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

Date of decision: 20.10.2023

+ CM(M) 1340/2023 & CM APPL. 42854/2023

SUSHMA

..... Petitioner

Through: Mr. Prashant Diwan and Mr. Brijesh Dwivedi, Advocates

versus

SARBJIT SINGH ARORA & ANR.

.....Respondent

Through: Mr. Mannmohit K. Puri with Mr. Vaibhav Vats, Advocates

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+ CM(M) 1420/2023

SARBJIT SINGH ARORA

..... Petitioner

Through: Mr. Mannmohit K. Puri with Mr. Vaibhav Vats, Advocates

versus

OM PRAKASH

..... Respondent

Through: Mr. Prashant Diwan and Mr. Brijesh Dwivedi, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. These petition(s) filed under Article 227 of the Constitution of India impugns the order(s) dated 14.10.2022 and 21.07.2023 passed by the ADJ-04, North-West District, Rohini Courts, Delhi ('Executing Court') in Ex Civil



No. 157/2017 titled as **Sarbjit Singh Arora v. Om Prakash**.

1.1 The Executing Court vide impugned order dated 14.10.2022 had taken on record the Vakalatnama of the intervener i.e., Smt. Sushma in the pending Ex. Civil No. 157/2017.

1.2 Vide the impugned order dated 21.07.2023 the Executing Court had issued warrants of attachment/possession with respect to the property bearing no. 409, Ground Floor, Block No. RU, Pitampura Residential Scheme, Delhi ('subject property').

1.3 The said intervener has raised objections to the claim of the decree holder to proceed against the subject property. The said objections have been dismissed by the Executing Court vide impugned order dated 21.07.2023. The said intervener has filed CM(M) No. 1340/2023 impugning the order dated 21.07.2023.

1.4 The decree holder has impugned the order dated 14.10.2022 in CM(M) 1420/2023 on the ground that no objection on behalf of the intervener could have been entertained on the said date in the absence of a written application to the said effect.

2. For ease of reference, the rank and status of the parties as it appears in CM(M) 1340/2023 is being referred to in this order. The intervener is the Petitioner and the decree holder is the Respondent No.1. The judgment debtor is arrayed as Respondent No.2.

3. The learned counsel for the Petitioner states that the Petitioner herein i.e., Smt. Sushma entered into a registered Agreement to Sell dated 07.04.2016 ('ATS') with Respondent No.2 i.e., Sh. Om Prakash (judgment debtor) for the purchase of subject property. He states that the Petitioner is in exclusive possession of the subject property in part performance of the said



ATS, as per Section 53A of the Transfer of Property Act, 1882 ('Act of 1882').

3.1. He states that the Petitioner has paid a sum of Rs. 49 lakhs to Respondent No.2 through bank transfer as recorded in the said ATS and the Respondent No.2 has failed to execute a sale deed in favour of the Petitioner herein. He states that a further sum of Rs. 7 lakhs as well was paid to the Respondent No. 2 in cash towards the purchase of the subject property. He states that in addition, the Petitioner incurred expenses on payment of stamp duty, registry fees and brokerage amounting to Rs. 3,62,250/-. He states in this manner a sum of Rs. 61,62,250/- was incurred by the Petitioner towards the said ATS. He states that no further sum is due and payable by the Petitioner to Respondent No. 2 as per the ATS. He states that the Petitioner has also registered an FIR bearing no. 289/16 dated 17.05.2016 against the Respondent No. 2 with respect to the said transaction.

3.2. He states that thereafter, disputes have arisen between the Petitioner and Respondent No.2 and therefore, the Petitioner was constrained to file a civil suit bearing CS No. 683/2017 ('civil suit') for recovery of the principal sum of Rs. 61,62,250/- along with interest from the Respondent No.2 and another defendant therein. He states that the said civil suit is pending adjudication before the District Judge, Rohini Courts, Delhi ('Civil Court') and Respondent No.2 has been proceeded ex-parte.

