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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EFA(OS) 7/2020 & CM APPLs. 9145/2020, 9147-9148/2020 and 22780/2022**

MOTI GUPTA & ANR. Appellants
Through: Mr. Gaurav Bahl, Advocate (through VC)
versus

SURINDER KUMAR AGGARWAL (DECEASED) THR. LRs Respondent
Through: Mr.S.K.Singh, Advocate with Mr. Ashish Kumar and Ms. Pepakayala Geetanjali, Advocates

+ **EFA(OS) 7/2021 & CM APPLs.42823/2021 and 4236/2023**

MRIDUL GUPTA Appellant
Through: Mr. Jawahar Chawla with Ms. Shallu Chawla, Advocates
versus

SURINDER KUMAR AGGARWAL NOW DECEASED THROUGH HIS LEGAL HEIRS MS. AMITA AGGARWAL AND MS. TANIYA AGGARWAL & ORS. Respondents
Through: Mr. S.K.Singh, Advocate with Mr. Ashish Kumar and Ms. Pepakayala Geetanjali, Advocates

% Reserved on: 15th September, 2023
Date of Decision: 26th September, 2023

CORAM:
HON'BLE MR. JUSTICE MANMOHAN
HON'BLE MS. JUSTICE MINI PUSHKARNA

J U D G M E N T



MINI PUSHKARNA, J:

1. The present appeals challenge the various orders passed by learned Single Judge in execution petition being *Ex. P. 336/2014*. Appeal being *EFA (OS) 7/2020* has been filed by the Judgment Debtors with prayer for quashing and setting aside the orders dated 08th November, 2019, 23rd July, 2019 and earlier orders passed by the learned Single Judge in *EX. P. 336/2014* on the ground that they had not instructed their counsel to settle the matter. Connected appeal being *EFA (OS) 7/2021* has been filed by the son of the Judgment Debtors with prayer for setting aside the order dated 22nd October, 2021 and all previous orders passed in *EX. P. 336/2014* on the ground that the property in question which is the subject matter of attachment and auction in the execution proceedings, is under his ownership on the basis of gift deed dated 28th May, 2015 executed by his mother, the Judgment Debtor no. 2, in his favour. For convenience sake, appellants in *EFA (OS) 7/2020* shall be referred as Judgment Debtors and appellant in *EFA (OS) 7/2021* shall be referred as son of the Judgment Debtors.

2. Facts of the case as canvassed on behalf of respondent/Decree Holder are that he had loaned a sum of AED 1,500,000/- (AED one million and five hundred thousand) to Judgment Debtor no. 2. In acknowledgment of the said loan, the Judgment Debtor no. 2 executed an acknowledgment, and she also handed over a cheque bearing no. 001001 drawn on Habib Bank AG Zurich for a sum of 1.4 million AED signed by her husband, Judgment Debtor no. 1. Admittedly, the said cheque was dishonoured, which led to filing of suit by respondent/ Decree Holder in the Commercial Plenary Court in Dubai. The suit of the respondent/ Decree Holder was decreed in his favour by way



of judgment and decree dated 15th December, 2013 passed by the Commercial Plenary Court in Dubai. Thus, execution petition being *EX. P. 336/2014* was filed by respondent/ Decree Holder for execution of the aforesaid judgment and decree before the learned Single Judge.

3. When the matter was listed for hearing on 31st July, 2018, learned counsel for the Judgment Debtors submitted that his client was ready and willing to pay a sum of Rs. 3 crores as full and final settlement of the decree. Thus, the execution petition was disposed of by learned Single Judge vide order dated 31st July, 2018 recording the settlement of the parties. For the purpose of working out the modalities of the payment, the matter was directed to be placed before the Delhi High Court Mediation and Conciliation Centre (“Mediation Centre”) by the learned Single Judge.

4. Subsequently, application, i.e. *E.A. 412/2018* was filed on behalf of the Judgment Debtors for recalling the order dated 31st July, 2018 on the ground that they had not instructed their counsel to settle the matter. The learned Single Judge by order dated 08th October, 2018 dismissed the application moved by the Judgment Debtors, thereby holding that the allegations made by the Judgment Debtors against their counsels to the effect that no instructions were given to them to enter into the settlement, was proved to be false.

