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

+ EFA(OS) 11/2024

SATISH MEHTA

.....Appellant

Through: Mr. Lovkesh Sawhney, Sr. Advocate
with Mr. Rohit Kumar, Advocate

Versus

CITI CORP FINANCE (INDIA) LTD & ORS.Respondents

Through: Mr. Arvind Varma, Sr. Advocate with
Mr. Pratham Mehrotra, Ms. Mahima
Chauhan and Mr. Suhel Qureshi,
Advocates for R-1.
Mr. Vedanta Varma, Advocate for
R2.

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE GIRISH KATHPALIA

ORDER

10.07.2024

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1. The present appeal under Section 10 (1) of the Delhi High Court Act read with Clause 10 of the Letters Patent has been filed on behalf of the judgment debtor no. 2 against the orders dated 02.03.2023 and 02.02.2024 passed by the learned Single Judge in Ex.APPLS.(OS) 1327/2021 in Execution Petition No. 5/2008.

2. Pursuant to arbitral award dated 03.09.2007, the respondent No. 1 preferred execution proceedings being E.A.5/2008 against the appellant, wherein a proposal for settlement was submitted by the appellant. The said execution petition was disposed of vide order dated 03.03.2020 in the light of settlement agreement dated 26.02.2020 reached between the parties.

3. According to appellant, during the process of implementing the



Settlement Agreement, it came to his knowledge that respondent No. 1 was neither the original decree holder; nor the owner of the shares being sold and was not in possession of shares certificate either. However, respondent No. 1 filed execution application being Ex.APPL.(OS) 1327/2021 for revival of Execution Petition 5/2008 and also filed contempt petition being Cont.Cas. (C) 1297/2022 for non-compliance of decree by judgment debtor i.e. Prime Telesystems Ltd. and Ors.

4. On 12.07.2023, learned counsel for the appellant-judgment debtor appearing in Execution Petition 5/2008 submitted that the senior counsel was not available and further submitted that the affidavit of assets of judgment debtor Nos. 2 and 3 in terms of Form 16 A of Appendix E Order XXI Rule 41 (2) CPC would be placed on record before the next date of hearing, if not already done. The matter was accordingly directed to be listed on 03.10.2023.

5. Subsequently on 03.10.2023, learned counsel for the judgment debtor no. 1 submitted that he had no instructions to appear on behalf of the judgment debtor nos. 2 and 3 and the matter was adjourned to 02.02.2024.

6. On 02.02.2024, the learned Single Bench observed that the judgment debtor had not deposited the sum of Rs.50 lacs (as upfront payment) as was directed vide order 02.03.2023 and that despite further directions vide orders 12.07.2023 and 03.10.2023, affidavit of assets had not been filed. However, subject to payment of cost of Rs.25,000/-, judgment debtor Nos. 2 and 3 were permitted to file affidavit of assets within 04 weeks.

7. The challenge to the orders dated 02.03.2023 and 02.02.2024 is on the ground that enforcement of the terms of the settlement agreement, which was arrived at by playing a fraud, is bad in law.



8. Relevantly, the learned Single Bench of this Court vide order dated 02.03.2023 had taken note of the fact that execution proceedings preferred by the respondent-decree holder against appellant/judgment debtor were disposed of vide order dated 03.03.2020 in terms of settlement agreement dated 26.02.2020 reached between the parties. However, since the appellant-judgment debtor failed to honour the settlement, which provided for payment of Rs.4.25 crores to the respondent-decree holder, the contempt proceedings were preferred.

9. In the order dated 02.03.2023, the learned Single Judge has also noted the contention of the judgment debtor to the effect that original decree holder i.e. Citicorp Finance (India) Limited was merged with Citi Financial Consumer Finance (India) Ltd., which subsequently changed its name to Citicorp Finance (India) Limited and that all rights and liabilities of the original decree holder have been assigned to the present applicant by virtue of amalgamation. The Court on this aspect observed that the liability of the judgment debtors would remain unchanged by reason of the amalgamation and that the judgment debtor cannot evade their liability on account of any irregularity allegedly committed by the decree holder.

10. We do not find any fault with the afore-noted observations of the learned Single Bench in the order dated 02.03.2023. In our opinion, the appellant-judgment debtor is bound to honour the settlement agreement and thus, a direction has rightly been issued to the judgment debtors No.1 to 3 to file their affidavit of assets and having failed to comply with the directions of the Court despite repeated opportunities, the imposition cost of Rs.25,000/- vide order dated 02.02.2024 is just and proper.

11. Finding no merit in the present appeal, it is accordingly dismissed



with liberty to the appellant to take appropriate steps before the learned Single Judge as per law.

SURESH KUMAR KAIT, J

GIRISH KATHPALIA, J

JULY 10, 2024
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