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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: 25th August 2022
Pronounced on: 8th September 2022

+ CM(M) 786/2022

DHRUV MEHTA Petitioner
Through: Ms. Shobhana Takiar, Adv.

Versus

AROON MEHTA AND ANR Respondents
Through: Ms. Geeta Luthra, Sr. Adv. with
Ms. Kamakshi Gupta and Mr. Manas
Agrawal, Adv. for R-1
Ms. Shivangi Sharma, Adv. for the R-2

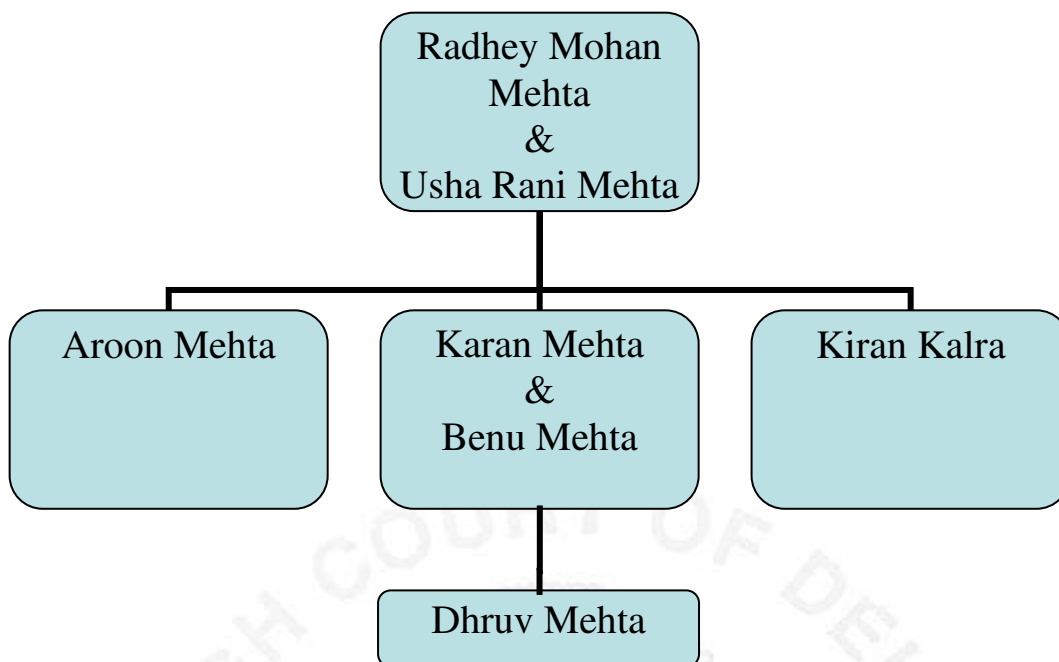
CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

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J U D G M E N T
08.09.2022

1. Radhey Mohan Mehta and Usha Rani Mehta had three children, namely Aroon Mehta (Respondent 1), Karan Mehta and Kiran Kalra (Respondent 2). Dhruv Mehta (the petitioner) was the son of Karan Mehta and his wife Benu Mehta. The family tree, therefore, looks like this:



2. The petitioner Dhruv Mehta and his mother Benu Mehta instituted CS DJ 2143/2006 (later renumbered CS DJ 113/2016) against Usha Rani Mehta, Respondent 1 Aroon Mehta and Respondent 2 Kiran Kalra. The suit sought partition of property bearing A-377, Defence Colony, New Delhi (“the suit property”). The suit property consisted of ground floor, first floor and second floor.

3. Cross objections were filed in the said suit by Kiran Kalra, which were registered as CS DJ 9758/2016.

4. The aforesaid two suits, i.e. CS DJ 113/2016 and CS DJ 9758/2016 (the cross objections filed by Kiran Kalra) were decreed by Mr. Mohinder Virat, the learned Additional District Judge (“the learned ADJ”), on 18th April 2019, on the basis of a compromise arrived at among the parties. The terms of the compromise were contained in the statements of the parties recorded on the said date.



The order passed by the learned ADJ on 18th April 2019, and the statements of the petitioner Dhruv Mehta, Defendant 1 Usha Rani Mehta and Respondent 1 Aroon Mehta, as recorded on the same day, deserve to be reproduced, in full, thus:

“(a) Statement of Shri Dhruv Mehta

Statement of Sh. Dhruv Mehta, S/o Late Sh. Karan Mehta, R/o A-377, Defence Colony, New Delhi.

On S.A.

I am the plaintiff no. 1 in the present suit. I state that the suit filed by me may be decreed in terms of settlement arrived at between me and defendants:-

(i) I shall be the sole and the absolute owner of ground floor of property bearing no. A-377, Defence Colony, New Delhi.

(ii) That during the life time of defendant no. 1, she shall have right to reside in the ground floor of the abovesaid property as per the current arrangement existing as of date.

(iii) I shall have no claim against the remaining property and considered defendant no. 2 as a sole and absolute owner of the rest of the property including terrace right.

This is my true statement and I shall be bound by the same.

RO & AC

(b) Statement of Ms. Usha Rani Mehta

Statement of Ms. Usha Rani Mehta, W/o Late Sh. Radhey Mohan Mehta, R/o A-377, Defence Colony, New Delhi.

On S.A.



I am the defendant no. 1 in the present suit. I state that the suit and counterclaim filed against me may be decreed in terms of settlement arrived at between me, plaintiff no. 1 and defendant no. 2 and 3.

(i) The statement of plaintiff, defendant no. 2 and the counter claimant/defendant no. 3 have been read over and explained to me and I have no objection if the present suit and the counter claim of defendant no. 3 are disposed of as compromised in terms of the settlement terms stated in the statement of the plaintiff no. 1, defendant no. 2 & 3, which may be read as part and parcel of my present statement.

This is my true statement and I shall be bound by the same.

RO & AC

(c) Statement of Sh. Arun Mehta

Statement of Sh. Arun Mehta, S/o Late Sh. Radhey Mohan Mehta, R/o A-377, Defence Colony, New Delhi.

On S.A.