5. Further, by order dated 08th October, 2018, the learned Single Judge attached the property in question being House no. 42-B and 43, Ashoka Park Main, Village Basai Darapur, Rohtak Road, Rampura, New Delhi-110035 (“subject property”) and also appointed a Court Auctioneer. The learned Single Judge also appointed a Valuer for valuing the subject property in question. Accordingly, the Valuer completed his process of valuation and



filed his report. Subsequently, by order dated 28th May, 2019, learned Single Judge directed the Court Auctioneer to take steps to auction the subject property.

6. Later on, two applications being *EAs. (OS) 313/2019 & 314/2019* were filed by Mridul Gupta, son of the Judgment Debtors seeking recall of the attachment order dated 08th October, 2018 against the subject property. The same were considered by the learned Single Judge in order dated 23rd July, 2019 thereby holding that son of the Judgment Debtors was not a party to the execution petition and that Judgment Debtors were clearly not ensuring that the attachment and auction orders were given effect to. Since the learned Single Judge proceeded with the matter further, application being *EA (OS) 696/2019* was filed by son of the Judgment Debtors stating that his objections had not been considered by the Court. By order dated 08th November, 2019, the learned Single Judge held that the Judgment Debtors had attempted to unlawfully resile from the settlement. Thus, the learned Single Judge by order dated 08th November, 2019 held that none of the previous orders were liable to be recalled or modified. The objections/applications of the Judgment Debtors and their son were accordingly dismissed.

7. Subsequently, by order dated 23rd September, 2021, the learned Single Judge appointed the Court Auctioneer as a Receiver to take possession of the areas of the property in question which were lying vacant and to seal the same. Thereafter, in order dated 22nd October, 2021, the learned Single Judge recorded that the Receiver in the course of carrying out inspection of the property, found the same to be vacant and thus, had taken the property in possession and had also sealed the same. Objections were raised on behalf of



the son of the Judgment Debtors. The learned Single Judge by order dated 22nd October, 2021 held that the objections of son of the Judgment Debtors had already been heard and disposed of by earlier orders dated 23rd July, 2019 & 08th November, 2019. Hence, directions were issued to the Receiver/Court Auctioneer to take further steps to put the property in question for auction. Thus, against the aforesaid orders inter alia dated 23rd July, 2019, 08th November, 2019, 22nd October, 2021 and other previous orders passed by the learned Single Judge, the present appeals have been filed on behalf of the Judgment Debtors and their son.

8. On behalf of the appellants i.e. the Judgment Debtors and their son, it is contended as follows:

8.1 No settlement was entered between the parties, therefore, disposal of execution petition by order dated 31st July, 2018 cannot be construed to be a disposal as per law.

8.2 Execution petition was filed contrary to Section 13 and 44 A of the Code of Civil Procedure, 1908 (CPC), as there was no reciprocal treaty with UAE on the day when the execution proceedings were filed by Decree Holder. The execution was filed in the year 2014, while the reciprocal treaty was signed between India and UAE on 17th January, 2020. Therefore, the foreign decree issued by Dubai Court does not fall within the “Reciprocating Territory”. The Decree Holder has committed fraud against this Court in this regard. Therefore, order obtained by fraud is liable to be set aside being a nullity.

8.3 Parties had not appeared before the Court on 31st July, 2018 and no instructions had been given by the Judgment Debtors to their counsel for settlement of the matter.



8.4 Settlement agreement has to be reduced into writing. Since no written agreement has been signed, there is no settlement agreement between the parties.

8.5 It is submitted that son of the Judgment Debtors is a third party/objector and there is no decree against him. The Dubai Court decree dated 15th December, 2013 was passed against his parents.

8.6 The Judgment Debtors had categorically stated that they did not own the property in question, which was exclusively owned by their son.

8.7 Objections had been filed on behalf of son of Judgment Debtors, disclosing categorically that he was the owner of the subject property, vide gift deed dated 28th May, 2015.

8.8 As per details of assets filed by Decree Holder, the Decree Holder sought attachment of the ground floor only out of 2 ½ storeyed building of the subject property.

