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

Date of decision:06.10.2023

+ EX.F.A. 37/2019

NEERU JAIN

..... Appellant

Through: Mr. R.K. Jain and Mr. Rishabh
Jain, Advocates

versus

SANJAY KUMAR JAIN

..... Respondent

Through: Respondent in person
Mr. Sharvan Dev, Advocate
(Through VC)

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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. This appeal impugns the order dated 04.06.2019 passed by the ADJ-02, North District, Rohini Courts, Delhi ('Executing Court') in execution petition bearing Ex. No. 964/2017, titled as '**Neeru Jain v. Sanjay Kumar Jain**', whereby the Appellant's execution petition was dismissed.

1.1. The Appellant is the decree holder and the Respondent is the judgment debtor. The Appellant is the sister-in-law of the Respondent.

1.2. The execution petition was filed by the Appellant seeking execution of the judgment and decree dated 15.10.2016 passed by the Trial Court in civil suit no. 09/2015.



2. The learned counsel for the Appellant states that the parties to the suit had entered into a settlement/compromise agreement dated 14.07.2016 ('settlement agreement') before the Delhi Mediation Centre, Rohini Courts, Delhi. He states in terms of the said settlement agreement and more specifically clause no. '2' therein, the Respondent herein had undertaken to make payment of Rs. 18 lakhs to the plaintiff in five (5) instalments.

2.1. He states that in lieu of the said payments the plaintiff had agreed to hand over all the documents with respect to Flat No. B-4/90A, Ground Floor, Residential Scheme, Lawrence Road, Delhi – 35 ('subject property'), which were in her possession to enable the defendant to have the subject property converted into freehold from leasehold.

2.2. He states that the said settlement agreement was filed before the Trial Court and a decree in terms of the said settlement agreement was passed by the Trial Court vide order dated 15.10.2016, wherein all the conditions set out in clause nos. 1 to 10 of the said settlement agreement were made a part of the decree.

2.3. He states that the Respondent herein has remained in uninterrupted possession of the subject property and is enjoying the possession in pursuance to the settlement agreement and the decree of the Trial Court.

2.4. He states that since no payments were made by the Respondent in terms of the settlement agreement, the Appellant filed the execution petition. He states that the Appellant herein continues to remain ready and willing to perform her obligations as set out at clause nos. 3, 4, 5, and 6 of the settlement agreement.

2.5. He states that since, the Respondent has failed to remit the payment



of Rs. 18 lakhs to be paid in five (5) instalments as set out in clause no. '2' of the settlement agreement, he is liable to pay interest at 18% per annum on the defaulted amount as set out in clause no. '6' of the said settlement agreement.

2.6. He states that however, the Executing Court fell in error by dismissing the execution petition holding that there is no mechanism for enforcing the decree dated 15.10.2016. He states that the Respondent has unjustly benefitted as he continues to remain in occupation of the suit property in pursuance to the decree whereas, the Appellant herein has not received the consideration of Rs. 18 lakhs which was promised to be paid to her in the year 2016-2017.

2.7. He states that the Executing Court should have proceeded to sell the subject property to realise the payment of the amounts due and payable to the Appellant.

3. In reply, the Respondent who appears in person and is a lawyer by profession states that he had offered to make the payments of the agreed upon amount to the Appellant on 03.09.2016 and 05.09.2016 by way of cheques. In this regard, he relies upon the proceedings recorded before the Executing Court on 06.09.2016. He fairly admits that the said cheques were not handed over to the Appellant and the money continues to remain with the Respondent.

3.1. He states that therefore, the Respondent herein has continued to remain ready and willing to perform his part of the settlement agreement. He fairly admits that he is enjoying the possession of the subject property without making payment of Rs. 18 lakhs to the Appellant till date.

3.2. He states that he is willing to deposit the principal amount of Rs.



18 lakhs before this Court. He however, disputes his liability to pay any further interest to the Appellant for the period of delay from 01.08.2016 till 30.09.2023.

4. This Court has considered the submission of the parties and perused the record.

5. The Appellant herein, who is the title holder of the subject property filed a suit for possession, damages and injunction against the Respondent herein. The Appellant purchased the property and admittedly has a registered sale agreement 30.07.2008 in her favour. During the pendency of the suit, the parties entered into the settlement agreement and in pursuance thereto, the Respondent agreed to purchase the subject property for a consideration of Rs. 18 lakhs, to be paid in five (5) instalments between 01.08.2016 to 01.08.2017.

This suit was decreed on 15.10.2016 in terms of the settlement agreement and the Respondent has continued to be in possession of subject property, in pursuance to the said decree. However, the Respondent has failed to make the payment of Rs. 18 lakhs.