3.3. He states that the Respondent No.1 herein is a decree holder for recovery of money by virtue of a judgment dated 22.09.2016 which was modified vide judgment dated 23.12.2016 ('said decree') and the Respondent No.2 is the judgment debtor in the said decree.

3.4. He states that the execution of the said decree is pending in the Ex Civil



No. 157/2017 and the Executing Court vide impugned order dated 21.07.2023 had issued warrants of attachment/possession with respect to the subject property.

3.5. He states that subsequently, in view of the pendency of this petition, the Executing Court has de-attached the subject property vide order dated 06.10.2023 to await the outcome of the present proceedings.

3.6. The learned counsel for the Petitioner has relied upon Section 55 (6) (b) of the Act of 1882 to contend that the Petitioner has a statutory charge on the subject property for recovery of the purchase money paid by her to the Respondent No. 2 in anticipation of the execution of sale deed and transfer of a clear and unencumbered title. He states that, however, since the Respondent No.2 has been unable to execute the sale deed, she is entitled to recovery of the said amount from the sale proceeds.

4. The learned counsel for Respondent No.1 has entered appearance.

5. The learned counsels for Petitioner and Respondent No.1 state that the said parties have arrived at a settlement; and the said parties have agreed that both Petitioner and Respondent No.1 shall duly cooperate with the Executing Court in the sale of the subject property. To this effect the Petitioner concedes to the attachment of the subject property by the Executing Court so as to enable the Executing Court to proceed with the sale of the subject property.

5.1. The learned counsels state that parties will assist the Executing Court to fix the appropriate reserve price so that the highest amount is realised in the auction sale.

5.2. The learned counsels for the parties state that Petitioner concedes that from the sale proceeds realised by Executing Court; after defraying costs of auction sale, in the first instance, the Respondent No.1 will be entitled to



receive an amount equal to the decretal amount outstanding on the said date. Thereafter, in the second instance the Petitioner herein will be entitled to receive from the Executing Court the principal amount of Rs. 61,62,250/- claimed by her in the civil suit, from the balance proceeds.

5.3. The parties have agreed that after accounting for the aforesaid disbursement, the balance amount, if any, will be transferred by the Executing Court to be deposited with the concerned Civil Court where the civil suit no. 683/2017 (filed by the Petitioner herein) is pending final adjudication.

5.4. The Petitioner states that she undertakes if in the final decree passed in civil suit no. 683/2017, the Civil Court holds that Petitioner herein is entitled to an amount lesser than Rs. 61,62,250/-; then the Petitioner will deposit that part of the amount with the concerned court as per directions of the Civil Court.

5.5. The Petitioner states that in addition to the aforesaid principal amount of Rs. 61,62,250/-, she has also claimed interest in the civil suit no. 683/2017. The parties agree that the entitlement of the Petitioner to amount recoverable towards interest, if any, will be subject to the final outcome of the said civil suit.

5.6. The parties state that the aforesaid terms and conditions have been arrived at between the parties voluntarily.

6. The Petitioner and the Respondent No. 1 are bound down to the aforesaid terms and conditions and their statements are accepted as an undertaking to this Court.

7. The learned Executing Court is therefore, requested to proceed with the attachment and sale of the subject property in accordance with law and to disburse the sale proceeds in favour of the Petitioner and Respondent No.1 as



per the terms and conditions recorded hereinabove; and transfer the balance amount, if any, with the concerned Civil Court trying civil suit no. 683/2017.

8. It is made clear that the aforesaid order has been passed with the consent of the parities and Petitioner and Respondent No.1 are bound by these terms, however, this order will not affect the right of any third (3rd) party who has a right in the subject property which is superior to the Respondent No.1 and Petitioner herein.

9. With the aforesaid directions for disbursal of the sale proceeds, the order dated 21.07.2023 stands modified in terms thereof. No interference with the order dated 14.10.2022 is made out in view of the aforesaid directions.

10. Accordingly, with the aforesaid directions the present petition(s) are disposed of. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 20, 2023/hp/asb/sk

Click here to check corrigendum, if any