8.9 The execution petition violates Order XXI Rule 6 CPC as the same is not accompanied with certificates of non-satisfaction of decree and transfer from the original Court of Dubai.

8.10 The gift deed dated 28th May, 2015 is a registered document and the same has not been challenged by the Decree Holder before any Court of law.

8.11 On behalf of the appellants, the following judgments have been relied upon:

- (i) ***N.K. Rajgarhia Vs. Mahavir Plantation Ltd., (2006) 1 SCC***
- (ii) ***Moti Lal Banker (Dead) by his Legal Representative Vs. Maharaj Kumar Mahmood Hasan Khan, (1968) 3 SCR 158***
- (iii) ***Director of Elementary Education, Odisha and Others***



Vs. Pramod Kumar Sahoo, (2019) 10 SCC 674

- (iv) ***Himalayan Coop. Group Housing Society Vs. Balwan Singh and Others., (2015) 7 SCC 373***
- (v) ***A.V. Papayya Sastry and Others Vs. Govt. of A.P. and Others, (2007) 4 SCC 221.***
- (vi) ***S. Sarojini Amma Vs. Velayudhan Pillai Sreekumar, (2019) 4 SCC (Civ) 696***
- (vii) ***S.P. Chengalvaraya Naidu (Dead) Vs. Jagannath (Dead) by LRs, (1994) 1 SCC 1***
- (viii) ***K.D. Sharma Vs. Steel Authority of India Ltd. & Ors.,(2008) 12 SCC 481***
- (ix) ***Ganpathbhai Mahijibhai Solanki Vs. State of Gujarat & Ors. (2008) 3 SCC 556***

9. *Per contra*, on behalf of respondent/Decree Holder it is contended as follows:

9.1 There is valid settlement between the parties that was duly recorded by the learned Single Judge in order dated 31st July, 2018.

9.2 The Judgment Debtors duly appeared before the Mediation Centre initially along with the same advocate whose presence is recorded in the order dated 31st July, 2018. Therefore, it is falsely stated on behalf of Judgment Debtors that they had given no instructions to their counsel for settlement.

9.3 Order XXIII CPC which deals with compromise of a suit, does not apply to executions in terms of Order XXIII Rule 4 CPC. Thus, there is no infirmity in the order dated 31st July, 2018 passed by the learned Single Judge recording the settlement.

9.4 The counsels who appeared for the Judgment Debtors before the learned Single Judge stood by their statement that there were instructions for



settlement in the matter.

9.5 There are categorical findings against the Judgment Debtors that they have obstructed the execution of the decree time and again.

9.6 At the time of filing details of assets of Judgment Debtors, the Decree Holder did not have complete details, therefore, only ground floor was mentioned. Therefore, order for attachment of the whole of the subject property is correct.

9.7 Complaints filed on behalf of Judgment Debtors before Bar Council against their lawyers, have also been dismissed.

9.8 The gift deed was executed after passing of the decree by the Dubai Court.

9.9 Appeal filed on behalf of Judgment Debtors against the judgment and decree passed by the Dubai Court, was also dismissed by the Superior Court, Dubai on 18th August, 2015 during the pendency of the execution proceedings.

9.10 On behalf of respondent/ Decree Holder, judgment in the case of ***Tayabbhai M. Bagasarwalla and Another Vs. Hind Rubber Industries Pvt. Ltd. and Others, (1997) 3 SCC 443***, has been relied upon.

10. We have heard learned counsel for the parties and perused the record.

11. Perusal of the record manifests that the Judgment Debtors had agreed to pay a sum of Rs. 3 crores as full and final settlement to the Decree Holder. The order dated 31st July, 2018 clearly records that settlement had been arrived at between the parties. The said order dated 31st July, 2018 reads as under:

“1. Amended memo of parties is taken on record. This is an execution petition seeking to execute the judgment and decree dated 15th December, 2013 passed by the Commercial Plenary Court in



Dubai. The case of the decree holder who was the Plaintiff in the said Court is that the Plaintiff lent a sum of AED 1,500,000/- (AED one million and five hundred thousand) to the Defendant No.2. In acknowledgment of the said loan, Defendant No.2 had executed an acknowledgment and she had also handed over a cheque No.001001 dated 26th May, 2013, for a sum of 1.5 million AED by Habib Bank AG Zurich signed by her husband-Defendant No.1. The counsel for the Defendant does not dispute the signatures of his client On the said acknowledgment or on the cheque. Admittedly, the cheque was dishonored which led to the filing Of the suit by the Petitioner /Decree Holder.