6. The terms of the settlement agreement which culminated into the decree dated 15.10.2016 are set out hereunder for ease of reference:

“This is a suit for recovery of possession of suit premises and for recovery of damages/mesne profit for illegal and unauthorised use and occupation of the suit premises and for consequence relief of injunction filed by the plaintiff against the defendant and received from the Court of Sh. Satish Kumar, Ld. ADJ-02 (North), Rohini Courts, Delhi and assigned to me for mediation by the Ld. Judge Incharge, Mediation Centre, Rohini Courts, Delhi.

Mediation process explained to the parties. I have conducted joint as well as separate sessions with both the parties. After deliberation, both the parties have arrived at an amicable settlement on the following terms and conditions:-



- 1) ***It is settled between the parties that the defendant will give a sum of Rs. 18,00,000/- (Rupees Eighteen Lac Only) to the plaintiff and the plaintiff will transfer her ownership rights in favour of the defendant qua the suit property.***
- 2) ***It is settled between parties the defendant will give a sum of Rs. 18,00,000/- (Rupees Eighteen Lac Only) to the plaintiff through DD against receipt, as per following schedule:-***
 - (i) Rs.4,00,000/- (Rupees Four Lac Only) on **01.08.2016**;
 - (ii) Rs.4,00,000/- (Rupees Four Lac Only) on **01.11.2016**;
 - (iii) Rs.4,00,000/- (Rupees Four Lac Only) on **01.02.2017**;
 - (iv) Rs.4,00,000/- (Rupees Four Lac Only) on **01.05.2017**;
 - (v) Rs.2,00,000/- (Rupees Two Lac Only) on **01.08.2017**;
- 3) *It is also settled that the plaintiff will handover all the documents freehold from DDA. The plaintiff will assist the defendant in getting the said property freehold from DDA and the defendant will bear all the expenses for the same.*
- 4) *It is also settled that the plaintiff will furnish the indemnity bond and affidavits etc. (if required by DDA) for getting the said property freehold.*
- 5) ***It is settled between the parties that the plaintiff will handover all the original documents in possession of the plaintiff with respect to the said property to the defendant at the time of receiving the final payment from the defendant. The plaintiff will handover the copies of the documents of the property to the defendant at the time of receiving the first installment. The said photocopies of the documents shall be self attested by the plaintiff.***
- 6) ***If the defendants delays in making the payment of installments as per above schedule, he is liable to pay interest @18% p.a. on the defaulted amount and if the plaintiff does not comply with the terms of this settlement, she is liable to return the amount received from the defendant with interest @18% p.a.***
- 7) *The defendant shall inform the plaintiff regarding the execution of the transfer of the documents on a particular date.*
- 8) ***It is further settled that all the parties shall make necessary statements before Ld. Referral Court for passing a consent decree in terms of the present settlement.***
- 9) *Since the matter stands settled in the Mediation Centre, the plaintiff shall be entitled for refund of the court fee, if any, as per Section 16 of the Court Fee Act.*



10) After compliance of the terms of this settlement, there shall remain no claim/dispute/difference/due between the parties with regard to the present cause of action or any claim whatsoever and that none of the parties shall file any other case against each other in future qua the present cause of action.

The parties have entered into the present compromise/ settlement without any pressure, coercion, fear or undue influence from any side. The parties shall remain bound by the terms of present settlement, and that the parties shall co-operate for performance of the same.

(Emphasis Supplied)

7. The Executing Court in the impugned order has recorded that on 06.10.2018 the Appellant herein had brought to the Court, the original documents in her possession pertaining to the subject property; however, it was the Respondent who failed to bring the demand drafts for the amount due and payable.

Thus, it is evident that the Appellant has duly performed her obligation under clause no. 5 of the settlement agreement, which forms a part of the decree and it is the Respondent who has wilfully breached his obligation under clause no.2 of the settlement agreement, which also forms part of the decree.

8. In the opinion of this Court, the Executing Court erred in dismissing the execution petition by holding that since the time schedule of payment as set out in clause no. 2 of the settlement agreement has expired and that the settlement agreement does not mention what is to be done in case where the fixed time schedule has not been complied with. This finding of the Executing Court is erroneous as the settlement agreement at clause no. 6 clearly entails that if there is a delay in making payment of the instalments as per the schedule, the Respondent shall become liable to pay interest at 18% per annum on the defaulted amount.



This liability to pay interest continues until the date of the payment of the agreed amount to the Appellant.

8.1. This Court is therefore of the opinion that the Executing Court erred in passing the impugned order dismissing the execution petition, in view of the clause no. 6 of the settlement agreement.

