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

Date of decision: 17.11.2023

+ **CM(M) 1853/2023, CM APPL. 58705/2023 & 58706/2023**

KULBHUSHAN CHOPRA

..... Petitioner

Through: Mr. Rohit Kumar, Ms. Srishti Sharma
and Mr. Adnan Saifi, Advocates with
Petitioner in person.

versus

YOGESH CHOPRA & ANR.

..... Respondents

Through: Mr. Nikhil Mehta, Advocate for R-1
with R-1 in person.
Mr. Rajat Wadhwa, Ms. Dhriti Bhatia
and Mr. Gurpreet Singh Gill,
Advocates for Auction Purchaser/R-3

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 order is being passed in continuation to this Court's earlier order dated 10.11.2023.
2. Learned counsel for the auction purchaser i.e., Mr. Sumit Sahni, has entered appearance. On his oral prayer, the auction purchaser is impleaded as Respondent no. 3 in this petition.
- 2.1. He states that the auction purchaser had submitted a bid of Rs. 40,50,000/- for sale of subject property i.e., property no. C-29, Vishnu Garden, New Delhi, which has been accepted by the Executing Court vide



order dated 10.11.2023. He fairly states that though five (5) cheques towards the said bid amount of Rs. 40,50,000/- have been deposited with the Executing Court, none of the said cheques have been encashed till date.

2.2. He states that any order for cancellation of sale would entail a payment equal to 5% of the purchase money as contemplated in Order XXI Rule 89(1)(a) of CPC to Respondent No.3, which amounts to Rs. 2,00,000/- approximately.

2.3. He further states that the Respondent No.3 had to liquidate his fixed deposits to make available the said bid amount in his bank account; and therefore, payment of Rs. 2,00,000/- is a fair compensation. He states that Respondent No.3 is willing to accept Rs. 2,00,000/- in full and final settlement of his claims.

3. Learned counsel for Respondent No. 1 states that in terms of the compromise arrived at between the Petitioner and Respondent No.1 a sum of Rs. 14,00,000/- out of total amount of Rs. 20,00,000/- already stands paid by the Petitioner. He states that the Respondent No.1 is ready and willing to accept the outstanding amount of Rs. 6,00,000/- from the Petitioner in satisfaction of the decree dated 03.06.2022. He states that he has no objection if the sale in favour of Respondent No.3 is cancelled.

4. He states that it is estimated that expenses to the tune of Rs. 40,000/- to 45,000/- has been incurred by the Court Auctioneer and the said costs should also be borne by the Petitioner.

5. Learned counsel for the Petitioner states that in compliance of this Court's order dated 10.11.2023, she is carrying with her a Demand Draft for a sum of Rs. 6,00,000/-, drawn in the name of the Executing Court for payment to the Respondent No.1 towards the balance amount.



5.1. She states on instructions that the Petitioner is willing to pay an amount of Rs. 2,00,000/- to Respondent No.3 towards full and final settlement of auction purchaser's claim, so that the sale of the subject property can be set aside.

5.2. She states that she will deposit the Demand Draft of Rs. 6,00,000/- with the Executing Court. She prays that out of this amount, Rs. 2,00,000/- be paid to the auction purchaser i.e., Respondent No.3 by the Executing Court forthwith.

5.3. She prays that the remaining amount of Rs. 4,00,000/- be paid over to Respondent No. 1 by the Executing Court forthwith. She further states that the Petitioner undertakes to pay the balance amount of Rs. 2,00,000/- to Respondent No. 1 before the Executing Court, on or before 24.11.2023. She states that in this manner Respondent No.1 would be paid the entire outstanding amount of Rs. 6,00,000/-.

5.4. She states that the Petitioner will also make good the costs of the auction incurred by the Court Auctioneer as per the directions of the Executing Court.

6. Accordingly, with the consent of the parties, the sale of the subject property in favour of the newly impleaded Respondent no. 3 is set aside, subject to the Petitioner strictly adhering to the following terms:

6.1. The Petitioner will deposit the Demand Draft dated 16.11.2023 for a sum of Rs. 6,00,000/- before the Executing Court on or before 20.11.2023 but not later than 24.11.2023;

6.2. Out of this amount of Rs. 6,00,000/-, the Executing Court will release a sum of Rs. 2,00,000/- to the Respondent no. 3 i.e., auction purchaser, in full and final settlement of his claim;



- 6.3. The Executing Court will release the remaining sum of Rs. 4,00,000/- to the Respondent No.1;
- 6.4. The Petitioner shall pay the balance amount of Rs. 2,00,000/- to Respondent No.1, on or before 24.11.2023. The Petitioner is directed to prepare a Demand Draft for a sum of Rs. 2,00,000/- in favour of Respondent no. 1, and hand over the same to Respondent no. 1 before the Executing Court on or before 24.11.2023
- 6.5. The Executing Court will apprise the Petitioner of the expenses incurred by the Court Auctioneer. The Petitioner shall deposit/pay the said expenses within the time fixed by the Executing Court.
- 6.6. The five (5) cheques handed over by Respondent No. 3, i.e., auction purchaser, shall be returned to him by the Executing Court.
7. The Petitioner and Respondent No.1 agree that subject to the compliance of the aforesaid terms, the execution proceedings shall stand satisfied.
8. The Petitioner and Respondent No.1 states that Respondent No.2's claims in the subject property already stand satisfied and she has no remaining claim in the said property.
9. The parties including new impleaded Respondent No.3 are directed to remain present before the Executing Court on 24.11.2023 to enable compliance of the directions set out herein above.
10. The parties will be at liberty to move an application for listing before the Executing Court and all the parties shall remain present before the Executing Court on the said date of hearing i.e., 24.11.2023.
11. Subject to the compliance of the terms set out in paragraph no. 6 and more specifically, sub-paragraph 6.1 to 6.6 herein, the auction sale shall



stand set aside.

12. Learned Executing Court is requested to pass appropriate orders for disposing of the executing proceeding pending before it.

13. The Petitioner, Respondent No.1 and Respondent No.3 are present in person and have consented to this order. The statements made by the parties including newly impleaded Respondent No.3 are taken on record and they are bound down to the same.

14. The Petitioner is directed to file an amended memo of parties in this petition within one (1) week.

15. The petition stands disposed of accordingly. Pending application(s) also stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

NOVEMBER 17, 2023

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Click here to check corrigendum, if any