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

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Date of decision: 12.10.2022

+ **RFA(OS) 75/2018**

VISHAL KAUSHIK

..... Appellant

Through: Mr Puneet Saxena, Adv.

versus

JYOTI GUPTA

..... Respondent

Through: Mr Vikas Arora, Adv.

CORAM:

HON'BLE MR JUSTICE RAJIV SHAKDHER

HON'BLE MS JUSTICE TARA VITASTA GANJU

[Physical Hearing/Hybrid Hearing (as per request)]

TARA VITASTA GANJU, J.: (ORAL)

RFA(OS) 75/2018, CM Appl. 46190/2018 (Application for stay under Section 151 CPC) & CM Appl. 46191/2018 (Application Under Section 5 Of Limitation Act Read With Section 151 CPC seeking condonation of delay of 596 days in filing the accompanying appeal)

1. The present Appeal has been filed against Order and Judgment dated 07.11.2016 passed by the learned Single Judge (hereinafter called “the Impugned Judgment”) wherein an amicable settlement was reached between the Appellant and the Respondent who were present in the Court on that date.
2. The terms of the compromise were recorded in the Impugned Judgment.
3. The operative part of the compromise arrived at between the parties which is recorded in the Impugned Judgment reads as follows:

“The parties have settled the matter on the following agreed terms :-

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The defendant agrees to pay the plaintiff a sum of Rs. 55 lacs in the following manner :-

By 20.12.2016 : Rs. 10 lacs

Rs. 10 lacs, each month commencing from 20.12.2016 and the balance amount of Rs. 5 lacs on or before 20.05.2017.

It is also agreed that the present suit may be decreed in favour of the plaintiff and against the defendant. The defendant will pay Rs. 55 lacs in the above terms.

It is agreed that on two consecutive defaults, the plaintiff would be entitled to execute the decree.

The suit is decreed in the sum of Rs. 40 lacs with interest @ 18% with effect from 25.04.2013.

The settlement which has been arrived at would also be treated as an undertaking to the Court.

The defendant who himself is a lawyer, knows the consequences of the breach of the agreement.”

4. The Appeal also impugns an Order dated 11.05.2018 passed by the learned Additional District Judge-03, East District/Karkardooma Courts, Delhi in execution proceedings filed by the Respondent to enforce the Decree.
5. The Appellant herein was the Defendant in the suit before the learned Single Judge.
6. The following has been recorded in our order dated 07.10.2022:

“4. The appellant/defendant/judgment debtor is a lawyer.

4.1 It is not in dispute, that the appellant/defendant/judgment debtor had signed the settlement terms transcribed in the judgment dated 07.11.2016.

5. Mr Puneet Saxena, who appears on behalf of the Appellant/ defendant / judgment debtor, says that the impugned judgment and decree is flawed, for the reason that the plaintiff/respondent was not present in Court, on the said date.

- 6. Mr Vikas Arora, who appears on behalf of the plaintiff/respondent, says that the husband of the plaintiff/respondent was present, and that he had signed the order-sheet.*
- 6.1 In any event, Mr Arora says, that the plaintiff/respondent has no objection to the terms of settlement transcribed in the order dated 07.11.2016.*
- 7. Besides this, our attention has been drawn to the order dated 24.07.2019, passed in the instant appeal, whereby two weeks were granted to the appellant/defendant/judgment debtor to deposit the deficit court fee.*
- 7.1 Mr Saxena has not informed us, as to whether this deficiency has been cured.*
- 8. Furthermore, we find, and even according to the appellant/defendant/judgment debtor, that there is a delay of 596 days in filing the appeal.*
- 9. Mr Saxena seeks a short accommodation to return with instructions.”*
7. Today, the Counsel for the Appellant has informed us that he has been unable to obtain any instructions from the Appellant, as the Appellant is presently incarcerated on account of a criminal complaint lodged against him.
8. The record of the Registry also shows that the deficit court fee amounting to Rs 63,000/- as directed by Order dated 24.07.2019 has not been deposited by the Appellant till today.
9. Learned Counsel for the Appellant once again submits that this Appeal must be heard on merits as the compromise was entered under duress and threat.
10. Learned Counsel for the Respondent, on the other hand, states that this is a mere ploy to drag and delay the execution of the decree in favour of the Respondent. He further submits that there is no merit in

the Appeal.