I am the defendant no. 2 in the present suit. I state that the suit and counterclaim filed against me may be decreed in terms of settlement arrived at between me and plaintiff and defendant no. 3:-

(i) I have seen the statement of plaintiff and the counter claimant/defendant no. 3 and has no objection if the present suit and the counter claim of defendant no. 3 are disposed of as compromised. I further say that whenever the property bearing no. A-377, Defence Colony, New Delhi is being demolished and reconstructed, the share of the plaintiff shall be the same as it is today i.e. to the extent of entire ground floor of the aforesaid property/suit property.

(ii) I undertake to pay a sum of Rs.1,30,00,000/- (One Crores Thirty Lacs Rupees only) to the defendant no. 3 in a period of six months from today as full and final settlement towards defendant no. 3 claims with respect to the suit



property and till the aforesaid payment is made by me I undertake not to create any third party interest only in the second floor of the suit property. For remaining my share in the suit property I have no restraint from selling the same and giving the money to defendant no. 3 as undertaken.

(iii) I have been further granted all access to the ground floor where my mother is residing till her life time and after her death I shall have no right, title, interest in the ground floor of the suit property.

This is my true statement and I shall be bound by the same.

RO & AC”

5. On 3rd October 2019, Respondent 1 Aroon Mehta filed Misc DJ 192/2019 before the learned ADJ for recalling/modification of the aforesaid compromise decree dated 18th April 2019. Respondent 1 contended that, as per the terms of compromise,

(i) whenever the suit property was demolished and reconstructed, the share of the petitioner Dhruv Mehta would continue to remain the same i.e. Dhruv Mehta would be entitled to the entire ground floor of the suit property,

(ii) Respondent 1 Aroon Mehta would pay to Respondent 2 Kiran Kalra, a sum of ₹ 1.3 crores within six months from the date of settlement towards full and final settlement of all claims of Respondent 2 with respect to the suit property,

(iii) till such payment was made, Respondent 1 would not create any third party interest with respect to the second floor of the suit property, and



(iv) Respondent 1 would have access to the ground floor, where his mother Usha Rani Mehta (Defendant 1) would reside during her lifetime, where after Respondent 1 would have no right, title or interest in the ground floor of the suit property.

Respondent 1 alleged, in his application, that it was in the clear contemplation of all parties, at the time of settlement and compromise on 18th April 2019, that the entire suit property would be reconstructed through a third party and that, even after reconstruction, the petitioner would continue to remain entitled to the ground floor of the reconstructed suit property. Despite this clear understanding, the application alleged that the petitioner was obstructing execution of an agreement with the developer to reconstruct the suit property. It was further averred, in the application that, at the time of settlement/compromise on 18th April 2019, Usha Rani Mehta and Respondent 1 Aroon Mehta had clearly stated that they were short of funds, and that payments could be sourced only from the developer. It was for this reason, contended the application, that a time limit was stipulated, to ensure that the parties did not protract or detract from the settlement. (It is worthwhile to note, here, that the time limit stipulated in the terms of settlement, as contained in the statements of the various *dramatis personae*, is to be found only in the statements of Respondent 1 Aroon Mehta and Respondent 2 Kiran Kalra). Respondent 1 Aroon Mehta undertook to pay ₹ 1.3 crores to Respondent 2 Kiran Kalra within six months towards full and final settlement of the claims of Respondent 2 in respect of the suit property and a corresponding statement, to the effect that she would accept ₹ 1.3 crores from Respondent 1 Aroon Mehta towards full and final



settlement of her claims in respect of the suit property, was contained in the statement of Respondent 2 Kiran Kalra.

6. Reconstruction of the suit property through a developer was, therefore, according to the aforesaid application filed by Respondent 1, an integral part of the settlement/compromise dated 18th April 2019. Respondent 1 alleged, in the application, that, though he was in touch with a developer who would undertake the reconstruction, the petitioner was prevaricating in the matter of entering into a Development Agreement with the developer for reconstruction of the suit property. It was also alleged, albeit without any supportive material, that the petitioner was demanding additional payment to cooperate in entering into an agreement with the developer for reconstructing the suit property.

7. On these premises, the application of Respondent 1 prayed that the compromise decree dated 18th April 2019 be recalled and the matter be adjudicated on merits or, in the alternative, that the order dated 18th April 2019 be modified by requiring Respondent 1 to pay ₹ 1.3 crores to Respondent 2 towards satisfaction of all her claims, subject to Respondent 1 entering into a Development Agreement with a third party with cooperation of the petitioner and for a direction to the petitioner to cooperate in execution of such Development Agreement.

8. The petitioner filed a response to the aforesaid application of Respondent 1 in December 2019. In his reply, the petitioner



contended that, having decreed CS DJ 113/2016 and CS DJ 9758/2016 by the compromise decree dated 18th April 2019, the learned ADJ had been rendered *functus officio*. Such a decree, it was sought to be contended, could only be corrected, in the event of any clerical mistake, under Section 152¹ of the Code of Civil Procedure, 1908 (CPC). No application would, therefore, it was submitted, be maintainable for modification of the decree. What Respondent 1 was essentially seeking, it was submitted, was an alteration of the terms of the decree, which was impermissible in law.

9. On 15th February, 2020, Misc DJ 192/19, filed by Respondent 1, came up for hearing before the learned ADJ. Respondent 1 sought time to move an application before the learned District in Sessions Judge, or before this Court, to transfer the matter to the court of Mr. Mohinder Virat, ADJ, as he was best aware of the terms of the compromise decree dated 18th April, 2019. The learned ADJ, therefore, adjourned the matter to 16th March 2020.

10. Respondent 1, thereafter, moved this Court by way of Tr P (C) 49/2020, seeking transfer of Misc DJ 192/19 to the Court of Mr. Mohinder Virat, ADJ. Paras 7 and 8 of the order passed by this Court on 12th February, 2021, disposing of Tr P (C) 49/2020, read thus:

“7. On a perusal of the statement of Mr. Aroon Mehta it is clear that a categorical understanding/settlement was entered

¹ 152. **Amendment of judgments, decrees or orders.** – Clerical or arithmetical mistakes in judgments, decrees or orders or errors arising therein from any accidental slip or omission may at any time be corrected by the Court either of its own motion or on the application of any of the parties.



into between the parties and the share of the Plaintiff i.e. Dhruv Mehta was to be to the extent of the entire ground floor. *Demolition and restructuring of the property was, clearly, in the contemplation of the parties. Obviously, if still parking is to be constructed in terms of the existing law, the ground floor would be the floor which is above the still parking stop the building would have still parking, they can be no doubt as to the intention of the parties as recorded. Appropriate parking space, would also have to be provided to Mr. Dhruv Mehta – the owner of the ground floor. The settlement ought to be given effect to in letter and spirit.*

8. As the statements given by the parties before the Id. ADJ are quite clear and categorical, as also the fact that the said Judicial officer who had recorded the settlement is no longer posted in the said Court, the transfer petition cannot be allowed. However, parties are free to get the decree passed by the Id. ADJ on 18 April 2019, in terms of the settlement arrived, executed in accordance with law.”

