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IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 18.09.2023

FAO(OS) 74/2023, CM APPL. 31384/2023 (seeking urgent ad-interim relief) & CM APPL. 48156/2023 (to take the settlement agreement on record)

USHA JOSHI

..... Appellant

Versus

ASHOK KUMAR AHLUWALIA & ANR.

.... Respondents

Advocates who appeared in this case:

For the Appellant : Mr. M. Sufian Siddiqui, Mr. Rakesh Bhugra, Mr. Kumar Satish Shah & Ms. Alya Veronica, Advocates.
Appellant in-person.

For the Respondents : Mr. Sanjeev Sahay, Ms. Shagun Saproo, Advocates for R-1 & R-2 with R-1 & R-2, in-person.

CORAM:
HON'BLE MR. JUSTICE SIDDHARTH MRIDUL
HON'BLE MR. JUSTICE ANISH DAYAL

J U D G M E N T



SIDDHARTH MRIDUL, J. (OPEN COURT)

1. The present appeal under Section 10 of the Delhi High Court Act, 1966, has been instituted on behalf of the appellant, assailing the order dated **26.04.2023**, rendered by the learned Single Judge, in **I.A. No. 11267/2022**, passed in **CS (OS) No. 418/2022**, titled '*Smt. Usha Joshi Vs. Sh. Ashok Kumar Ahluwalia & Anr.*'

2. During the pendency of the appeal, the parties had sought time to arrive at an amicable resolution of the underlying disputes. Subsequent *thereto*, by way of an application, being **CM APPL. 48156/2023**, instituted within the meaning of Order XXIII Rule 3 of the Code of Civil Procedure, 1908, has been filed jointly, on behalf of the parties; wherein it has been mutually agreed by and between the parties, to comply with the terms and conditions, as contained in the **Settlement Agreement** dated **14.09.2023**.

3. The **Settlement Agreement**, dated **14.09.2023**, has been arrived at, between the parties, with the aid and assistance of the Delhi High Court Mediation and Conciliation Centre, Delhi High Court, which is duly supported by affidavits, on behalf of the parties, and is also counter-signed by learned counsel representing them.



4. We have perused the terms and conditions agreed, by and between the parties, in relation to the performance of the reciprocal obligations. A perusal of the above-mentioned **Settlement Agreement** also reflects, that the terms and conditions of the settlement arrived at, between the parties are legal and lawful.

5. For the sake of completeness, the said **Settlement Agreement** dated **14.09.2023**, is extracted *herein below, in extenso*:

ANNEXURE-A-1

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Delhi High Court Mediation and Conciliation Centre
Delhi High Court, Sher Shah Road, New Delhi

Date: 14.09.2023

SETTLEMENT AGREEMENT

This Settlement Agreement is entered into on 14.09.2023

SMT. USHA JOSHI W/O **SHRI PARDEEPKUMAR JOSHI**, R/O HOUSE NO. B 4/3, FIRST FLOOR, RAJOURI GARDEN, J-6, TAGORE GARDEN, RAJOURI GARDEN, DELHI-110027 HEREINAFTER CALLED THE 'FIRST PARTY'.

AND

SHRI ASHOK KUMAR AHLUWALIA, S/O LATE SH. SATPAL AHLUWALIA, R/O HOUSE NO. B-4/2, RAJOURI GARDEN, NEW DELHI-110027.

SHRI PARDEEP KUMAR AHLUWALIA, S/O LATE SH. SATPAL AHLUWALIA, R/O FLAT NO. 248, SECTOR-28, NOIDA, SECTOR-37, GAUTAM BUDDHA NAGAR, UTTAR PRADESH-201303, HEREINAFTER JOINTLY CALLED THE 'SECOND PARTY'

THE PARTIES HEREIN INCLUDES THEIR LEGAL HEIR, SUCCESSOR, ASSIGNEE, ETC.

WHEREAS "FIRST PARTY" and the "SECOND PARTY" entered into an Agreement to Sell dated 07.03.2022 with respect to the Property No. B-4/2, Village Basai, Darapur Colony, Rajouri Garden, New Delhi-110027, hereinafter referred to as the "Suit Property"



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AND WHEREAS the First Party paid Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only) i.e. 10% of the Sale Consideration as Earnest Money Deposit to the Second Party. The said amount has been paid in the by the First Party to the Second Party in following manner;

- i) Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) to Ashok Kumar Ahluwalia,
- ii) Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) to Pardeep Kumar Ahluwalia

AND WHEREAS dispute arose between the Parties with reference to the execution of the said Agreement to Sell and the FIRST PARTY lodged an FIR No. 390/2022, dated 02.07.2022 under Section 420, 406 & 34 of IPC at P.S. Kirti Nagar, against the Second Party.

AND WHEREAS the First Party also filed a Suit for Specific Performance of the said Agreement to Sell being Case No. CS (OS) 418/2022 for Specific Performance and Permanent Injunction before the Hon'ble Delhi High Court.

AND Whereas the Second Party has filed for the Quashing of the said FIR No. 390/2022 being WP(Crl.) No.2392/2022 before Hon'ble Delhi High Court.

