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

\+ CS(OS) 1260/2011

RAJIVE DHINGRA ..... Plaintiff

Represented by: Mr. Ashish Mohan, Mr. Mohit Hukumchand Kumar, Advs.

versus

HARISH DHINGRA & ANR ..... Defendant

Represented by: Mr. Akhil Sachar, Ms. Sunanda, Mr. Japreet Singh Chhabra, Advs. for D-1.
Mr. Sourav Jena, Adv. for D-2.

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

O R D E R

% **26.02.2020**

I.A. 2715/2020 (u/O XXIII R 3 CPC)

1. By this application plaintiff and defendant No.2(a) and defendant No.2(b) as also defendant No.1 who has also filed an affidavit in support of this application seek decree of the suit in terms of the settlement arrived at between the parties before the Delhi High Court Mediation and Conciliation Centre vide the settlement dated 31st January, 2020.

2. The present suit has been filed by the plaintiff Rajive Dhingra impleading his brother Harish Dhingra as defendant No.1 and legal heirs of late sister Smt. Veena Anand, namely Ms. Supriya Anand and Ms. Priya Anand. The present suit seeks partition of the immovable properties left behind late Shri Tulsi Das Dhingra, the father of plaintiff and defendant No.1 and late defendant No.2.

3. During the pendency of the present proceedings parties have entered

into a settlement before the Delhi High Court Mediation and Conciliation Centre copy whereof is annexed with the application.

4. Taking the settlement on record and decreeing the suit in terms of the settlement, application is disposed of.

<u>CS(OS) 1260/2011</u>

1. Plaintiffs and defendants No.1 and defendant No.2(a) and 2(b) have entered into the settlement on the following terms and conditions:

a) *"That the Parties recognize that the property bearing No. A-2/34, Safdarjung Enclave, New Delhi – 110029 (hereinafter referred to as the "Suit Property") was not part of the HUF created by Late Shri Tulsi Das Dhingra.*

b) *That the First Party has agreed to release his entire share in the Suit Property in favor of the Second Party as the latter continues to reside in the Suit Property for a total consideration of Rs.5,80,00,000/- (Rupees Five Crores Eighty Lakhs Only)*

c) *That the Second Party has agreed to settle all disputes with the First Party by agreeing to pay a full and final settlement amount of Rs.5,80,00,000/- (Rupees Five Crores and Eighty Lakhs Only) to the First Party for his inheritance out of the estate. That the First Party shall release all his rights, title, and interest in the Suit Property in favor of the Second Party upon receipt of the above-mentioned full and final settlement amount to be paid in the following manner:*

Rs. 41,00,000/- (Rupees Forty One Lakhs Only)	*From the Second Party's 1/3rd share in the movable assets left behind by Late Shri Tulsi Das Dhingra, in the form of portfolio of shares, fixed deposits and other deposits in various banks.*
Rs.5,39,00,000/- (Rupees Five Crores Thirty Nine Lakhs Only)	*To be paid by the Second Party to the First Party as scheduled below.*

d) *That the Second Party shall pay an amount of Rs.5,00,000 (Rupees Five Lakhs Only) by way of cheque bearing No. 430413 dated 31.01.2020 drawn on Citi Bank, South-Ex, New Delhi as earnest money to the First Party at the time of signing the present Settlement Agreement. This earnest money shall be credited towards the total settlement amount to be paid by the Second Party to the First Party, upon receipt of the final payment in complete fulfillment of all the terms of this agreement.*

e) *That before the end of twelve (12) months from the date of signing of this Settlement Agreement, the Second Party shall make part payment of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) to the First Party. The First Party shall intimate to the Second Party vide registered letter on the address mentioned hereinabove / through e-mail, seven days before the expiry of the period of twelve (12) months stating that the First Party is available in New Delhi to collect the said part payment of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) through cheque/DD either himself or through First Party's legal counsel or the First Party's authorized representative. In the event that the First Party does not collect the said payment himself then the legal counsel or the authorized representative of the First Party present at New Delhi shall collect the said payment of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) made by the Second Party either through cheque/DD and simultaneously upon receipt of the same give a written acknowledgment.*

f) *That in case the Second Party fails to make the part payment of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) to the First Party within 12 months of signing this Settlement Agreement, it is agreed that the Second Party shall become liable to pay interest @ 8% per annum for 3 months on the unpaid portion of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) from the date of expiry of the 12 month period, i.e., 31.01.2021, to the First Party. It is further agreed that in the event of a further default in paying any unpaid portion of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) along with interest in the agreed extended period of 3 months, the Second Party shall pay interest @10% per annum on any* *unpaid portion of Rs.1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only), from the expiry of the 15 month period (12 months + 3 months extended period), i.e., 30.04.2021, till such amount including all accumulated interest is paid to the First Party.*