(Emphasis supplied)

11. Respondent 2 Kiran Kalra filed Ex 40/2021 and Respondent 1 Arun Mehta filed Ex 201/2021, seeking execution of the compromise decree dated 18th April 2019. Both Execution Petitions sought attachment and sale of the suit property and a direction to the petitioner to pay, out of the sale proceeds, ₹ 1.3 crores to Respondent 2 Kiran Kalra along with interest.

The Impugned Order

12. By the impugned order dated 23rd May, 2022, the learned ADJ has disposed of Misc DJ 192/19.



13. Before the learned ADJ, Respondent 1 contended that the petitioner was obstructing execution of the compromise decree dated 18th April, 2019 as, despite Respondent 1 repeatedly approaching the petitioner for executing the collaboration agreement with the developer, the petitioner was prevaricating. Respondent 1 further submitted that he had, in fact, identified a builder, but was unable to execute a collaboration agreement with him owing to non-co-operation by the petitioner.

14. Findings of the learned ADJ in the impugned order

14.1 The learned ADJ observes that, despite having been summoned to appear on 15th January, 2020, 8th March, 2022, 24th March, 2022 and 23rd April, 2022, the petitioner Dhruv Mehta absented himself. The learned ADJ takes adverse notice of his absence, observing that the presence of the petitioner had been requisitioned only in order to work out the grey areas in the settlement. Having so observed, the learned ADJ identifies “the short question” involved in the application filed by Respondent 1 as “the non-fixing of the time period for demolition and reconstruction of the suit property”.

14.2 Respondent 1 argued, before the learned ADJ, that both parties had agreed for redevelopment and reconstruction of the suit property, and this position also stood recognised in the order dated 12th February, 2021, whereby this Court disposed of Tr P (C) 49/2020. As the petitioner was obstructing execution of the development agreement with the builder whom Respondent 1 had already identified, it was



prayed, before the learned ADJ, that the decree dated 18th April, 2019 be either modified or a receiver appointed to give effect to its terms.

14.3 Contesting the allegation that he was in any manner obstructing execution of the decree dated 18th April, 2019, the petitioner submitted that the terms of the settlement agreement, in terms whereof the two suits between the parties were decreed, were clear and unambiguous, and that a decree, once passed, could not be altered at the instance of one of the parties thereto.

14.4 The learned ADJ held that the stipulation, in the terms of compromise, that “whenever” the suit property was demolished and reconstructed, the share of the petitioner would be the same as it was on that date, indicated that reconstruction and redevelopment of the suit property was one of the essential terms of the compromise. Observing that “the purpose of a compromise decree is to finally settle the dispute and give finality to the lis”, the learned ADJ held that, had it not been the intention of the parties that the suit property would be developed and reconstructed, there would have been no necessity to incorporate, in the terms of settlement, the clause to the effect that, whenever the suit property was redeveloped and reconstructed, the share of the petitioner would remain unaltered. The mere fact that the terms of compromise did not incorporate any timeframe within which the redevelopment and reconstruction was to take place, according to the learned ADJ, did not imply that the redevelopment and reconstruction issue was to be kept open to be undertaken at the mercy of either of the parties.



14.5 The learned ADJ has also relied on Section 46² of the Indian Contract Act, 1872 to observe that though, in the compromise decree, ordered in the terms of settlement, the parties had not specified any time within which the property was to be redeveloped/reconstructed, such redevelopment/reconstruction was clearly within the intent of the parties. The learned ADJ has further observed that, by exhibiting recalcitrance in the matter of execution of the developer agreement with the builder, the petitioner was taking undue advantage of the fact that he was residing on the ground floor of the suit property, whereas Respondent 1 was on the first floor of the property which was 62 years old. The learned ADJ observes that it could not have been the intention of Respondent 1 to keep the issue of re-development/reconstruction of the suit property open-ended, especially as he himself was 68 years of age. Further observing, therefore, that the petitioner and Respondent 1 had both intended that the suit property would be reconstructed/re-developed in a reasonable time, and over three years having passed since the compromise decree dated 18th April, 2019, the learned ADJ went on, in paras 15 and 16 of the impugned order, to hold thus:

“15. Therefore, the decree dated 18.04.2019 needs to be modified to reflect the true intentions of the parties as it existed on 18.04.2019 and the word "whenever" in the statement of defendant no. 2 Sh. Aroon Mehta shall be read

² **46. Time for performance of promise, where no application is to be made and no time is specified.**
– Where, by the contract, a promisor is to perform his promise without application by the promisee, and no time for performance is specified, the engagement must be performed within a reasonable time.

Explanation. – The question “what is a reasonable time” is, in each particular case, a question of fact.



with the suffix 'within the reasonable time'. The necessary consequences flowing from such 'amended' decree shall follow to give effect to the decree and therefore, by invoking inherent powers of the court u/s 151 CPC, the following directions are given for complete and effective justice.

16. Since plaintiff no. 1 Dhruv Mehta has not come forward to honor the terms of the decree and not even appeared before the court, despite repeated directions the defendant no.2 Sh. Aroon Mehta cannot be left remediless. This is a fit case where a receiver is required to be appointed in order to give effect to the 'amended' decree. In view of the same, Sh.Ashok K Vadhera Adv. Enrl. D/191/1973, Off; 101-A, Khanna Market, Lodhi Colony, New Delhi, Mobile No. 9817021471, 9811966330 is appointed as receiver- with following terms of reference:

a.) The defendant no.2 Sh.Aroon Mehta shall submit the proposed Collaboration/developer Agreement to the receiver who will examine the same in the light of the decree and thereafter the receiver shall sign and execute the said Collaboration agreement on behalf of plaintiff no. 1 Sh. Dhruv Mehta.