AND WHEREAS the First Party has filed an Appeal before the Hon'ble Division Bench of the High Court being FAO (OS) No.74/2023 arising from CS (OS) 418/2022.



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AND WHEREAS the above said matter was referred to Samadhan (Delhi High Court Mediation and Conciliation Centre) vide order dated 01.09.2023 passed in FAO No. 74/23 by Hon'ble Division Bench comprising of Hon'ble Mr. Justice Siddharth Mridul and Hon'ble Ms. Justice Tara Vitasta Ganju.

AND WHEREAS the parties agreed that Ms. Veena Ralli, Advocate shall act as their Mediator in the present matter to facilitate them in resolving their disputes.

AND WHEREAS comprehensive mediation sessions were held between the Parties and their respective Counsel(s). The Parties, with the assistance of the Mediator and proactive participation of their counsel (s) have voluntarily arrived at an amicable solution resolving the above mentioned disputes and differences on the following terms and conditions:

1. Both the Parties agreed that the Second Party shall return to the First Party the earnest money of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only) as recorded in order dated 01.09.2023 passed in FAO No. 74/2023 by Hon'ble Mr. Justice Siddharth Mridul and Hon'ble Mr. Justice Tara Vitasta Ganju, by way of Demand Draft towards the full final settlement of all the disputes between the Parties arising from the execution of the said Agreement to Sell. The Parties agree that the said amount shall be paid by the Second Party to the First Party before the Hon'ble Division Bench of the High Court at the time of recording of statement of the Parties before the Hon'ble Court in terms of the Present Settlement Agreement on 18.09.2023 subject to quashing of the said FIR. The said amount shall be paid as under;

Usha



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- i) Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) by Ashok Kumar Ahluwalia, to Smt. Usha Joshi.
- ii) Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) by Pardeep Kumar Ahluwalia, to Smt. Usha Joshi.

A copy of the Bank Drafts in the name of the First Party as "Usha Joshi" is annexed hereto as **Annexure- A (Colly)**

2. The original of the bank drafts shall be handed over by the Second Party to the First Party before the Hon'ble Division Bench of the High Court in FAO (OS) No. 74/2023 after the quashing of the FIR as provided in Clause 4 of this Agreement against written acknowledgment.
3. Both the Parties agree that the Parties hereto shall obtain a consent decree in terms of the present Settlement Agreement in the Civil Suit for Specific Performance and Permanent Injunction filed by the First Party against the Second Party before the Hon'ble Delhi High Court being CS (OS) 418/2022 on 18.09.2023. Both the Parties shall file a Joint Application under Order 23 Rule 3 CPC duly supported with affidavit in terms of the Present Settlement Agreement in FAO No. 74/2023 seeking disposal of the said Suit for Specific Performance.
4. Both the Parties agree that they shall file a Joint Petition for quashing of the said FIR in terms of the Present Settlement Agreement so as to get the same listed before the Hon'ble Delhi High Court on 18.09. 2023. The First Party shall provide Affidavit and shall appear in person to make Statement for the quashing of the said FIR No. 390/2022 and all the

Usha

Ashok Kumar Ahluwalia

Pardeep Kumar Ahluwalia



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Proceedings emanating therefrom and shall cooperate in every manner as required in law.

5. The First Party hereto agrees, undertakes and assures that in pursuance to the execution of the Agreement to Sell dated 07.03.2022, she has neither created nor shall create any third party right, title, Interest, lien, legal defect or encumbrances on the said Property in any manner whatsoever in terms of the present settlement agreement. The First Party unequivocally states that she has not created any defect in the marketable title of the suit Property.
6. The Second Party hereto agrees, undertakes and assures that in pursuance to the execution of the Agreement to Sell dated 07.03.2022 they have also neither created nor shall create any third party right, title or interest on the said Property till the Second Party hands over the Demand Draft of Rs. 85,00,000/- (Rupees Eighty Five Lakhs Only) to the First Party in terms of the Present Settlement Agreement on 18.09.2023 or a date fixed by the Hon'ble Court itself which shall not be later than 25.09.2023 in FAO No. 74/2023. Time is the essence of the Agreement.
7. The Parties agreed that if the First Party fails to appear and make statement before the Hon'ble Delhi High Court in terms of the present Settlement Agreement and /or for quashing of the above said FIR and/or for passing of the consent decree in the Suit for Specific Performance/FAO No. 74/2023 shall not be later than 25.09.2023, then the Second Party shall be at liberty to deal with the Suit Property



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without any fetter or restriction from the side of the First Party as mentioned in Clause 6 and further shall be at liberty to get bank draft encashed. Thereafter both the Parties shall be at liberty to take appropriate Legal Recourse.

