$~**S-19**

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

\+ **EFA(OS) 12/2023 & CM APPLs.50088/2023 and 50090/2023**

ARJUN SOMDUTT ..... Appellant

Through: Mr.Aruneshwar Gupta, Sr.Advocate with Mr.Varun Dewan, Advocate.

versus

VIVAN SOMDUTT AND OTHERS .....Respondents

Through: Mr.Munindra Dvivedi, Advocate with Mr.Abhishek Chauhan, Advocate for R-1.
Mr.B.B.Gupta, Sr.Advocate with Ms.Meghna Mishra, Mr.Ankit Rajgarhia and Ms.Yashodhara Gutpa, Advocates for R-2.

% 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

MANMOHAN, J: (ORAL)

CM APPL. 50089/2023 (exemption)

1. Allowed, subject to all just exceptions.

2. Accordingly, the application stands disposed of.

EFA(OS) 12/2023 & CM APPLs.50088/2023 and 50090/2023

3. Present appeal has been filed challenging the order dated 14th August, 2023 passed by the learned Single Judge in EX.P. 17/2016, whereby the Court directed auction of the subject property in accordance with the

proposed terms of auction agreed between the parties and in the ratio agreed under the family settlement dated 31st December, 1991.

4. Learned senior counsel for the Appellant states that the finding of the learned Single Judge, wherein the reserve price for the subject property was set at Rs. 65 crores, is erroneous, incorrect and in contradiction to the valuation report dated 28th April, 2018, the orders dated 12th November, 2018 and 17th November, 2022 as well as the prevailing circle rates/ market price of the property. He further states that a combined reading of these documents conclusively establishes that the market value of the property exceeds Rs. 100 crore, much higher than the meagre reserve price of Rs. 65 crores. He emphasises that the determination of the reserve price in question lacks a reasonable basis and is incongruent with the prevailing market value of the property. He states that this contention finds substantial support in the Agreement to Sell dated 03rd January, 2012, wherein the agreed sale consideration was set at Rs.65,00,07,000/-. According to him, with passage of ten years from the date of the said Agreement to Sell dated 03rd January, 2012, one would reasonably anticipate an escalation in property values.

5. Learned senior counsel for the Appellant further contends that by way of affidavit filed in Ex. P. 17/2016, he never gave any consent or provided any no-objection for Court auction of the subject property. He submits that the observation made by the Learned Single Judge in the impugned order regarding the Appellant's consent to the terms of public auction is erroneous, inaccurate and suffers from an error apparent on the face of the record.

6. Having heard learned senior counsel for the Appellant, this Court is of the view that the reserve price fixed by the learned Single Judge is the

minimum amount at which the property in question can be sold. If according to the Appellant, the price of the property in question is in excess of Rs.65 crores, it is open to him to make a bid at the public auction himself or to get a buyer or collaborator for Rs.65 crores or more.

7. This Court is of the opinion that the property in question is unlikely to fetch its true market price due to the inter se dispute between the parties and due to the recalcitrant attitude adopted by the Appellant.

8. As far as the erroneous recording of the concession by the learned Single Judge is concerned, the law is well settled that the Judges' record is conclusive. Neither a lawyer nor a litigant can claim to contradict it, except before the Judge himself, but nowhere else (See: ***State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another***, ***(1982) 2 SCC 463***).

9. Since in the present case, no application for recall of the concession has been made before the learned Single Judge, the said plea cannot be entertained.

10. Consequently, the present appeal along with applications being bereft of merits is dismissed.

MANMOHAN, J

MINI PUSHKARNA, J

SEPTEMBER 26, 2023
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