b.) The receiver shall take all the appropriate steps and move appropriate applications before any competent authority/ public office for the purposes of getting sanction plan of the proposed building and for all incidental and connected purposes in order to give effect to the terms of the 'amended' decree, on behalf of plaintiff No.1 Sh. Dhruv Mehta. All steps and action by the receiver in respect of the present matter on behalf of plaintiff no. 1 Sh. Dhruv Mehta shall be deemed to be taken by plaintiff no.1 Sh. Dhruv Mehta for all intents and purposes. The receiver shall also bear in mind that under the existing Municipal Bye laws, there may be requirements of making a stilt parking and in that case, appropriate parking space would also have to be provided to the plaintiff no.1 Sh.Dhruv Mehta the owner of ground floor.



c.) The receiver shall also adhere to the directions passed by Hon'ble High Court in TR. P. (C) No.49120 vide order dated 12.02.2021 , wherein *inter alia*, it is clarified that if the stilt parking is to be constructed in terms of existing law, the ground floor would be the floor which is above the stilt parking. It was also observed by Hon'ble High Court that the settlement ought to be given effect to in letter and spirit.

d.) After execution of the development agreement with the builder/defendant no. 2 Arun Mehta and completion of necessary formalities, the receiver shall give a time of one month to plaintiff no.1 Sh. Dhruv Mehta to enable him to remove his belongings from the ground floor of the suit property and to handover the vacant possession of the ground floor to the builder for the purpose development and reconstruction. In case the plaintiff no.1 does vacate the ground floor of the premises within the said period of one month, the receiver shall take over the possession of the ground floor.

e.) At the time of taking the possession of the ground floor of the suit property, the receiver shall make inventories of the goods/ articles lying therein. The preparation of such inventory shall be witnessed in the presence of a police official to be deputed by SHO, Defence Colony, New Delhi who shall be a witness thereto. The whole event shall be videographed and photographed.

f.) In such a situation, if required, the goods and articles lying on the ground floor of the property shall be stored at a suitable place under the custody of the receiver and in case the plaintiff no. 1 Sh.Dhruv Mehta pays the requisite charges for keeping these goods, all his goods and articles shall be handed over to him. In the meanwhile, the defendant no. 2 Arun Mehta shall bear the costs/expenses of all such tasks which were required to be done by the plaintiff no. 1, but are done by the receiver/ defendant no.2 Sh. Aroon Mehta in order to give effect to the 'amended' decree.



g.) The receiver shall maintain an account of all the expenses incurred by the defendant no.2 Sh.Aroon Mehta in this regard from time to time till the time the vacant possession of the ground floor of the suit property is handed over to the builder.

h.) After the construction of the building by the builder, the builder shall handover the ground floor/ the first floor in the case of stilt parking(as the case may be) to the receiver on behalf of plaintiff no. 1 Sh.Dhruv Mehta.

i.) The receiver shall handover the possession of the newly built ground floor/ first floor with stilt parking (as the case may be) to the plaintiff no.1 Sh.Dhrv Mehta, on his payment of all the charges incurred by the defendant no.2 Arun Mehta in carrying out the whole exercise including the charges/ fees paid to the receiver from time to time.

j.) For the time being, the fees of the receiver is fixed at Rs.1 Lakh to be paid by defendant no.2 Arun Mehta. The receiver shall file quarterly progress report every three months till the whole exercise is completed. Copy of this order be sent to receiver. Application u/s 151 CPC is accordingly disposed off.”

Rival Submissions

15. Ms Shobana Takiar submits that the power to modify a decree, once passed, exists only under Section 152¹ of the CPC. She points out that the consent decree dated 18th April 2019 was passed in a suit for partition, permanent injunction and rendition of accounts. There was, therefore, no prayer, in the suit, for demolition of the suit property or reconstruction thereof. Though, in her submission, the terms of consent, as set out in the statements recorded of the various parties on 18th April 2019, were unambiguous, she submits that, even



viewed in the backdrop of the prayers in the suit, it could not be legitimately presumed that the parties had, within their contemplation, a time bound plan of demolition and reconstruction of the suit property.

16. Adverting to the order dated 12th February 2021, passed by this Court in Tr P (C) 49/2020, Ms. Takiar submits that the parties were, by the said order, granted liberty to get the decree dated 18th April 2019 executed “in terms of the settlement arrived”. What the impugned order does, points out Mr. Takiar, is to execute the consent decree dated 18th April 2019, contrary to its express terms. She submits that the learned ADJ is clearly in error in holding that the parties intended that, within a reasonable time, the suit property would be demolished and reconstructed. In so holding, Mr. Takiar submits, the learned ADJ has accepted, as correct, the unilateral submission of Respondent 1, despite the lack of consent to the said submission by the petitioner.

17. To support her submissions, Ms. Takiar has relied on the judgement of the Supreme Court in *Ajanta LLP v. Casio Keisanki Kabushiki Kaisha*³, specifically on para 19 of the report.

18. Responding to the submissions of Ms. Takiar, Ms. Geeta Luthra, learned Senior Counsel, submits that, though the learned ADJ has, in the impugned order, stated that he was modifying the consent decree dated 18th April 2019, the expression “modify” was actually a



malapropism, as the learned ADJ merely ensured effective execution of the said decree. Relying, *inter alia*, on the order dated 12th February 2021, passed by this Court in Tr P (C) 49/2020, Ms. Luthra submits that all parties intended, at all points of time, that the suit property would be demolished and reconstructed. The use of the word “whenever” in the statement of Respondent 1, recorded on 18th April 2019 and forming part of the terms of settlement, she submits, merely clarified that, as and when the suit property would be demolished and reconstructed, the share of the petitioner therein would remain unaltered. The use of the word “whenever”, therefore, she submits, cannot be construed as leaving the time within which such demolition and construction was to take place completely open-ended. The petitioner was, submits Ms. Luthra, seeking to capitalize on the word “whenever” and its etymological in exactitude, to protract, indefinitely, the exercise of development and reconstruction of the suit property. That, she submits, was never the intention of the parties while entering into the settlement on 18th April 2019, as was clarified by this Court in its order dated 12th February 2021 (*supra*) in Tr P (C) 49/2020.

19. The execution of the consent decree, submits Ms. Luthra, had to be in its letter and spirit. A consent decree, in fact, effectively constituted a contract between the parties. Ms. Luthra, submits that Section 46² of the Contract Act, clearly stipulates that, where no time is fixed for performance of a contract, the contract is expected to be performed within a reasonable time. The impugned order dated 23rd



May 2022, she submits, merely fixes such a reasonable time. In doing so, therefore, it does not, in any manner, amend the consent decree dated 18th April 2019.

