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

% ***Date of decision: 19th April, 2023***

\+ FAO(OS) 372/2016, CM APPL. 21785/2019 & CM APPL. 39025/2022

RAVINDER KUMAR JAIN & ORS ..... Appellants
Through: Mr. M.A. Niyazi, Mr. Rahul Malhotra and Ms. Shruti Gupta, Advocates.

versus

VIRENDER KUMAR JAIN & ORS ..... Respondents
Through: Mr. Abhishek Aggarwal, Advocate with R-1 in person. Mr. Javed Khan, Advocate for R-3 to R-8.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI
HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. R-1 is present in the court. Basket no. 4 has come to his share. He says that he has three fundamental reservations apropos implementation of the settlement agreement. The three issues, with respect to his Basket, have been noted in the previous order dated 10.04.2023. The same are now resolved between the parties as

under:-

i. The Parking space which is to be linked to the commercial flat at Jasola will either be made available to him or the market rate for a parking space shall be paid to him. The market rate, according to appellant is in the range of Rs.2 lacs however, the respondent says that it is in the range of Rs.5 lacs. The other siblings are agreeable to pay Rs.5 lacs. R-1 agrees to accept the Rs.5 lacs in lieu of the parking space.
ii. The value of the Tronica City flat is mutually assessed at Rs.35 lacs. This quantum too shall be paid by the appellants to R-1.
iii. Apropos Basket no.2, the plot of land at Narela which was supposed to be transferred in the name of R-1 Virender Kumar Jain, it is agreed by the parties that the said property was not in existence at the time of filing of the suit. Therefore, its inclusion in the basket was an error and does not call for implementation. An impossibility cannot be insisted upon.
iv. The Lothian Road property mentioned hereinbelow was in the possession of R-1, it was to go into Basket-2, details of the same are as under:-

> *"3. Jain Motor Trading Co, 2704, Kashmere Gate, Delhi With property at 2704/2614 Lothian Road, Delhi 110 006 100 % of the firm with one branch at GT Road Jalandhar on rent."*

2. R-1 was to honour the aforesaid obligation of rendering property bearing no.2704/2614, Lothian Road to Basket-2. Instead, he has disposed it off, after the filing of the appeal. R-1 knew fully well that in terms of the settlement agreement, this property was to go into the share of the appellants. The said property is no more available with

R-1 to transfer it to appellant no.2. On a query put to the learned counsel for R-1 apropos the value of the Lothian Road property he states, upon instructions from R-1,that it would be of equivalent value to the Narela property.

3. Refuting the afore-indicated valuation the appellants say that there can be no comparison between an agricultural plot of land in Narela, situated virtually on the outskirts of the city and a commercial property, located in the heart of the city, on Lothian Road, next to the historical St. James Church. According to the appellants, the Lothian Road property was sold for approximately Rs.11 crores, whereas the Narela property would not fetch more than Rs.50 lacs. So, the mismatch in value is at least 12 times. R-1 says that the property was sold off at Rs.1.10 crores. However, it was always open to him to have offered it to the appellants, who for many reasons including emotional and historical, would have wanted to purchase/retain it, in the family. Yet R-1 did not offer it to them and went on to sell it, in breach of the terms of settlement to a third party, a stranger to the family. Indeed, even now the appellants are ready and willing to buy it at Rs.2.5 crores, i.e. at more than twice the value at which it was

purportedly sold-off by R-1.

4. The Lothian property was sold despite an injunction order passed apropos all properties by the Division Bench of this court, on a motion moved by R-1. The latter was fully aware of the injunction order, yet he consciously and deliberately breached it. He sold-off the Lothian property without so much as even moving an application seeking liberty of the court. Such blatant breach of the court's directions could entail consequences of damage and contempt of court.

5. The learned counsel for the appellants submits that the value of the Lothian property, if taken at Rs.11 crores, and the value of Sohna property is considered at Rs.10 crores, then a total of Rs.21 crores is to be accounted for by R-1. The Sohna property is to come into the share/Basket of the appellants.

6. M/s Cuddle Up Diet Products Pvt. Ltd. with R-1, is to come to the share of the appellants after re-payment of debts of Rs.3.3 crores attached to the said company. After this liability is set-off against the aforesaid value of Rs.21 crores, Rs.17.5 crores would still need to be paid by R-1 to the appellants. Presently the latter is not in a position

to pay the said monies.