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3. *On the last date, an interim injunction was granted restraining the Judgment-Debtors from alienating, transferring or creating any third-party interest on House No.42B & 43, Ashoka Park, Main Rohtak Road, Delhi. The Judgment Debtors were also directed to seek instructions as to how they can secure the interest of the Petitioner/Decree Holder. Today, the parties have appeared before this Court. Learned counsel for Judgment Debtors submits that his client is ready and willing to pay a sum of Rs.3 crores as full and final settlement of the decree. Learned counsel for the Decree Holder submits that his client is willing to accept the said amount provided the same is paid expeditiously. Learned counsel for Judgment Debtors submits that his client is willing to dispose of a part of the property at Ashoka Park, Main Rohtak Road, Delhi in order to pay the Decree Holder.*

4. *Accordingly, the present execution petition is disposed of, recording the settlement of the parties in the following terms.*

i) The Judgment Debtors shall pay a lumpsum amount of Rs.3 crores in full and final settlement of the decree dated 15th December, 2013 passed by the Commercial Plenary Court.

ii) The said payment of Rs.3 crores shall be cleared on or before 31st December, 2018.

iii) In order to agree for the modalities of the payment, the matter is placed before the Delhi High Court Mediation and Conciliation Centre."

12. By way of the aforesaid order dated 31st July, 2018, the learned Single Judge while disposing the execution petition as settled, referred the matter to the Mediation Centre solely for the purpose of enabling the parties to agree



on the terms and modalities of payment. The learned Single Judge had recorded the settlement finally as reflected in the order dated 31st July, 2018.

13. Subsequently, Judgment Debtors filed applications before the learned Single Judge on the ground that they had not instructed their counsel to settle the matter. Upon filing of the said applications, the learned Single Judge called a report from the mediator to ascertain whether the two Judgment Debtors were present during the mediation proceedings. Pursuant thereto, the mediator submitted a report wherein it was confirmed that both the Judgment Debtors were present before the mediator on 16th August, 2018 along with their counsels. Even when the Judgment Debtors had changed their counsel, Judgment Debtor no. 2 was present before the mediator on 20th August, 2018. Further, as recorded by the learned Single Judge in the order dated 08th October, 2018, the earlier counsels representing the Judgment Debtors categorically stated that the Judgment Debtors had given them instructions to settle the matter, pursuant to which settlement had been recorded on 31st July, 2018 by the Court. Thus, in the order dated 08th October, 2018 learned Single Judge has held as follows:

“1. Mr. Alok Sinha, Advocate is present with Mr. Parmendra Ojha, Advocate. They were the counsels who represented the Judgment Debtors on 31st July, 2018. They submit that they are representing the Judgment Debtor No.1 in at least four to five matters. They also categorically submit that for entering into the settlement on 31st July, 2018, Judgment Debtor-1 had given them instructions to settle the matter. Accordingly, the settlement was recorded on the said date.

2. It is also submitted by them that the Judgment Debtor Nos. 1 and 2 have also participated in the mediation proceedings on 16th August, 2018. Thereafter, they took away the files from them around 18th August, 2018. Mr. Parmendra Ojha in fact submits that he has messages on his phone which would establish that the Judgment Debtor No. 1 had agreed to meet him and even after the first date before the Mediator, Judgment Debtor No.1 had agreed to obtain the valuation of



the property.

3. A report was called from the mediation centre as well. Ms. Veena Ralli, learned Mediator, has also confirmed in her report that on 16th August, 2018 both Mr. Moti Gupta and Ms. Neeta Gupta @ Anita were present along with Mr. Alok Sinha and Mr. Parmendra Ojha, learned counsels. Even thereafter when the counsel was changed, Ms. Neeta Gupta @ Anita was present on 20th August, 2018.”