20. Ms. Luthra submits, relying on *Rahul S. Shah v. Jinendra Kumar Gandhi*⁴ and *S.M. AR. Ramaswami Chettiar v S.M.A.M. RM. Ramaswami Chettiar*⁵, that the learned ADJ was well within his jurisdiction in appointing a Receiver to conduct the auction of the suit property and ensure proper execution of the consent decree dated 18th April 2019. She submits that this was also in accordance with the prayer contained in the execution petition filed by her clients. She emphasises the fact that close over three years have passed since the consent decree dated 18th April 2019, without any party inching a step forward towards its execution and implementation.

21. Adverting, once again, to prayers in the execution petition filed by her client before the learned ADJ, Ms. Luthra points out that demolition and reconstruction of the suit property and appointment of a receiver was one of the two alternative prayers contained in the execution petition. She submits that her client had, in the alternative, prayed that the consent decree dated 18th April 2019 be modified and the suit decided on merits. Ms. Luthra emphasises that the consent decree dated 18th April 2019 could not be sought to be misinterpreted, by the petitioner, in such a manner as would frustrate the decree itself.

⁴ 2021 6 SCC 418

⁵ 1962 SCC OnLine Mad 183



22. Having thus argued on merits, Ms. Luthra proceeded to contend, in the alternative, that the present petition was not maintainable under Article 227 of the Constitution of India, as the learned ADJ has also disposed of the two execution petitions pending before him, and an order disposing of an execution petition is appealable under the CPC. The “modification” of the consent decree dated 18th April 2019, she submits, was merely a step towards execution and could not, therefore, be separately assailed under Article 227 of the Constitution of India.

23. Apropos Section 46² of the Contract Act, and the power of the Court to modify the decree in conformity with Section 46² of the Contract Act, Ms. Luthra relies on *Hungerford Investment Trust Ltd. v. Haridas Mudra*⁶ and *Rama Narang v. Ramesh Narang*⁷, emphasising paras 22 and 25 of the former decision and para 23 of the later. She emphasises that the terms of compromise dated 18th April 2019 used the expression “*whenever* it is developed”, and not “*if* it is developed”. Moreover, she submits that it would be fallacious to read the said expression in isolation and *de hors* the other terms of compromise. A document, she submits, has to be read as a whole to gather the intention of the parties, for which purpose she places reliance on the judgment of High Court of Allahabad in *Manju Lata Sharma v. Vinay Kumar Dubey*⁸ and of the Supreme Court in *Gurpreet Singh v. Chatur Bhuj Goel*⁹. She further relies on *Rajinder*

⁶ (1972) 3 SCC 684

⁷ 2006 11 SCC 114

⁸ AIR 2004 All 92

⁹ (1988) 1 SCC 270



Kumar v. Kuldeep Singh¹⁰, to contend that, while an executing court cannot go behind a decree, it is within its jurisdiction in construing the decree in such a manner as to effectuate the decree and the intent of the parties while executing it. She also places reliance on the decision of the coordinate Single Bench of this Court in **Raj Kumar Seth v. Pawan Kumar Seth**¹¹. She further refers to **Topanmal Chhotamal v. Kundomal Gangaram**¹² and **Shub Karan Bubna v. Sita Saran Bubna**¹³, to contend that a court was required to ensure meaningful relief instead of a paper decree.

Analysis

24. At the outset, I address the preliminary objection of Ms. Luthra that the present petition, under Article 227 of the Constitution of India, is not maintainable. The contention is merely to be stated, to be rejected. The opening sentence in the impugned order reads thus:

“The present application is u/s 151 CPC moved by defendant no. 2 Sh. Aroon Mehta for recalling/modification of order dated 18.04.2019 passed by the Ld. Predecessor of this court whereby on the joint statements of the parties, a Compromise Decree was passed on 18.04.2019.”

The impugned order has, therefore, not been passed in the execution petitions *per se*, but in an application moved by Respondent 1 for recalling/modification of the compromise decree dated 18th April

¹⁰ (2014) 15 SCC 529

¹¹ 2020 SCC OnLine Del 134

¹² AIR 1960 SCC 388

¹³ (2009) 9 SCC 689



2019. An order passed on such an application is not appealable either under Section 96 or under Orders XLI and XLIII of the CPC. The impugned order does not purport to dispose of either of Execution 42/2021 or of Execution 201/2021. It merely directs that a copy of the order be placed on the files of the said execution petition. As such, the present petition under Article 227 is clearly maintainable.

25. I now proceed to examine the impugned order, and the submissions of Ms. Luthra on other aspects.

Import of the expression “whenever”

26. The entire controversy revolves, in a sense, around the words “whenever the property bearing no. A-377, Defence Colony, New Delhi is being demolished and reconstructed” as employed by Respondent 1 in his statement dated 18th April 2019 forming part of the terms of settlement, on the basis whereof CS DJ 113/2016 and CS DJ 9758/16 were decreed.

27. The learned ADJ has, *vide* the impugned order dated 23rd May 2022, *substituted* the word “whenever”, in the statement of Respondent 1, with the words “within the reasonable time”. Admittedly, by doing so, the learned ADJ has *modified* the terms of compromise/settlement dated 18th April 2019, though Ms Luthra would seek to contend otherwise.

28. The first question that arises for consideration, therefore, is



whether the word “whenever”, as intoned by Respondent 1 in his statement recorded on 18th April 2019, means “within the reasonable time”. If it does, the matter may *still* at least brook consideration. If it does not, however, the learned ADJ has clearly rewritten the compromise decree dated 18th April 2019; worse, he has rewritten the statement of Respondent 1, recorded on solemn affirmation on the said date. There is no law which enables him to do so. It would, in that event, be a case of manifest judicial overreach.

29. The word “whenever” is a word of common English usage. Its meaning is not shrouded in obscurity. One does not have to brush aside any cobwebs in order to understand its import. “Whenever” when used in its conjunctive sense, is defined in the Cambridge dictionary, as “every or any time”. The same dictionary clarifies that, when used as an adverb “whenever” is often used instead of “when” to add emphasis to a phrase.