7. At this stage, the case was passed over for the learned counsel for R-1 to obtain instructions. Having done so, he submits that in lieu of the Lothian and Sohna Road properties, as well as for his retaining M/s Cuddle Up Diet Products Pvt. Ltd., R-1 hereby gives up his claim in the asset at serial no. 1 of Basket no. 4, which is as under:-

> *"1. JMC Industries, 5 Shivaji Marg, New Delhi*
> *50% share in the Finn including the Land & Building at Alwar Unit.*
> *a. 50% of the land & building owned by us and the business thereof, (other 50% in Basket 1)*
> *b. (This excludes the Land & Building with The Art Mall).*

8. The same is accepted by all the other brothers/appellants, some of whom are present in the court or have their authorised representative. In effect, R-1 agrees and undertakes that he shall have no stake, interest or claims in the aforesaid assets. The sisters have nothing to say in the matter.

9. In view of the above, it is agreed between the parties as under:

    i. The asset/property at serial no.1 in Basket no. 4 shall be deleted and will be available to the appellants.

    ii. The plot at Narela will not be required to be transferred in the name of R-1/Virender Jain or his nominee in lieu of the aforesaid statement of R-1.

iii. Assets at Serial nos. 3 and 10 of Basket no. 2 will stand transferred to Basket no. 4.

10. For working out the details of handing-over of documents and transferring of shares and titles, at joint request, Mr. Saqib, Advocate, (Mobile-9910180819), is appointed as the Local Commissioner. Looking at the extensive nature of the work and the time that it would entail, his fee, for the moment is fixed at Rs.14 lacs. Half of it shall be paid to him upon acceptance of the LC responsibility, on receipt of this order. Each brother shall pay up his proportional share of the fees. Expenses shall be extra.

11. The property at 4, Flag Staff Road, Delhi has not been partitioned. It is the subject of a litigation before the Supreme Court. It is agreed between the parties that if the property comes to the family, it will be divided equally after making adjustments towards the cost of litigation funded by the brothers, as well as for amounts paid by the brothers towards its purchase.

12. To give a quietus to the matter, each brother is ready and willing to give a statement that any property which belonged to their grandfather or father, which ought to have been brought into the common pool, has in fact already been divided. However, if any

such property or asset has slipped-out, from due consideration, the same shall be brought into the common pool to be divided equally between the siblings. Let the parties file an undertaking to this effect within three days of receipt of a copy of this order.

13. Apropos any such property if discovered by any of the siblings, liberty is granted to them to approach the court.

14. The parties agree that the transferable value of juristic entities/companies shall be as of the date the Baskets were selected, i.e. 21.05.2012.

15. The brothers have two sisters, the latter and/or their family members are to inherit some monies. They have been waiting for over half a decade to see their shares of monies. Mr. Javed Khan, the learned counsel for R-3 to R-8 submits that the monies should have been given to them many moons ago. The brothers assure the court that the monies will be given in three instalments: Rs.4 crores will be paid to them within a year from today, assuming that the formalities will largely be completed within three months.

16. It is agreed between the brothers that if the money is not paid within 12 months after the completion of formalities by the Local

Commissioner, interest at FDR rates will be payable on the amounts due to the sisters.

17. One petrol pump has come to the Basket no. 2. The license to run the petrol pump has since been cancelled by IOCL for want of requisite documents. To revive the claim of appellant no. 2, in whose Basket the said petrol pump has landed, the signatures of R-2 would be necessary. It is agreed that there can be no benefit to R-2 if the appellant no.2 is deprived of the revival of their licence. The learned counsel for R-2 states, upon instructions, in particular from R-1, that R-2 has no objection to signing the requisite documents for revival of the license by IOCL and the same would be done in terms of such schedule, as may be fixed by the Local Commissioner.

18. Handing-over of the assets will be after removal of all encumbrances and liabilities attached to each property.

19. In view of the above, the parties agree to withdraw all pending proceedings against each-other within two weeks and to secure their interests, they will seek adjournments in all the matters till the formalities are completed.

20. This order has been passed with the consent of the parties.

21. The appeal, along with pending applications, stands disposed-off in terms of the above.

NAJMI WAZIRI, J

SUDHIR KUMAR JAIN, J

APRIL 19, 2023/j/n/sd