14. Thus, in view of the aforesaid, the learned Single Judge concluded that the allegations made against the counsels to the effect that no instructions were given to them to enter into the settlement, were proved to be false.

15. It is pertinent to note that after the disposal of the matter on 31st July, 2018 by which the learned Single Judge had duly recorded settlement between the parties, the Judgment Debtors had appeared before the Mediation Centre along with their counsels. The matter had been referred to the Mediation Centre only for the purposes of recording the modalities of payment by the Judgment Debtors to the Decree Holder in view of the settlement recorded by the court in order dated 31st July, 2018. The very fact that the Judgment Debtors appeared before the Mediation Centre along with their counsels, is a clear pointer to the fact that the Judgment Debtors had indeed settled the matter as recorded by the learned Single Judge. The directions to appear before the Mediation Centre was given in the order dated 31st July, 2018 and there would have been no occasion for the Judgment Debtors to appear before the Mediation Centre if they had not settled the matter. This clearly shows that there is an attempt by the Judgment Debtors to retract from the settlement that had finally been recorded by the learned Single Judge in order dated 31st July, 2018. Such



conduct of the Judgment Debtors is totally unacceptable. Once having entered into a settlement which was duly recorded by the learned Single Judge, the Judgment Debtors cannot be allowed to recant from their duly recorded settlement subsequently. Such a course of action, if allowed, would hamper the justice system. Court process cannot be permitted to be disregarded or taken lightly by reneging from the statements made before Court which are recorded in the open Court. There is sanctity attached to the settlements which are entered into before the Court.

16. The contention as regards to the settlement agreement not being in writing, is also found without any merits. The settlement was duly recorded in the order passed by the learned Single Judge in the open Court after hearing counsel for the parties. When a settlement is duly recorded by Court on the basis of submissions made before it, such objection of separate settlement agreement in writing is meritless.

17. It is also to be noted that the Judgment Debtors have left no stone unturned to obstruct the execution proceedings by not cooperating with the Court Valuer for valuation of the suit property. Besides, applications were filed on behalf of the Judgment Debtors and their son raising objections time and again with a view to stall the progress of the execution proceedings. This Court also notes that the Judgment Debtors have attempted to thwart the execution of the decree in more than one way. After passing of the decree that was sought to be executed in the execution proceedings, the Judgment Debtor no. 2 executed gift deed dated 27th May, 2015 qua the subject property in favour of her son, Mridul Gupta, clearly with a view to defeat the execution of the decree in question. With regard to the conduct of the Judgment Debtors and their son, learned Single Judge in order dated 23rd



July, 2019 has recorded as follows:

“5. The Judgment Debtors did not cooperate with the Court Valuer which resulted in enormous delay in getting the valuation report. This Court had to pass repeated orders from time to time. As recorded in the order dated 20th December, 2018, the Judgment Debtor - Ms. Neeta Gupta created obstructions and commotion during the implementation of the orders dated 8th October, 2018 and 14th November, 2018. Thereafter, the Court appointed Valuer submitted the report.

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7. It is clear from the various events that have transpired that the Judgment Debtors, after agreeing before the Court to pay a sum of Rs.3 crores to the Decree Holder have taken several steps to resile from the same and have till date not honoured the said commitment made to the Court. Whenever the Court has taken steps towards auction of the subject property which was in the name of Mrs. Neeta Gupta, and which has been allegedly transferred in the name of her son through a gift deed, she has repeatedly raised objections. The Court had in fact appointed the Court Auctioneer considering the obstructions being created by the Judgment Debtors. Today, the objection petition filed by Mr. Mridul Gupta is on record. The said objection petition is not filed on behalf of the Judgment Debtors but is filed on behalf of their son. He is not a party to the present execution petition. The Judgment Debtors are clearly not ensuring that the attachment and the auction orders are given effect to.”

