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

+ **EX.P. 37/2023**

AMIT JAIN

Through

..... Decree Holder
Mr. Hitesh Chopra, Mr. Parth Sinha
and Mr. Rahul Kumar, Advocates
alongwith Decree Holder in Person

versus

JINESH JAIN & ORS.

Through

..... Judgement Debtors
Ms. Radha, Proxy Counsel for Ms.
Malika Arora, Advocate for JD-3
Mr. Sanjeev Mahajan, Court
Commissioner

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER

% **02.07.2024**

EX.APPL.(OS) 966/2024

1. The present application has been filed by the Decree Holder for cancellation of the auction scheduled on 03.07.2024 and disposing of the main execution petition i.e., EX.P. 37/2023 as satisfied.
2. Learned counsel for the Decree Holder states that the issues arising in the present execution petition have been amicably settled between the Decree Holder and Judgment Debtor No. 3.
 - 2.1. He states that the Decree Holder holds as an owner 4/5th undivided share in the suit property.
 - 2.2. In this regard, he states that the Decree Holder acquired 1/5th undivided share of the suit property from his deceased mother Late Smt.

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Sushma Jain vide gift deed dated 24.04.2012. Further, 1/5th undivided share in the suit property has been acquired by the Decree Holder vide sale deed dated 21.02.2024 executed by the Judgement Debtor No. 2 in his favour and lastly another 1/5th undivided share in the suit property has been acquired by the Decree Holder vide sale deed dated 11.06.2024 executed by the Judgement Debtor No. 1 in his favour.

2.3. He states that the Decree Holder was entitled to 1/5th undivided share in his own right and in this manner after accounting for the gift deed dated 24.04.2012 and sale deeds dated 21.02.2024 and 11.06.2024, the Decree Holder as on date has 4/5th (or 80%) undivided share in the suit property having acquired the shares of Judgement Debtor Nos. 1 and 2 as well as late Smt. Sushma Jain.

2.4. He states that the Judgement Debtor No. 3 holds the remaining 1/5th (or 20%) undivided share in the suit property.

2.5. He states that Judgement Debtor No. 3 is in joint possession of the suit property alongwith the Decree Holder as on date.

2.6. He states that the Decree Holder and Judgement Debtor No. 3, who are the only remaining co-owners of the property in the ratio of 80:20 have entered into memorandum of understanding ('MoU') dated 17.06.2024 pertaining to the use and occupation of the suit property.

2.7. He states that as per this MoU, the parties have agreed that the existing super-structure will be demolished and in the newly reconstructed super-structure, Judgement Debtor No. 3 will have exclusive rights to the 4th Floor alongwith the terrace except for the portion of the terrace required for providing essential common services to the remaining floors in the building.

2.8. He states that though the aforesaid exclusive rights of the terrace are



not specifically mentioned in the MoU dated 17.06.2024; however, this is the clear and express understanding between the parties. The Decree Holder, who is present in Court and identified by his counsel confirms this understanding with respect to terrace rights.

2.9. He states that the aforesaid MoU dated 17.06.2024 be taken on record and the execution petition be disposed recording that the final judgment and decree dated 11.10.2022 passed in CS(OS) 60/2021 stands satisfied.

3. Ms. Radha, Proxy counsel appearing for Ms. Malika Arora states on instructions that the Judgment Debtor No. 3 admits the contents of the application and the execution of the MoU dated 17.06.2024. She states that she has no objection if the application is allowed and submits Judgement Debtor No. 3 will abide by the terms of the MoU.

4. Mr. Sanjeev Mahajan, the Court Commissioner is present in Court and states that except for an amount of Rs. 30,000/-, the entire fees have been received by him.

5. Learned counsel for the Decree Holder states that this outstanding amount of Rs. 30,000/- will be paid over to the Court Commissioner before the end of the date.

6. In view of the aforesaid submissions of the learned counsel for the Decree Holder and learned counsel for Judgement Debtor No. 3, the application is allowed in terms of the prayers made therein. The MoU dated 17.06.2024 is taken on record and the statement of the Decree Holder with respect to the exclusive terrace rights of Judgement Debtor No. 3 at para 2.7 with the exception of provision of essential common services for the remaining floors of the building on the terrace is also taken on record. The Decree Holder and Judgement Debtor No. 3 are bound down to the terms of



the MoU. The auction scheduled on 03.07.2024 stands cancelled.

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7. In view of the aforesaid directions, the final judgment and decree dated 11.10.2022 stands satisfied and therefore, the execution petition as well stands disposed of as satisfied.

8. The date already fixed before the Joint Registrar i.e., 19.07.2024 and 23.07.2024 stand cancelled.

MANMEET PRITAM SINGH ARORA, J

JULY 2, 2024/rhc