8.2. The Executing Court without ensuring that the decretal amount is paid over to the Appellant erroneously dismissed the execution petition, thereby causing unjust enrichment to the Respondent herein, who continues to be in possession of subject property and is enjoying the same in pursuance to the decree. In the absence of the decree, the Respondent who admittedly does not have any title to the suit property would have been liable to be evicted as well as pay damages.

9. The Appellant herein is a decree holder to the extent that she is entitled to the receipt of consideration of Rs. 18 lakhs (plus interest) in accordance with clause no. '2' read with clause no. '6' of the settlement agreement, which entitles the Appellant to receive the principal amount and interest in case of delay. The Appellant herein is entitled to recover the decretal amount by enforcement the decree like a money decree.

9.1. In view of the submission of the counsel for the Appellant that the Appellant has no objection if the decretal amount is recovered by the sale of the subject property, the Executing Court is at liberty to proceed with the sale of the subject property.

10. Further, in view of the fact that the Appellant before this Court has made a statement that she continues to remain ready and willing to comply with her obligations set out in clause no. 3 to 5 and this was also the finding of the Executing Court in the impugned order, this Court finds



there was no ground for the Executing Court to hold that the decree cannot be executed. As noted above, non-execution of the decree is unjust and harsh on the Appellant and has caused unjust enrichment to the Respondent, who is enjoying the possession of the subject property.

11. The Appellant is bound down to her statement that she will cooperate with the Executing Court for the due implementation of clause nos. 3 to 5 of the settlement agreement. However, before she is called upon to comply with conditions at clause nos. 3 to 5 for the benefit of the Respondent, the principal amount along with interest up to date ('decretal amount') has to be deposited with the Executing Court by the Respondent.

If the Respondent is unwilling to deposit the decretal amount, then the Executing Court is at liberty to sell the subject property for realisation of the decretal amount. In such a circumstance, the Appellant will cooperate with the Executing Court for facilitating the sale of subject property by executing appropriate transfer documents in favour of the successful auction purchaser.

12. During the course of the arguments, the Respondent has stated that he continues to remain ready and willing to make the payment. He states, however, he is unwilling to bear the obligation to pay interest as per clause 6 of the settlement agreement. The Respondent is also simultaneously disputing the entitlement of the Appellant to receive the principal amount of Rs. 18 lakhs. This Court is therefore, not satisfied with the bona fide of the Respondent. The fact remains that Respondent has been unwilling to make the payment of the principal amount of Rs. 18 lakhs and the interest. This is also duly reflected from the order dated



06.09.2016 passed by the Executing Court recording the non-cooperation.

12.1. This Court is of the opinion that the Respondent cannot impose conditions on the Appellant, which are extraneous to the settlement agreement and not borne out from the said agreement.

12.2. If the Executing Court was not satisfied with the demands/conditions made by the Respondent during execution, the Executing Court was empowered to reject the demands/conditions of the Respondent and proceed to execute the decree in favour of the Appellant as a money decree. However, the Executing Court by dismissing the execution petition has put a premium on the non-compliance of the Respondent.

13. A feeble argument has been raised by the Respondent that the Appellant i.e., the decree holder does not have any title to the subject property which is capable of transfer; and it was for this reason that the Respondent has not made the payment.

13.1. The said argument cannot be raised by the Respondent at this stage of execution after the decree has been drawn. It has come on record that the Respondent has been enjoying the possession of the subject property since, 1998 and therefore, the settlement was arrived at between the parties in the year 2016 with due knowledge of the title of the plaintiff/Appellant over the subject property. The imperfection, if any, in the title of the plaintiff/Appellant would have been duly considered by the Respondent before consenting to the payment of Rs. 18 lakhs. Therefore, defendant/Respondent cannot be permitted to reopen the decree at this stage.

13.2. The Appellant admittedly has a better title to the subject property



than the Respondent and he is not entitled to continue in possession of the subject property without making payment of decretal amount to the Appellant. As stated above, in case the Respondent is unwilling to make the payment, the Executing Court is at liberty to sell the subject property with the cooperation of the Appellant herein so as to ensure that the Appellant receives payment of the amount of Rs. 18 lakhs with interest up to date.

14. In view of the said facts, the petition is allowed, the impugned order is set aside and the Executing Court is directed to proceed with the execution of the decree in the aforesaid terms. The Execution Petition No. 964/2017 is restored to its original number.

15. The parties are directed to appear before the Executing Court on 20.10.2023. The registry is directed to transmit the copy of this order to the Executing Court. Pending applications, if any, stand disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 6, 2023/hp/aa

Click here to check corrigendum, if any