18. As regards the contention raised on behalf of Judgment Debtors and their son that the execution petition was not maintainable in view of the fact that there was no reciprocal treaty with Dubai at the time of filing of the execution petition by the Decree Holder, the same does not hold any water. The learned Single Judge in order dated 08th November, 2019 has rightly held as follows:

“4. The stand taken in EA (OS) 696/2019, is that the objections filed by Mr. Mridul Gupta have not been considered by the Court. However, the objections filed by Mr. Mridul Gupta being E.A.(OS) No. 313/2019 and 314/2019 have already been considered in order dated 23th July 2019. The fundamental objection being raised is that the foreign judgement/decreed which is sought to be executed ought to satisfy the requirements of Sections 13 and 44A CPC. In this litigation, the question of recording satisfaction under the said



provisions did not arise as the matter was settled during the course of hearing and subsequently, the Judgment Debtors have merely attempted to unlawfully resile from the settlement. Once the dispute was settled, the legal objections under Sections 13 and 44A CPC were not to be considered by the Court.”

19. Thus, it is evident that the conduct of the Judgment Debtors is utterly deplorable and reprehensible. They have attempted to make serious allegations against their counsels, which have been found to be untenable. Further, the Judgment Debtors and their son have taken every possible step to ensure that the progress of the execution proceedings is frustrated.

20. The contention on behalf of Judgment Debtors and their son that the subject property does not belong to the Judgment Debtors but to their son by way of gift deed, which has not been challenged, is not tenable. As manifest, the gift deed qua the subject property was executed after the decree had been passed against the Judgment Debtors. Clearly, the transfer was made by the Judgment Debtors in favour of their son to defeat the decree of the Decree Holder. As submitted on behalf of Decree Holder, the son of Judgment Debtors is settled in Dubai and execution of gift deed was only a paper transaction in order to avert execution of the decree. As recorded by learned Single Judge, the gift deed allegedly executed by Judgment Debtor no. 2 in favour of her son, Mridul Gupta, after the execution petition had been filed, is nothing but an attempt to overreach the process of the Court. The conduct of the Judgment Debtors in their attempt to resile from the settlement duly recorded by the Court and their attempt to obstruct the execution proceedings, has already been noted by this Court in preceding paragraphs.

21. Further, the objection as regards to violation of Order XXI Rule 6 CPC is also not tenable, as the said provision does not apply in the facts and



circumstances of the case.

22. The judgments relied upon by the Judgment Debtors and their son, do not come to their aid in any manner. The judgments in the case of ***KD Sharma (supra)*** and ***Ganpatbhai Mahijibhai (supra)*** on the aspect of a decree obtained by fraud is not applicable to the facts of the present case as the Judgment Debtors have not been able to establish that the judgment/decree obtained by Decree Holder was in any manner obtained by fraud. Rather, the appeal filed on behalf of Judgment Debtors in the Dubai Superior Court has been dismissed, and the decree against them has attained finality. Similarly, the judgment in the case of ***S. P. Chengalvaraya Naidu (supra)*** is not applicable to the present case as there is nothing on record to show that the case of the Decree Holder is based on falsehood.

23. Likewise, the judgments in the case of ***A.V. Papayya Sastry (supra)*** and ***Himalayan Coop. Group Housing Society (supra)*** on the issue that a lawyer must be specifically authorised to settle and compromise a claim and that concession by a lawyer is not binding on a party, do not apply to the facts and circumstances of the present case. The contention of the Judgment Debtors that they did not instruct their counsels for settlement has been found to be untenable. The counsels for the Judgment Debtors have remained steadfast in their stand about categorical instructions from the Judgment Debtors for settling the matter. Further, the conduct of the Judgment Debtors in appearing before the Mediation Centre in terms of the order of the learned Single Judge for working out the modalities of the payment to be made to the Decree Holder in terms of the settlement as recorded by the learned Single Judge, clearly points out to the fact that the Judgment Debtors had given clear instructions for settlement of the matter.



The Judgment Debtors would not have appeared before the Mediation Centre to record the modalities of the payment to be made to the Decree Holder, had they not settled the matter. The only purpose of appearing before the Mediation Centre was recording of modalities for payments and not for recording any settlement agreement, as the final settlement already stood recorded in the order dated 31st July, 2018 passed by the learned Single Judge.

24. In view of the detailed discussion hereinabove, no merit is found in the present appeals. The same are accordingly dismissed along with pending applications.

MINI PUSHKARNA, J

MANMOHAN, J

SEPTEMBER 26, 2023

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