30. Courts have also had occasion, albeit rarely, to grapple with the import of the word “whenever”. The High Court of Andhra Pradesh was in ***Re: Dr. Raghotham***¹⁴, concerned with the interpretation of Section 94(1) of the Code of Criminal Procedure, 1973 (the Cr PC), which reads thus:

“(1) Whenever any Court, or any Officer in charge of a police station considers that the production of any document or other thing is necessary or desirable for the purposes of any investigation, inquiry, trial or other proceeding under this

¹⁴ AIR 1963 AP 362



Code by or before such Court or officer, such court may issue a summons, or such officer a written order, to the person in whose possession or power such document or thing is believed to be, requiring him to attend and produce it or to produce it, at the time and place stated in the summons or order.”

31. Dealing with the aforesaid provision, the High Court held, in para 9 of the report, that “the word “whenever” with which Section 94 begins, if given its natural meaning, would indicate mean “every time when the Court finds it necessary or desirable to act upon that provision it is empowered to do so.”

32. In a similar vein, the High Court of Allahabad ruled, in *Mohammad Mustaqueem v. Aftab Ahmad*¹⁵, that the word “whenever” meant “at whatever time or at what time so ever”.

33. Specifically, dealing with the expression “whenever it thinks fit” as used in Order XXII Rule 4(4) of the CPC, the High Court of Bombay held, in *Shaukatali Isindar v. Nargesh Dhanjishaw Jaseemani*¹⁶, thus:

“The words “whenever it thinks fit” in Order 22, Rule 4(4) are words of the widest amplitude. They do not envisage a time limit and there is no warrant for reading a time limit for the application of sub-rule (4) by the sequence in which the sub-rule occurs.”

(Emphasis supplied)

¹⁵ AIR 1983 All 368

¹⁶ 1981 SCC OnLine Bom 145



34. Etymologically or otherwise, it is impossible to read, into the word “whenever”, as implied in the statement dated 18th April 2019, of Respondent 1, any intention that the suit property would be demolished and reconstructed within any particular time frame. The word “whenever” is, by its very nature, indeterminate. It is, in plain English, a word, the usage of which conveys an intent to leave things open-ended, and not to introduce any constraint of time – just as the use “wherever” manifests an intention not to introduce any constraint of space.

35. Contrary to what Ms. Geeta Luthra would seek to urge, and contrary to what the learned ADJ has held, the use of the word “whenever”, as understood in its plain meaning, does not in any manner indicate that the parties intended that the suit property would be demolished and reconstructed within a reasonable time. In fact, if anything, the use of the indeterminate expression “whenever” indicates an intent to the contrary. It indicates that the parties did not desire any constraint of time to be imposed, or even that the suit property would definitely be demolished and reconstructed. The word “whenever” may be regarded as synonymous with “if and when” or, alternatively, “as and when”. All that the parties intended was that “if and when” or “as and when” the suit property would be demolished and reconstructed, the share of the petitioner, therein, would remain unaltered. No other intent, in my view, can be read into the use of the expression “whenever”. If anything, therefore, the interpretation placed by Ms. Luthra as well as by the learned ADJ, on the terms of the settlement as incorporated into the compromise decree dated 18th



April 2019, is contrary to the intent of the parties, rather than reflective thereof.

36. Even if it were, *arguendo*, to be presumed that the word “whenever” did indicate the desire of the parties to have the suit property demolished and reconstructed at some point of time, there is still no warrant for the presumption that the exercise was to be undertaken within the proximate future. The word “whenever” is completely unenlightening in that regard. It might indicate the intent of the parties to have demolition and redevelopment undertaken in the proximate future; equally, it might indicate their intent that, though it was required to be undertaken, that could be at any point of time in future, proximate or distant. No intent to have the demolition and reconstruction undertaken within a reasonable time can, therefore, be read into the use of the word “whenever”.

37. In replacing the word “whenever” with the words “within a reasonable time”, therefore, the learned ADJ has – as he has correctly noted – modified the decree dated 18th April 2019. He has, in a manner of speaking, disapproved of the schedule for demolition and reconstruction being left open ended, and has, instead, bound the exercise by constraints of time. In my considered opinion, no law allowed him to do so. If the parties to the compromise did not intend the exercise of demolition and reconstruction – if at all – to be time-bound, the learned ADJ could not, perforce, have compelled the parties, absent consensus *ad idem*, by a time bound schedule in that regard. With respect to the learned ADJ, such an attempt would, in



my view, amount to manifest judicial overreach.

38. I may observe, in this regard, straightaway, that it is not open to this Court to rewrite the order of the learned ADJ. The learned ADJ having consciously observed that he was modifying the decree dated 18th April 2019, it would not be open to either side to contend, or for this Court to hold, that he was not, in fact, doing so.

39. Even otherwise, by replacing the word “whenever” with the words “within a reasonable time”, the learned ADJ clearly modified the import and effect of the terms of the consent decree, by altering an expression which was clearly indeterminate in nature to an expression which required compliance within a reasonable period of time. It cannot be said that the word “whenever” means the same as “within a reasonable time”. The very intent of the parties in arriving at a compromise decree was, therefore, radically altered by the learned ADJ.

40. I am entirely with agreement with Ms. Takiar in her submission that the learned ADJ has no jurisdiction or authority whatsoever to do so. Section 152 of the CPC empowers the Court only to correct clerical or arithmetical mistakes, arising from accidental slips or omission in judgments, decrees or orders. The provision is consciously both constricted and restrictive in nature. The mistake, if any, must be clerical or arithmetical in nature. If it is an error which the court proceeds to correct, the error must be arising from an accidental slip or omission.



41. The replacing, by the learned ADJ, of the word “whenever”, in the compromise decree dated 18th April 2019, with the words “within a reasonable time”, clearly, travels much beyond the pale of the authority of the learned ADJ as conferred by Section 152 of the CPC. There is no provision in the CPC or elsewhere which empowers the learned ADJ to carry out such a correction, thereby modifying the decree. Even on this sole ground, therefore, the petitioner is entitled to succeed, and the impugned order dated 23rd May 2022 would be liable to be set aside.