8. Both the Parties agree that this 'Settlement Agreement' shall be irrevocable and binding upon both the Parties. The Parties shall remain bound by the terms of the present Settlement Agreement. The Parties agree to honor the same in its true letter and spirit. The Parties also agree that time is of the essence of the present Settlement Agreement.
9. However, in the event of breach of any of the covenants of the present settlement agreement by either party, the defaulting party shall be liable to be prosecuted for Contempt of Court as per the provisions of the Contempt of Courts Act apart from being liable to pay the penalty as agreed herein this Settlement Agreement.
10. In the event any of Party committing Default in discharging its obligation in terms of the Present Settlement Agreement, the aggrieved Party shall be entitled to receive Rs. 42,50,000/- (Rupees Forty Two Lakhs Fifty Thousand Only) as penalty from the Defaulting Party.
11. Both the Parties solemnly assure and undertake that they shall have no claim against each other arising from the present dispute/ the said Agreement to Sell once the decree is passed by this Hon'ble Court in terms of the present Settlement Agreement. Consequently, once a consent decree is passed by the Hon'ble Delhi High Court in terms of the present settlement agreement, the Agreement to Sell dated



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07.03.2022 shall be rendered null and void and the original Agreement to sell shall be destroyed.

12. The Parties hereto state that they have not filed any other case, claim or proceedings before any court, forum or authority against each other except the cases mentioned herein above and if any case, claim or proceedings is found to have been filed by either of them in respect of the Suit Property then the same shall also be deemed to have been resolved in terms of the present Settlement Agreement.
13. Both the Parties further agree that the stipulations made herein by way of the agreed terms, shall be treated as their respective undertakings to the Hon'ble Court and they shall be held responsible for the contempt of court under the Contempt of Courts Act. Apart from this, the aggrieved Party shall be free to take action against the defaulting Party for violation of any term thereof, as available under law.
14. Both the Parties agree that they have executed the present Settlement Agreement by their free will and volition without any force or pressure from anybody. The Parties also agree that they have understood the contents of the present Settlement Agreement as the same have been explained to them in their vernacular language by the Mediator(s) and their respective counsel, in the presence of each other and they have consented to the same in its true letter and spirit, and as such they shall not dispute the same ever in future.



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15. Both the parties agree and undertake to present themselves before the Hon'ble Court for placing the present Settlement Agreement on record and to be bound by the same.

PARTIES SIGNATURES

Smt. Usha Joshi
(First Party)

Shri Ashok Kumar Ahluwalia
(Second Party)

Shri Pardeep Kumar Ahluwalia

COUNSEL SIGNATURES

Mr. M. Sufian Siddiqui, Enrl No. D-1930/2005
(Advocate for the First Party)

Mr. Sanjeev Sahay, Enrl. No. D/281/97
(Advocate for the Second Party)

(Veena Ralli)
Mediator



6. The parties are present before this Court, in-person today, along with their counsel, and undertake to comply with the terms and conditions, as elaborated in the said **Settlement Agreement**. The undertaking furnished on behalf of the parties is *hereby* accepted.

7. In view *thereof*, the only course of action, that commends itself to us, is to take the said **Settlement Agreement** on record; and direct the parties to comply with the reciprocal obligations, as contained in the said **Settlement Agreement**, *forthwith*, without demur.

8. In view of the above, the application is allowed; and disposed of accordingly.

9. We are informed at the Bar, that in pursuance to the said **Settlement Agreement** dated **14.09.2023**, **FIR No. 390/2022**, dated **02.07.2022**, under **Section 420, 406 and 34 of the Indian Penal Code, 1860**, registered at **Police Station: Kirti Nagar**, has been quashed by the learned Single Judge, *vide* order dated **18.09.2023**, passed in **W.P. (CRL) 2684/2023**.

10. Additionally, the original Demand Drafts have been handed-over to learned counsel appearing on behalf of the appellant, who admits to be in receipt of the same *thereof*, subject to encashment. A photocopy of the



said Demand Drafts, is annexed as **Annexure A (colly)**, to the **Settlement Agreement** dated **14.09.2023**, the details of which are as follows:

S.NO.	DD NUMBER	DATE	AMOUNT
1	013235	21.07.2023	15,00,000
2	010252	13.09.2023	27,50,000
3	504848	21.07.2023	15,00,000
4	504881	13.09.2023	27,50,000
Total Amount- Rs. 85,00,000 (Rupees Eighty Five Lakhs Only)			

11. In view of the foregoing, the original **Agreement to Sell** dated **07.03.2022**, referred to in the pleadings of the instant appeal, stands cancelled.

12. In terms of the order above, it is directed that a Compromise Decree, based upon the terms and conditions, agreed to, by and between the parties, as reflected *herein above*, be drawn up, *forthwith*.

13. The Registrar General, Delhi High Court, is further directed to process the application for refund of court fee, filed on behalf of the appellant, in terms of **Section 16** of the Court Fees Act, 1870; as well as in the backdrop of the **Settlement Agreement**.

14. In view of the foregoing, the suit for specific performance of the



said **Agreement to Sell**, being **CS (OS) 418/2022**; and the instant appeal being **FAO(OS) 74/2023** (arising from the subject suit) stand disposed of, in the afore-mentioned terms. Pending applications, if any, also stand disposed of.

15. A copy of this judgment be uploaded on the website of this Court *forthwith*.

**SIDDHARTH MRIDUL
(JUDGE)**

**ANISH DAYAL
(JUDGE)**

SEPTEMBER 18, 2023
Aanchal

[Click here to check corrigendum, if any](#)