g) *That the final balance payment will include any unpaid amounts thus far along with any accumulated interest, plus a final sum of Rs. 3,70,00,000/- (Rupees Three Crore Seventy Lakhs Only), which shall be paid by the Second Party to the First Party at the end of 30 months from the date of signing of this Settlement Agreement simultaneously with the execution of all necessary conveyance documents in favour of the Second Party. The First Party shall intimate the Second Party vide registered letter on the address mentioned hereinabove or via e-mail, seven days before the expiry of the period of 30 months stating that the First Party is available in New Delhi to collect the remaining receivable of Rs. 3,70,00,000/- (Rupees Three Crore Seventy Lakhs Only), along with any unpaid portion of previously due payments and accumulated interest, which shall be remitted to the First Party before the end of thirty (30) months.*

h) *That upon receipt of the balance payment of a sum of Rs. 3,70,00,000/- (Rupees Three Crore Seventy Lakhs Only), along with any unpaid portion of previously due payments and accumulated interest, the First Party acknowledges that he shall have no right, title or interest in the Suit Property. The First Party shall simultaneously with the receipt of the balance payment in full, would deem to have surrendered physical, actual, constructive and symbolic possession of the entire Suit Property in favour of the Second Party. The Second Party thereafter, shall be the sole, exclusive and absolute owner of the Suit Property.*

i) *That if the full and final payment of the total Settlement Amount is still not made by the Second Party to the First Party by the end of 30 months from the date of signing of this Settlement Agreement, no grace period shall be sought by the Second Party and the Second party shall be considered in default. In such a scenario, the money received by the First Party up till the date of default by the Second Party plus the amount of Rs. 41,00,000/- (Rupees Forty One Lakhs Only) representing the value of the movable assets belonging to the share of the Second Party (1/3rd share) shall be refunded to the Second Party without interest within a* *period of six (6) months from the date of such default. Further, the First Party shall upon such payment of refund being made to the Second Party, shall be deemed to become owner of 50% share in the Suit Property and the Second Party shall promptly upon the refund being made, cooperate in the execution of all necessary documents to convey title to the extent of 50% share in favour of the First Party. However, if the refund is not made within six (6) months from the date of default, the First Party shall be liable to refund the amount received along with 10% interest per annum. It is clarified that the First Party shall be entitled to claim his 50% share in the Suit Property only after refund is made in accordance with this clause. If the Second Party fails to accept the refund payment from the First Party and/or fails to cooperate in the execution of all necessary documents to convey 50% title to the First Party, the First Party shall be at liberty to deposit the refund amount with the Registry of the Hon'ble High Court of Delhi and the First Party will be at liberty without any express notice to the Second Party to take steps to execute the necessary conveyance documents through the Learned Joint Registrar of this Hon'ble Court or any other Officer of this Hon'ble Court in consonance with the principles of Order 21 Rule 34 of the Code of Civil Procedure, 1908.*

j) That in a scenario, wherein upon receipt of the payment of Rs. 1,64,00,000/- (Rupees One Crore Sixty Four Lakhs Only) plus the initial payment of a sum of Rs. 41,00,000/- (Rupees Forty One Lakhs Only), the First Party defaults and does not perform the remaining obligations arising out of the present Settlement Agreement after the period of thirty (30) months from the date of this Settlement Agreement, the Second Party shall be at liberty to deposit the balance amount of a sum of Rs.3,70,00,000/- (Rupees Three Crore Seventy Lakhs Only) along with any unpaid portion of previously due payments and accumulated interest, with the Registry of the Hon'ble High Court of Delhi and the Second Party shall be at liberty without any express notice to the First Party to take steps to execute the necessary conveyance documents through the Learned Joint Registrar of this Hon'ble Court or any other Officer of this Hon'ble Court in consonance with the principles of Order 21 Rule 34 of the Code of Civil Procedure, 1908.

k) That the said Settlement Amount shall constitute full and final settlement of the inheritance of the First Party towards his share of the Suit Property.

l) At the option of the Second Party or his nominee, upon complete payment of the total amount in complete fulfillment of all the terms of this Settlement Agreement, the First Party shall execute and register such conveyance documents as may be required by the Second Party in accordance with law such as Relinquishment Deed/ Release Deed etc. by ensuring his personal presence in New Delhi, India.