Infirmities in the impugned order

42. There are several counts on which the learned ADJ, in his endeavour to dispense what he felt to be substantial justice by ensuring effective implementation and enforcement of the consent decree dated 18th April 2019, has fallen into error. These may be enumerated as under:

- (i) The reliance, by the learned ADJ, in para 10 of the impugned order, on the order dated 12th February 2021, passed by this Court in TR P (C) 49/2020 is clearly misguided. The order does not, in any manner of speaking, justify either the interpretation that the learned ADJ chose to place on the terms of compromise, or the course of action followed by him predicated on the said interpretation. The learned ADJ has correctly noted that, in its order dated 12th February 2021, this



Court observed that demolition and re-structuring of the suit property was clearly *within the contemplation of* the parties. Much more, in my considered opinion, has been attributed, by the learned ADJ, to the somewhat innocuous observation, by this Court, then is legitimately permissible. All that this Court said was that reconstruction, redevelopment of the suit property was *within the contemplation of* the parties. That was merely stating the obvious. The very stipulation, in the terms of settlement, that, whenever the property would be redeveloped and reconstructed, the share of the petitioner would remain unaltered, implies that redevelopment and reconstruction of the suit property was within the parties' contemplation. Contemplating on a possible future event, however, is one thing; desiring that the said event should definitely take place, and within a reasonable time, is something entirely different. The learned ADJ has confused these two aspects. While the reference to reconstruction and redevelopment of the suit property would indicate that such reconstruction and redevelopment was in the contemplation of the parties, it indicates no more than that. In fact, by using the indeterminate adverb "whenever", the terms of compromise made it clear that the reconstruction and redevelopment of the suit property was no more than a possible future event. If and when such an event were to take place, the terms of compromise clarify that the share of the suit property, which would go to the petitioner, would remain unaltered. That is all that the observation, in the order dated 12th February 2021, of this Court in TRP(C)



49/2020, would also justifiably imply.

(ii) The learned ADJ proceeds, in para 10 of the impugned order, to observe that “the purpose of a compromise decree is to finally settle the dispute and give a finality to the lis.” There can be no cavil with this proposition. It is not clear, however, as to why the learned ADJ felt that the terms of settlement, as encapsulated in the statements of Usha Rani Mehta, Respondent 1 and Respondent 2 and the petitioner did *not* finally settle the dispute or give a finality to the lis. It did. The terms of settlement clearly envisaged that

- (a) the petitioner would remain the sole and absolute owner of the ground floor of the suit property,
- (b) during her lifetime, Usha Rani Mehta would have the right to reside on the ground floor of the suit property,
- (c) the petitioner relinquished all claims against the remaining property,
- (d) Respondent 1 was the sole and absolute owner of the rest of the property including the terrace,
- (e) whenever the suit property was demolished or reconstructed, the share of the petitioner would remain the same,
- (f) Respondent 1 Arun Mehta would pay ₹ 1.3 crores to Respondent 2 Kiran Kalra within six months, towards the claims of Kiran Kalra as full and final settlement of the claims with respect to the suit property,



- (g) till such payment was made, Respondent 2 would not create any third party interest in the second floor of the suit property,
- (h) Respondent 1 was, however, permitted to sell his remaining share in the suit property, and make payment to Respondent 2 Kiran Kalra therefrom,
- (i) during the lifetime of Usha Rani Mehta, Respondent 1 would have all access to the ground floor where Usha Rani Mehta would be residing,
- (j) after the death of Usha Rani Mehta, Respondent 1 would have no right, title or interest in the ground floor of the suit property, and
- (k) subject to receipt of ₹ 1.3 crores from Respondent 1 within six months of the date of the compromise decree, Respondent 2 Kiran Kalra relinquished all claims against the suit property and acknowledged Respondent 1 as the sole and absolute owner of the property, except to the extent of the share of the petitioner.

It is not possible to understand what greater precision, certainty or finality the learned ADJ expected of the compromise decree. To all intents and purposes, the compromise decree has finality settled *inter se* all rights and liabilities between the petitioner and Respondents 1 and 2. Insofar as development and reconstruction of the suit property was concerned, the terms of compromise only envisaged that the petitioner's share in the suit property would remain unaltered even thereafter. That



stipulation did not, in any way, accord lack of finality to the compromise decree.

(iii) What, in fact, the learned ADJ has therefore, done by the impugned order, is to reopen the terms of compromise, which were final and binding in themselves, and introduce an entirely new term of compromise, which envisaged mandatory demolition and reconstruction of the suit property and execution, for the said purpose, of a collaboration agreement with a developer under the supervision of the receiver appointed by the learned ADJ. In the opinion of this Court, it is not possible to read, into the stipulations and specifications contained in the statements of the petitioner, Respondents 1 and 2 and Usha Rani Mehta, as recorded on 18th April 2019, any intention to subject the suit property to such an exercise. The impugned order, therefore, effectively *undoes the finality, to the lis, which the compromise decree dated 18th April 2019 had accorded.*

(iv) There is no justification, in law, for the finding, of the learned ADJ, in para 11 of the impugned order, that the terms of compromise could not be left “open ended to the sweet will of any of the parties”. The terms of compromise, dated 18th April, 2019, were not in any manner open ended or at the will of either of the parties. It was a closed and tightly closeted compromise, which divided the suit property among the various parties to the suit and also clarified, apparently *ex abundanti cautela*, that,



even if the suit property were to be redeveloped and reconstructed, the share of the petitioner would not change. That lone caveat did not, in any manner of speaking, derogate from the finality to the lis that the consent decree otherwise imparted.

(v) The reliance, by the learned ADJ, on Section 46 of the Contract Act, is also equally misplaced. Section 46 of the Contract Act provides that where, by a contract, *a promissor is to perform his promise without application by the promisee*, and no time for performance is specified, the engagement must be performed within a reasonable time. The reason why the reliance, of the learned ADJ on Section 46 is so misplaced, is not far to seek. Section 46 applies where the contract requires a promissor to perform his promise. There is no promise, in the terms of compromise as drawn up on 18th April 2019 via the statements of Usha Rani Mehta, the petitioner and Respondents 1 and 2, that the suit property would be demolished and reconstructed, much less that this would happen within a reasonable time. The terms of compromise merely moot – or, to use the expression employed by this Court in its order dated 12th February 2021, contemplate – a possibility of such an event taking place and provide for the consequence in case such a contingency came to pass. It does no more. It does not even contemplate that demolition and redevelopment of the suit property should take place within a reasonable time. Section 46 of the Contract Act, therefore, has no application to the case at



hand.

