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

% ***Date of decision: 22.12.2021***

+ **EX.P. 57/2021 & EX.APPL. (OS) 1137-39/2021**

ABHISHEK JAIN Decree Holder

Through Mr. K.K. Bhuchar and Mr. Atul
Bhuchar, Advs. with DH in person
versus

MANOJ KUMAR JAIN Judgement Debtor
Through Mr. Ravi Gopal, Adv. with JD in
person

CORAM:
HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (oral)

EX.APPL. (OS) 1401/2021 (u/S. 151 CPC)

1. The present application has been filed by both the parties for recording compromise between the parties.
2. Vide order dated 06.12.2021, adjournment was sought to finally arrive at a settlement.
3. Today, learned counsel for judgment debtor appears and on instructions, has given an undertaking that matter has been settled between the parties out of the Court.
4. Learned counsel for the decree holder submits that the terms of

compromise are incorporated in para 4 to 7 and 9 of present application and accordingly, prayed that the present execution petition be disposed of.

5. Accordingly, para 4 to 7 and 9 are incorporated in the compromise which are as under:-

“4. That the Judgement Debtor has agreed to pay to the Decree Holder a total sum of Rs.2,25,00,000/- as per the Schedule laid down hereinafter, and also on the terms laid down.

5. The Judgement Debtor has given a schedule, whereby the Judgement Debtor would be making payments to the Decree Holder on the terms and conditions as laid down herein.

The Judgement Debtor has paid to the Decree Holder a sum of Rs. 20,00,000/- (Rupees Twenty Lacs only) by Pay Order No. 082210 dated 6.12.2021 on Indusind Bank. Sector-63, Noida. Thereafter, the Judgement Debtor shall continue paying to the Decree Holder as per his convenience but shall complete payment of Rs.1,05,00,000/- latest by August 31, 2022. The Judgement Debtor shall pay a further sum of Rs. 1,00,00,000/- (Rupees one crore only) on or before June 30, 2023.

6. The Judgement Debtor agrees that if the schedule detailed above is not adhered to by the Judgement Debtor, then and in that event, the Decree Holder shall be entitled to execute the entire decretal amount, amounting to Rs. 4,94,13,787/- alongwith the interest as directed in the decree.

7. It is agreed that there are two distinct deadlines for the payments to be made by the Judgement Debtor:

(i) August 31, 2022 whereby the Judgement Debtor shall complete a further payment of Rs. 1,05,00,000/- to the Decree Holder.

(ii) June 30, 2023 whereby the Judgement Debtor shall pay to the Decree Holder a further sum of Rs.1,00,00,000/- (Rupees one crore only).

If these two payments are made by the scheduled date by June 30, 2023 the Judgement Debtor would have paid a total sum of Rs. 2,25,00,000/-. It is agreed that the Judgement Debtor is liable to pay to the Decree Holder the entire sums of money as directed in the decrees dated September 30, 2019 in both the cases named above. However, it is further agreed that if the Judgement Debtor makes the two payments as detailed hereinabove, namely, one by August 31, 2022 and the other by June 30, 2023, the decrees would stand satisfied. However, it is specifically agreed that even if there is default in complying with any of the two schedules, as detailed above, the entire decretal amounts shall be payable by the Judgement Debtor to the Decree Holder. The Judgement Debtor has been made to understand that a default in the payments on the two dates mentioned above namely August 31, 2022 and June 30, 2023 by even one day shall make the entire decretal amount payable by the Judgement Debtor.

However, if the Judgement Debtor makes payments as detailed above, namely, a sum of Rs. 1,05,00,000/- by August 31, 2022 and the second payment of Rs. 1,00,00,000/- (Rupees one crore only) by June 30, 2023 both the decrees shall stand satisfied.

9. The Judgement Debtor Manoj Kumar gives an undertaking to the Court that till the two decrees mentioned above are satisfied, the Judgement Debtor shall not sell, mortgage or otherwise transfer his shares in the following three Companies in any manner whatsoever. The Companies and the shareholding are as follows:

- (i) *Mangalya Infrastructure Private Limited, with its Registered Office at B-7, Ground Floor, Ashoka Niketan, Nanak Vihar, Delhi-110092. (51% shares).*
- (ii) *Mangalya Realtech Private Limited with Registered Office at 3520, Kucha Lalman, Delhi Gate, New Delhi-110002 (90% shares)*
- (iii) *Mangalya Buildtech Private Limited with Registered Office at 3520, Kucha Lalman, Delhi Gate, New Delhi-110002 (26% shares)."*

6. Learned counsel appearing on behalf of judgment debtor, on instructions, further submits that the judgment debtor undertakes to abide by the terms of compromise as mentioned in para 4 to 7 and 9 of present application.

7. The said undertakings of learned counsel for judgment debtor are accepted and are taken on record.

8. In view of above, the present execution petition and the pending applications are disposed of in terms of aforesaid compromise.

9. Needless to say, parties shall remain bound by the terms of the compromise.

10. At this stage, learned counsel for the decree holder prays for refund of full Court fee.

11. On the aspect of refund of court fee, the relevant provision of Sections 16 & 16 A of Court fees Act, 1870 read as under:

“16. Refund of fee.- Where the Court refers the parties to the suit to any one of the mode of settlement of dispute referred to in section 89 of the Code of Civil Procedure, 1908 (5 of 1908), the plaintiff shall be entitled to a certificate from the Court authorizing him to receive back from the collector, the full amount of the fee paid in respect of such plaint.

STATE AMENDMENT

Delhi- After section 16, following section shall be inserted namely,-

“16A. Refund of fees on settlement before hearing.- Whenever by agreement of parties-

(i) Any suit is dismissed as settled out of Court before any evidence has been recorded on the merits of the claim; or

(ii) Any suit is compromised ending in a compromise decree before any evidence has been recorded on the merits of the claim; or

(iii) Any appeal is disposed of before the commencement of hearing of such appeal; half the amount of all fees paid in respect of the claim or claims in the suit or appeal shall be ordered by the court to be refunded to the parties by whom the same have been respectively paid.

Explanation.- the expression “merits of the claim” refers to matters which arise for determination in the suit not being matters relating to the frame of the suit, misjoinder of parties and cause of action, the jurisdiction of the Court to entertain or try the suit or the fee payable, but includes matters arising on pleas of res-judicata, limitation and the like.”

12. As per the interpretation of Section 16 A of Court Fees Act, 1870, I find that the afore-referred Section prescribes that the court fees has to be refunded in case of suits and appeals only. Accordingly, this Court is of the

view that the decree holder is not entitled to refund of Court fee.

EX.P. 57/2021

13. In view of order passed in EX.APPL. (OS) 1401/2021, no further order is required to be passed.

(SURESH KUMAR KAIT)
JUDGE

DECEMBER 22, 2021
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