. Rani Mishra, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.02.2020

1. Rani Sharma (Rani) was the owner of 5/9 undivided share in property No.46, Block No. S, Panchshila Cooperative House Building Society Ltd. (Panchsheel Park), New Delhi; the remaining 4/9 share in the said property was owned by the children of the husband of Rani from his first wife and from whom the said 4/9 share had been purchased by Sanjiv Anand (Sanjiv).
2. In RFA No.738/2005 of this Court emanating from judgment dated 18th August, 2005 of the Court of Ms. Shailender Kaur, Additional District Judge, Delhi in Suit No.351/03/1984 filed by Rani for specific performance of agreement of the children of her husband to transfer their 4/9 share in the property in her favour, a compromise on the terms contained in a Memorandum of Understanding dated 28th January, 2011 was arrived at and a decree dated 4th February, 2011 passed in terms thereof. As per the said compromise, Rani gave up her claim to the 4/9 share, specific performance of the agreement for transfer of which was sought, and agreed to sell her 5/9 share also to Sanjiv, who was neither a party to the suit nor a party to the RFA No.738/2005 but a party to the Memorandum of Understanding dated 28th January, 2011 and which was to form part of the decree.

3. It is the claim of Rani that Sanjiv had failed to pay to Rani the sale consideration agreed by him in the Memorandum of Understanding dated 28th January, 2011. Rani has filed Execution Petition No.81/2019 seeking execution of the decree dated 4th February, 2011 in RFA No.738/2005, seeking recovery of Rs.27.50 crores from Sanjiv.
4. Sanjiv agreed to transfer his entire right in the property aforesaid, i.e. 5/9 share to be acquired from Rani and 4/9 share already acquired from the children of husband of Rani, in favour of Shakti Residency Pvt. Ltd. (Shakti).
5. Shakti instituted CS(OS) No.503/2016 for recovery of Rs.15,15,00,822/- from Sanjiv and for recovery of Rs.10,91,78,904/- from Rani.
6. Vide order dated 25th November, 2016 in CS(OS) No.503/2016, the application of Shakti under Order XII Rule 6 was dismissed.
7. Shakti preferred FAO(OS) No.9/2017 against the order dated 25th November, 2016, which was disposed of vide judgment dated 1st July, 2019 directing Sanjiv to deposit Rs.8.55 crores and directing Rani to deposit Rs.5.95 crores in the Court and further directing that the amounts so deposited be placed in a fixed deposit and disbursal thereof to abide by the orders in the suit.
8. Sanjiv as well as Rani preferred Special Leave Petitions to the Supreme Court against the judgment dated 1st July, 2019 in FAO (OS) No.9/2017, which were dismissed *in limine*; however time for deposit was extended.

9. Shakti filed IA No.16014/2019 in CS(OS) No.503/2016, complaining that while Sanjiv has complied with the direction, Rani had not and seeking a decree for recovery of Rs.5.95 crores from Rani. Vide order dated 18th November, 2019 in CS(OS) No.503/2016, a decree for recovery of Rs.5.95 crores from Rani, to be deposited in this Court, was passed.

10. Shakti has filed Execution Petition No.117/2019 for execution of decree aforesaid dated 18th November, 2019 of recovery of Rs.5.95 crores from Rani, for deposit in Court.

11. The counsels were heard on 11th February, 2020 when it was the contention of the counsel for Sanjiv, that there was no decree of which execution was sought in Execution Petition No.81/2019 by Rani.

12. Pursuant to order dated 11th February, 2020, parleys have been held between the parties for amicable settlement of all disputes and today also the matter was passed over several times to enable the parties, all of whom are stated to be present in person, to arrive at an amicable settlement.

13. With the assistance of the Senior Counsels and counsels, the disputes subject matter of all the three proceedings aforesaid have been settled on the following terms:

A. Sanjiv has agreed to pay a total sum of Rs.16.50 crores to Shakti in the following manner:

(a) Rs.5 crores to be released out of the amount of Rs.8.55 crores deposited by Sanjiv in this Court in pursuance to order dated 1st July, 2019 of the Division Bench in FAO (OS) No.9/2017 emanating from order dated 25th November, 2016 in CS(OS) No.503/2016.

- (b) The balance amount of Rs.11.50 crores by transferring the absolute ownership right in favour of Shakti or its nominee in respect of the entire second floor of the proposed reconstruction of property No.46, Block No. S, Panchshila Cooperative House Building Society Ltd. (Panchsheel Park), New Delhi, along with 22.5% share in the stilt for parking and other common areas and amenities of the said property and in the land underneath the same.
- B. Sanjiv, within six months herefrom, will execute and register at the cost of Shakti, a Sale Deed in favour of Shakti, of undivided 22.5% share in the property as existing, free from all sort of encumbrances.
- C. Sanjiv and Shakti jointly, within six months herefrom will identify a builder for reconstruction / redevelopment of the property. The costs for redevelopment of the property shall be on account of Sanjiv and / or the builder identified for redevelopment and Shakti shall not be liable for any part thereof (save adjustment of the amount of Rs.11.50 crores payable by Sanjiv to Shakti and which will be adjusted in sale consideration as aforesaid) except statutory liabilities if arise on sale consideration of Rs.11.50 crores.
- D. In case the builder is not mutually identified within six months of today, Sanjiv shall pay interest @ 12% per annum on Rs.11.50 crores to Shakti with effect from expiry of six months

and till such time a builder is mutually identified and Property Redevelopment Agreement is executed with such builder.