(vi) Resultantly, the contention, of Ms. Geeta Luthra that the impugned order can be justified on the anvil of Section 46 of the Contract Act, is also thoroughly misplaced. Section 46 of the Contract Act, has no application, as there was no promise, in the first place, that the suit property would be demolished, redeveloped or reconstructed. Even the order dated 12th February 2021, passed by this Court in TRP(C) 49/2020, does not envisage any such promise having been made in the terms of settlement dated 18th April 2019. Section 46 of the Contract Act, therefore, has no application in the present case.

43. The upshot of the aforesaid discussion is that the learned ADJ could not have, *suo motu*, amended the terms of compromise, as drawn up in the statements of the parties recorded on 18th April 2019, to introduce, therein, a mandatory requirement of demolition and reconstruction of the suit property within a reasonable time – which the learned ADJ has effectively regarded as “forthwith”. Much less could the learned ADJ have, of his own will and volition, appointed a receiver to oversee the execution and implementation of the collaboration agreement between the petitioner and respondents and the prospective builder. What the impugned order has done, is therefore, to place an entirely new regimen in place, in substitution of the regimen envisaged by the terms of compromise dated 18th April 2019.



44. In this context, the reliance, by Ms. Takiar, on the judgment of the Supreme Court in *Ajanta LLP*³ is apt. The judgment, in fact, completely covers the present case, on facts as well as in law. Paras 21, 22 and 24 of the report in *Ajanta LLP*³ read thus:

“21. A judgment by consent is intended to stop litigation between the parties just as much as a judgment resulting from a decision of the Court at the end of a long drawn-out fight. A compromise decree creates an estoppel by judgment [*Byram Pestonji Gariwala v. Union Bank of India*¹⁷]. It is relevant to note that in *Byram Pestonji Gariwala*¹⁷, this Court held that *the appellant therein did not raise any doubt as to the validity or genuineness of the compromise nor was a case made out by him to show that the decree was vitiated by fraud or misrepresentation*. While stating so, this Court dismissed the appeal.

22. *A consent decree would not serve as an estoppel, where the compromise was vitiated by fraud, misrepresentation, or mistake. The Court in exercise of its inherent power may rectify the consent decree to ensure that it is free from clerical or arithmetical errors so as to bring it in conformity with the terms of the compromise. Undoubtedly, the Court can entertain an application under Section 151 CPC for alterations/modification of the consent decree if the same is vitiated by fraud, misrepresentation, or misunderstanding.*

24. The High Court applied its mind and passed a decree in terms of the settlement agreement dated 16-5-2019. Though, the High Court dismissed the application by refusing to entertain the application on the ground that it was filed under Section 152 CPC, *we have considered the submissions of the parties to examine whether the appellant has made out a case for modification of the decree by treating the application as one under the proviso to Order 23 Rule 3 read*

¹⁷ (1992) 1 SCC 31



with Section 151 CPC. There is no allegation either of fraud or misrepresentation on the part of the respondent. We are unable to agree with the appellant that there was a mistake committed while entering into a settlement agreement due to misunderstanding. Correspondence between the advocates for the parties who are experts in law would show that there is no ambiguity or lack of clarity giving rise to any misunderstanding. Even assuming there is a mistake, a consent decree cannot be modified/alterd unless the mistake is a patent or obvious mistake. Or else, there is a danger of every consent decree being sought to be altered on the ground of mistake/misunderstanding by a party to the consent decree.”

(Emphasis supplied)

The present case, in my view, exemplifies the “danger” to which the concluding sentence in para 24 of the report in *Ajanta LLP*³ refers.

45. In the present case, too, the respondents never alleged fraud or misrepresentation or patent or obvious mistake in the consent decree dated 18th April 2019. In the absence of any such allegation, much less any such positive material, it was not permissible for the learned ADJ to modify the compromise decree dated 18th April 2019 as he has chosen to do.

Re. submissions of Ms. Geeta Luthra

46. Ms. Luthra has relied on the decisions in *Rahul S. Shah*⁴ and *S.M.AR. Ramaswami Chettiar*⁵ to contend that the learned ADJ was within his authority in appointing a receiver. It is not necessary to enter into the aspect of the power or authority of the learned ADJ to appoint a receiver as, in my opinion, no justification for appointing a



receiver existed in the first place.

47. Ms. Luthra has also emphasized the fact that, in the execution petition filed by her clients, two alternative prayers were made, one of which the learned ADJ has allowed. She points out that the application prayed that the suit property be demolished and reconstructed within a fixed period, under the aegis of a receiver to be appointed by the Court or that, in the alternative, the compromise decree be recalled and the suit heard on merits.

48. That argument, again, need not detain this court in the present case. The fact of the matter is that the learned ADJ chose to adopt the first of the two alternatives suggested by the petitioner, by modifying the decree and appointing a receiver. He, in my considered opinion, acted in complete excess of the jurisdiction vested in him, in doing so. The impugned order, as an inexorable sequitur, has necessarily to be set aside.

49. As to whether the alternative prayer of Respondent 1, in its execution petition, could be granted, is an issue outside the pale of consideration in the present petition.

50. Ms. Luthra also placed reliance on various judicial decisions cited in para 24 *supra*. It is not necessary to go into each of these decisions. *Hungerford Investment Trust Ltd.*⁶ and *Rama Narang*⁷ have been cited in the context of Section 46 of the Contract Act which, as I have already held, is inapplicable in the present case, as the terms



of compromise dated 18th April 2019 did not incorporate any promise to demolish, redevelop or reconstruct the suit property. **Manju Lata Sharma**⁸ and **Gurpreet Singh**⁹ have been cited by Ms. Luthra for the proposition that a document has to be read as a whole together to divine the intention of the authority. Even read as a whole, in my considered opinion, the intent of the parties, in executing the compromise on 18th April 2019, was to treat the reconstruction and redevelopment of the suit property as, at the highest, a possible future occurrence, and not as an event which had necessarily to take place. That is what the word “whenever”, etymologically understood, signifies. For the same reason, the judgments cited by Ms. Geeta Luthra, on the point that a decree has to be effectively and meaningfully construed, do not help in advancing the case that she seeks to canvass.

Conclusion

51. For all the aforesaid reasons, the impugned order, which is completely unsustainable in law, is quashed and set aside.

52. The petition is accordingly allowed with no orders as to costs.

C. HARI SHANKAR, J

SEPTEMBER 08, 2022

r.bararia