m) That the Third Party acknowledges that they have relinquished/ released their right, title or interest in the Suit Property and for the said purpose shall execute Relinquishment / Release Deed to give effect to this settlement agreement. In the event, the Second Party has paid off the First Party in full in accordance with the terms of this Settlement Agreement, the Third Party shall execute Relinquishment / Release Deed exclusively in favour of the Second Party; however, in the event of default by the Second Party as stipulated hereinabove, the Third Party shall release their share in the Suit Property in favour fo the First and the Second Party in equal proportion. For the purpose of executing and registering the Relinquishment / Release Deed, the Third Party shall ensure their personal presence, in Delhi, India.

n) The Third Party shall be entitled to the contents of locker No. 98 in the Central Bank of India, Safdarjung Enclave, New Delhi-110029 maintained by Late Shri Tulsi Das Dhingra. The contents of the locker have been inventoried by the Local Commissioner appointed by the Hon'ble High Court of Delhi vide its order dated 30.03.2016. The First and the Second Party shall have no right, title or interest in the contents of the locker no. 98 as maintained in the Central Bank of India, Safdarjung Enclave, New Delhi-110029.

o) The Third Party shall be equally entitled to a 1/3rd share in the movable assets left behind by Late Shri Tulsi Das Dhingra as part of their share of inheritance, in the form of portfolio of shares, fixed deposits and other deposits in various banks, which is appended as Schedule A to the present Settlement Agreement.

The First Party and the Third Party have independently confirmed the veracity and contents of Schedule A and the same is accepted by the First and the Third Party without any demur or protest.

p) *That promptly upon signing of this Settlement Agreement, 2/3rd share of the movable assets in the shape of portfolio of shares, bonds, fixed deposits and other deposits in various banks in the name of Late Sh. Tulsi Das Dhingra as on 31.01.2020 shall be transferred to the First Party and 1/3rd of the movable assets in the shape of portfolio of shares, bonds, fixed deposits and other deposits in various banks in the name of Late Sh. Tulsi Das Dhingra as on 31.01.2020 shall be transferred to the Third Party, and shall be treated as their inheritance. It is clarified that the necessary steps for such transfers shall be taken by the respective beneficiaries and the Second Party shall render all possible assistance for the same.*

q) *That the suit shall be decreed between the parties in terms of the present Settlement Agreement and the parties herein expressly agree to remain bound by the terms of this Settlement Agreement. The First Party further acknowledges that pursuant to the receipt of the final payment of a sum of Rs.3,70,00,000/- (Rupees Three Crore Seventy Lakhs Only), along with any unpaid portion of previously due payments and accumulated interest, the First Party shall have no right, title or interest in the Suit Property. Accordingly, possession of the front portion of the first floor as demarcated in the report of the Local Commissioner dated 25.05.2011 shall remain with the First Party until full and final payment of the entire Settlement Amount is made and all the terms of this Settlement Agreement have been fulfilled by the Second Party.*

r) *The Parties further agree that in the event any shares, debentures, units and/or other movable assets are found in the name of Late Smt. Shanta Dhingra, W/o Late Shri Tulsi Das Dhingra, the same shall be divided between the First and the Third Party in the proportion of 2/3rd and 1/3rd share respectively, which shall be treated as their respective inheritance.*

s) *All the Parties further agree that they shall cooperate with/amongst each other to facilitate execution of all or any* *documents required for transfer of movable/immovable properties in terms of the present Settlement Agreement.*

t) That it is agreed and clarified that the present Settlement Agreement has been arrived at bona fide and in good faith to achieve the purposes stated so in the recitals. It is agreed and clarified that there is no fraud, coercion, economic duress or undue influence imposed on any party hereto to enter into the Settlement Agreement and that each party has agreed to the present Settlement Agreement out of their own free will and volition. It is made clear that none of the Parties hereto and none of their heirs or representatives shall challenge Settlement Agreement on any basis whatsoever and the Parties hereto shall ensure that such challenge, if any, is repelled and resisted in any forum. The Parties agree and confirm that the Settlement Agreement is valid, legal, irrevocable and enforceable in all its terms.

u) The Parties hereto agree that the oral family settlement arrived between the Parties earlier has now been reduced to writing and detailed in this Settlement Agreement. "

2. The settlement agreement is duly signed by the plaintiff and defendant No.1 and defendant No.2(b) on her behalf as also on behalf of 2(a) based on the special power of attorney executed by defendant No.2(a) in favour of 2(b) copy whereof has been annexed with the settlement agreement.

3. Consequently, the suit is decreed in terms of the settlement.

4. Decree sheet will incorporate in terms of the settlement arrived at between the parties.

5. Parties shall remain bound by their undertaking in the settlement agreement.

MUKTA GUPTA, J.

FEBRUARY 26, 2020
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