- E. In the event of Rani delivering possession of the property to Sanjiv as herein provided, Sanjiv shall, before Shakti and Sanjiv have mutually identified a builder for redevelopment of the property, put Shakti into possession of the entire ground floor of the property.
- F. However if the builder is not mutually identified by Sanjiv and Shakti within a period of one year herefrom, then Shakti shall be entitled to recover as a money decree, the balance amount of Rs.11.50 crores with interest @ 12% per annum from expiry of six months hereof from Sanjiv, against retransfer of title of 22.5% share in the property and possession of ground floor of property by Shakti in favour of Sanjiv at cost of Sanjiv.
- G. The aforesaid compromise between Shakti and Sanjiv is in full and final settlement of the claim of Shakti against Sanjiv, Rani and property No.46, Block No.S, Panchshila Cooperative House Building Society Ltd. (Panchsheel Park), New Delhi (save as agreed now) in CS(OS) No.503/2016 and in disposal of Execution Petition No.117/2019.
- H. The settlement aforesaid is in supersession of the decree dated 18th November, 2019 in CS(OS) No.503/2016 and it is made clear that the decree now in CS(OS) No.503/2016 in favour of Shakti is in terms of above i.e. to recover Rs.11.50 crores with interest aforesaid from Sanjiv, if within one year herefrom the

builder for redevelopment of the property is not mutually identified or if Sanjiv, even prior thereto, within six months herefrom does not execute Sale Deed of 22.5% undivided share in property No.46, Block No.S, Panchshila Cooperative House Building Society Ltd. (Panchsheel Park), New Delhi in favour of Shakti or its nominee.

- I. As far as Rani is concerned, Sanjiv, in full and final settlement of all claims of Rani against Sanjiv, Shakti and Rani's 5/9 share in property No.46, Block No.S, Panchshila Cooperative House Building Society Ltd. (Panchsheel Park), New Delhi including under the decree dated 4th February, 2011 in RFA No.738/2005 and in supersession thereof, shall pay a total sum of Rs.15.50 crores to Rani, in addition to the amounts already received by her from Sanjiv or from Shakti; as under:
 - (a) By release in favour of Rani of the entire balance (after withdrawal of Rs.5 crores aforesaid by Shakti) amount out of the Rs.8.55 crores deposited by Sanjiv in this Court including the interest accrued on the entire amount of Rs.8.55 crores.
 - (b) The entire balance amount out of Rs.15.50 crores shall be paid within six months herefrom and if not paid within six months herefrom, the total amount payable by Sanjiv to Rani shall stand enhanced from Rs.15.50 crores to Rs.16.80 crores. However if the balance amount is not

paid within further six months also, i.e. within one year herefrom, then the same will be recoverable by Rani from Sanjiv by execution as of a money decree together with interest @12% per annum thereon from the expiry of the first six months from today till the date of payment / realisation.

- J. Rani, as of today, is in possession of the entire property No.46, Block No.S, Panchshila Cooperative House Building Society Ltd. (Panchsheel Park), New Delhi and shall hereafter not induct any other person into possession or occupation thereof. Rani, simultaneously against payment of the entire amounts agreed to be paid by Sanjiv to her, shall be liable to deliver vacant peaceful physical possession to Sanjiv and also execute at the cost of Sanjiv, documents of transfer of her 5/9 share in the property in favour of Sanjiv or his nominee. Sanjiv however to give 30 days advance notice to Rani of date of payment and when possession shall be liable to be delivered. In case Rani does not do it, Sanjiv shall be entitled to enforce this clause as a decree for specific performance.

14. The aforesaid compromise is found to be lawful and is allowed.

15. A decree, in supersession of the decree dated 18th November, 2019 in CS(OS) No.503/2016 and in supersession of decree dated 14th February, 2011 in RFA No.738/2005 qua Sanjiv, in respect of 5/9th share of Rani is passed, in favour of Rani and Shakti and against Sanjiv and in favour of Sanjiv and against Rani in terms of above.

16. Decree sheet in CS(OS) No.503/2016 be drawn up, with this order forming part of decree sheet. A draft of this order be e-mailed to counsels and counsels are at liberty to mention on 17th February, 2020 if any correction is required.

17. The Registry of this Court is directed to, out of the amount of Rs.8.55 crores deposited in CS(OS) No.503/2016 in pursuance to order dated 1st July, 2019 and interest accrued thereon, forthwith release Rs.5 crores in favour of Shakti Residency Pvt. Ltd. and the entire balance amount in favour of defendant no.2 Rani Sharma.

18. All interim orders in force in CS(OS) No.503/2016 stand vacated.

19. Execution Petition No.81/2019 and Execution Petition No.117/2019 are disposed of in terms of above.

20. A certificate entitling Shakti Residency Pvt. Ltd. to refund of 50% of the court fees paid on CS(OS) No.503/2016 be issued and handed over to the counsel for Shakti Residency Pvt. Ltd.

RAJIV SAHAI ENDLAW, J

FEBRUARY 14, 2020

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