



2024:DHC:5922



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

+ **EX.P. 36/2021**

SHIKHA CHAKRAVARTY & ORS.Decree Holders

Through: Mr. Dhruv Varma, Mr. Rohit
Kathuria and Mr. Sagar Chauhan, Advs.

versus

MAJOR SAUMITRA SARKAR (RETD.).....Judgment Debtor

Through: Mr. Hemant Manjani and Mr.
Uday Mathu, Advs. with JD in person

CORAM:

HON'BLE MR. JUSTICE C. HARI SHANKAR

JUDGMENT (ORAL)

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07.08.2024

EX.P. 36/2021

1. CS (OS) 25/2016 was instituted by the respondent Major Saumitra Sarkar against the petitioners, seeking a restraint against the petitioners from accessing the terrace of the property situated at I/1782, Chittaranjan Park, New Delhi¹.

2. The suit was disposed of, on 31 January 2019, on the basis of a settlement arrived at between the respondent and the present petitioners, who were Defendants 1, 2 and 6 in the suit, binding the parties to the settlement.

3. The present execution petition has been preferred by the petitioners as Defendants 1, 2 and 6 in CS (OS) 25/2016, seeking

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execution of the judgment and decree dated 31 January 2019, read with the Settlement Agreement of the same date.

4. It is necessary to reproduce the following orders passed by this Court in the present proceedings chronologically:

“Order dated 3 May 2023

1. Learned counsel appearing for the execution petitioners has submitted that while major parts of the settlement agreement have been duly implemented, issues do still remain with respect to Clause 11 thereof.

2. That clause reads as under: -

"11. That, the First Party undertakes to do all needful acts for proper repair of the damage/disruption occasioned due to the construction of the additional/new floor over and above the roof of the said Property, such as disruption of electrical lines, water seepage through sewerage pipes, water pipes etc. at his own cost as necessary and put forth by the Second Party. However, the request for repair should be made simultaneously as and when the repair is needed up till the end of first rainy season from completion of construction work."

3. In view of the aforesaid, let the respondent duly attend to the prayers for repairs as made by the execution petitioner and proceed further in accordance with Clause 11 extracted hereinabove.

4. Let the matter be called again on 29.08.2023.

Order dated 12 October 2023

1. Learned counsel for the decree holder submits the order dated 03.05.2023 has not been complied with in as much as the judgment debtor has to complete all repairs as are mentioned in clause 11 and 12 of the settlement agreement dated 31.01.2019 and as stated in para 2 of the order dated 03.05.2023.

2. Learned counsel for the judgment debtor seeks time to

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1 "the suit property", hereinafter

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take instructions.

3. List on 12.01.2024.

Order dated 13 May 2024

1. On 12.10.2023, this court recorded that repairs as mentioned in Clause 11 and 12 of the settlement agreement dated 31.01.2019 and in para 2 of the order dated 03.05.2023 has not been complied with.

2. Today, there is nobody appearing on behalf of judgment-debtor in the first call or in the second call.

3. Issue bailable warrants against judgment-debtor in the sum of ₹ 20,000/- to be executed through SHO, PS Regent Estate, Kolkata-700092.

4. The Superintendent of Police (Kolkata) is requested to ensure necessary compliance.

5. The decree-holder shall take steps for service of bailable warrants within 1 week from today, returnable on 07.08.2024.”

5. As per the submissions made by learned Counsel for the petitioners before this Court and as recorded in the orders extracted *supra*, all that remains to be satisfied, in so far as the covenants of the Settlement Agreement between the parties are concerned, is compliance with Clauses 11 and 12 thereof.

6. Clause 11 requires the respondent to do all acts necessary for proper repairs of damages/disruption occasioned due to construction of the additional/new floors over and above the roof of the suit property, at the respondent's cost. The clause, however, goes on to clarify that the request for repair had to be made simultaneously as and when repair was needed, up till the end of the first rainy season after completion of the construction work.

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7. It is also clear from Clause 11 that the liability of the respondent to carry out repairs was conditional on a request being made by the petitioners.

8. Despite having categorically asserted before this Court, on three occasions, that the respondent is in breach of Clause 11 of the Settlement Agreement, not a single communication has been placed on record by the learned Counsel for the petitioners, whereby or whereunder the petitioners requested the respondent to carry out any repair work in the suit property. Even as on date, Mr. Dhruv Varma, learned Counsel for the petitioners does not have with him the correspondence to the said effect and only submits that he would place it on record.

9. Mr. Hemant Manjani, learned Counsel for the respondent, however, states on instructions that there shall be strict compliance of Clause 11 of the Settlement Agreement. He, however, points out that Clause 11 does not contain any omnibus right of the petitioners to have repairs work carried out by the respondent for all time to come. It requires the repairs to be carried out subject to a request being made by the petitioners as and when needed till the end of the first rainy season from completion of construction work.

10. If, therefore, any construction work remains to be completed, it shall be open to the petitioners to write to the respondent, calling on the respondent to carry out any necessary repair works, till the end of the first rainy season from the completion of the construction work.

As and when any such request is made, the respondent shall carry out

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the said work at his own cost.

11. Mr. Verma also submits that there is incomplete compliance of Clause 12 of the Settlement Agreement.

12. Clause 12 requires the respondent to install a lift at his own cost, repair any damage which may take place to the flats of the petitioners while installing the lift, and allow unhindered access to the lift by the residents of the flats. Additionally, and somewhat strangely, it also requires the respondent to take steps to have a society of flats owners/residents constituted for maintaining the lift.

13. Mr. Varma submits that his client's grievance is only that the decree holders are not being allowed access to the lift.

14. Mr. Hemant Manjani submits, on instructions, that access to the lift is being provided to the decree holders as well as to all other residents of the flats.

15. This Court makes it clear that the decree holders shall be allowed unhindered access to the lift, as this is a specific covenant of the Settlement Agreement. The undertaking by the respondent, who is present in person, is recorded to that effect.

16. Though I find it difficult to understand how there can be a direction for compliance with the mandate for having a society constituted, the respondent is directed to take appropriate steps in that regard in consultation with other flats owners of the society/premises.

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17. Mr. Varma further submits that, though Clause 7 of the Settlement Agreement required the respondent to provide new servant quarters to the decree holders in replacement of the existing quarters, this is yet to be complied with.

18. Mr. Manjani, learned Counsel for the respondent submits that servant quarters are not yet ready and assures that, as soon as they are ready, they shall be handed over to the decree holders.

19. Nothing survives for further consideration in this execution petition, which is accordingly disposed of.

EX.APPL.(OS) 508/2021

20. This application does not survive for consideration and stands disposed of.

C.HARI SHANKAR, J

AUGUST 7, 2024

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Click here to check corrigendum, if any

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