11. The case file of the Suit i.e. CS(OS) No. 880/2015 instituted by the Respondent against the Appellant was examined.
- 11.1 The record shows that a Suit for recovery in the sum of Rs. 96,80,000/- along with *pendente lite* and future interest @ 18% was filed by the Respondent against the Appellant on 26.03.2015 before the learned Single Judge. The Appellant entered appearance in the Suit and throughout the proceedings before the learned Single Judge, did not comply with the Orders and directions passed by the Court. Initially, several dates were taken to file the Written Statement by him; even after cost was imposed for non-filing of Written Statement, cost was not paid for several dates. The Written Statement was finally filed by the Appellant on 14.08.2015.
- 11.2 On 29.09.2015, the Appellant was directed to furnish a Bank Guarantee in the amount of Rs.40,00,000/- to the satisfaction of the Registrar General of this Court. Despite various opportunities being given to the Appellant, this Order was also not complied with by the Appellant.
- 11.3 The said Order was then modified by the learned Single Judge on 11.01.2016 and it was directed that instead of a Bank Guarantee of Rs.40,00,000/-, the Appellant should deposit the said amount with the Registrar General of this Court. Once again this Order also was not complied with by the Appellant.
- 11.4 On the next date of hearing i.e. on 15.02.2016, since there was no compliance with the Order dated 11.01.2016 nor was there any appearance on behalf of Appellant, the learned Single Judge initiated

suo motu contempt proceedings against the Appellant. The record also shows that those contempt proceedings numbered as Cont.Cas(C) 161/2016 are still pending before the Court.

- 11.5 On 21.03.2016, the Appellant appeared before the learned Single Judge and stated that since he has not been able to deposit Rs.40,00,000/- as directed by the Court on 11.01.2016, he would deposit the original title deeds of Flat No. C-59, Janak Garden, Pandav Nagar, Delhi-110091 (hereinafter referred to as "Property") with the Court. It was directed that title deeds of the Property be deposited by 08.04.2016. Further directions were also passed by the learned Single Judge in respect of the amounts to be deposited by the Appellant. It was also directed in the said Order that in case the amount is not deposited, the Property may be sold by public auction to realize the outstanding amounts due to the Respondent.
- 11.6 Since, there was non-compliance by the Appellant once again, without any explanation, the learned Single Judge on 11.05.2016 directed sale of the property through public auction and also directed that the keys of the Property be deposited with the Court within a month. The matter was listed for hearing, however, even thereafter, non-compliance and requests for adjournment for the compliance by the Appellant continued.
- 11.7 It is in this backdrop that the Impugned Judgment came to be passed on 07.11.2016 recording a compromise in the suit.
12. Detailed orders have been passed by the learned Single Judge in this matter from time to time. None of these orders were assailed by the Appellant. The record shows that the conduct of the Appellant is no

different in the Appeal or in the Execution proceedings taken out to enforce the decree passed by the Court.

13. The Appellant has challenged the Impugned Judgment and compromise by alleging coercion, undue pressure and influence exerted upon the Appellant. Admittedly, the Suit was decreed more than six years ago on the basis of a compromise recorded in the Court in the presence of the Appellant and the sums agreed to therein have not been paid, despite the pendency of the Execution proceedings.
- 13.1 The Appellant being a practising lawyer of this Court, entered into a compromise in the Court and as such, was aware of the consequence of the compromise. The record shows that the Impugned Judgment is duly signed by the Appellant and bears his enrolment number as well. That apart, the Impugned Judgement also bears the signatures of the husband of the Respondent, whose authority to enter into a settlement is not challenged by the Respondent.
- 13.2 The record shows that the settlement entered into by the Appellant to return advance monies taken from the Respondent was also partly acted upon. It is not disputed that after paying Rs. 4 lakhs of the agreed sum i.e., 55 lakhs, the Appellant has failed to make any further payment as per the compromise.
- 13.3 The above narration of facts and the Appellant's conduct makes it clear that once again, the Appellant is trying to wriggle out of the compromise entered into by him in Court and to drag and delay proceedings to frustrate the decree passed.
14. Even otherwise, the law with regard to a challenge to a Compromise Decree and Judgment is well settled. An appeal against an Order

passed by the Court with the consent of parties is barred by the provisions of Order 96 of the Code of Civil Procedure, 1908 (hereinafter called “the CPC”) Sub-section (3) of Section 96 of the CPC, provides that no appeal shall lie from a decree passed by a Court with the consent of the parties and reads as follows:

“96. Appeal from original decree.—

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3. No appeal shall lie from a decree passed by the Court with the consent of parties.”

- 14.1 No Appeal is maintainable against the Order of a Court recording a compromise or refusing to record a compromise either.
- 14.2 This Appeal is therefore barred by the aforesaid provisions of the CPC.
15. To make matters worse, the requisite court fee in the sum of Rs. 63,000/- which was to be filed at the time of the filing of the Appeal, has not been paid, despite several opportunities given in this regard to the Appellant.
16. Besides this, there is a delay of 596 days in the filing of this Appeal, which we are unable to persuade ourselves to condone, having regard to the circumstances obtaining in the instant case.
17. We find no merit in the Appeal and the applications, and accordingly, the Appeal and the applications are dismissed.

(TARA VITASTA GANJU)
JUDGE

(RAJIV SHAKDHER)
JUDGE

OCTOBER 12, 2022 /r

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