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IN THE HIGH COURT OF DELHI AT NEW DELHI

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FAO(OS) 64/2024 & C.M. APPL. 27240/2024

RAVINDER CHADHA

..... Appellant

Through: Mr. Praveen Agrawal with Ms. Aayushi Gupta, Ms. Medha Tandon, Mr. Insaaf Duggal, Mr. Atul Kumar and Mr. Chandan Kumar, Advocates

versus

VIRENDER CHADHA & ANR.

..... Respondent

Through: Mr. Deepak Sabharwal with Ms. Shivani Sharma, Ms. Anurya Sabharwal and Ms. Manisha Jainwal, Advocates for R-1.
Mr. Sanjeev Bhatia, Advocate for R-2.

Reserved on: 08th May, 2024Date of Decision: 1st July, 2024

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CORAM:**HON'BLE THE ACTING CHIEF JUSTICE****HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA****J U D G M E N T****MANMEET PRITAM SINGH ARORA, J:****CM APPL. 27241/2024 (for exemption)**

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

FAO(OS) 64/2024 & C.M. APPL. 27240/2024

1. Present appeal has been filed under Order XLI of the Code of Civil Procedure, 1908 ('CPC') read with Section 10 of the Delhi High Court Act, 1966, challenging the impugned order dated 15th March, 2024, passed by the learned Single Judge in CS (OS) No. 482/2022, *inter-alia*, issuing the following directions:



1.1. A Local Commissioner had been appointed and directed to execute all transfer documents in terms of the Settlement dated 8th March, 2019 ('Mediation Settlement'), entered into between the parties before the Delhi Government Mediation and Conciliation Centre ('Mediation Centre').

1.2. The Appellant herein has been directed to maintain status quo as regards possession in respect of the immoveable properties which fell to his share as per the Mediation Settlement and has been further restrained from transferring possession of the said properties to any third party till further orders of the Court.

1.3. The Appellant herein has been directed to file an affidavit along with all the documents with respect to sale of Factory No. K-281, Sector – III, Bawana, Delhi, which has been executed for transferring the said property; since this property was part of the Mediation Settlement.

Brief facts

2. The Appellant herein is the defendant No.1, the Respondent No.1 is the plaintiff and Respondent No.2 is the defendant No.2, in the underlying suit.

2.1. The parties are brothers and Class-I Legal heirs of late Sh. Kapil Dev Chadha and late Smt. Kamlesh Chadha, who died on 5th July, 2008 and 27th November, 2018 respectively. The underlying civil suit had been filed by the Respondent No.1 herein seeking partition of jointly owned immoveable properties, recovery of possession, mesne profits and permanent and mandatory injunction.

2.2. The following immoveable properties were sought to be partitioned in the underlying suit:

- i. Property No. J-354, New Rajinder Nagar, New Delhi – 110060;
- ii. Property No. F-259, New Rajinder Nagar, New Delhi – 110060;



- iii. Factory No. K-281 along with Flat no. 9/702, Sector – 3, Bawana, Industrial Area;
- iv. Shop No. 97, 3rd floor, Narain market, Sadar Bazar, Delhi-6;
- v. Shop No. 102 and 103, 3rd floor, Narain market, Sadar Bazar, Delhi – 6;
- vi. Godown/Shop No. 1379, 2nd floor, Katra Narial, Pan Mandi, Sadar Bazar, Delhi – 6;
- vii. Godown/Shop No. 1383 2nd floor, Katra Narial, Pan Mandi, Sadar Bazar, Delhi – 6;
- viii. Godown/Shop No. 1383-A. 1st floor, Pan Mandi, Sadar Bazar, Delhi – 6;
- ix. Shop No. 1385-A, 1385-C, 1359, 1361-E and 1366-B out of property No. XIV, 1358-66, ground floor, Pan Mandi, Sadar Bazar, Delhi – 6;
- x. Shop No. 1360-A, 1358-B, 1361-A, out of Property No. – XIV, 1358-66, ground floor, Pan Mandi, Sadar Bazar, Delhi – 6;
- xi. 1st floor and above portion of property no. XIV, 1358-66, Pan Mandi, Sadar Bazar, Delhi – 6;
- xii. Ground Floor and 1st floor of property No. XIV, 3495-96. Gali Lallu Misser, Pan Mandi, Sadar Bazar, Delhi – 6; and
- xiii. 2nd and 3rd floor of Property No. XIV, 3495-96. Gali Lallu Misser, Pan Mandi, Sadar Bazar, Delhi – 6.

(the aforesaid properties are collectively referred to as ‘suit properties’)

2.3. In the plaint, the Respondent No.1 has stated that the suit properties are joint family properties and are in joint possession of the parties to the suit. It is stated that some of the properties were purchased by late Sh. Panju Ram Chadha, the grand-father of the parties; some properties were



purchased by late Sh. Kapil Dev Chadha, the father of the parties and the remaining properties as well as business were purchased and/or created with the corpus of the joint family property.

2.4. It is stated in the plaint that for the purpose of division and distribution of the suit properties, various private written settlements were entered into between the parties on multiple occasions between 11th December, 2015 and 12th March, 2018, which recognises the fact of joint ownership of the subject properties; however, the settlements were not given effect to by the Appellant herein.

2.5. It is stated in the plaint that in fact, with a view to arrive at an amicable settlement, the Respondent No. 1 approached the Mediation Centre on 1st February, 2019 and after meetings were held on several dates with the Mediator, the parties agreed on a settlement and thereafter, entered into a duly signed settlement agreement with respect to suit properties on 8th March, 2019 ('Mediation Settlement'). The Mediation Settlement has been duly signed by the Mediator and it records that all disputes between the parties stand settled and no more disputes are left between the parties. The said file was, accordingly, closed.

2.6. It is stated that, however, the Appellant herein failed to comply with the terms of the Mediation Settlement and instead, issued a letter dated 26th April, 2019 to the Mediation Centre making false allegations against the Respondent No. 1/plaintiff with respect to non-compliance. It is stated that Respondent No. 1 duly replied to the aforesaid letter on 13th August, 2019 reiterating his willingness to abide by the Mediation Settlement. It is stated that, however, due to the disputes raised by the Appellant, the Mediation Centre closed this file on 13th September, 2019.



2.7. It is stated that despite execution of Mediation Settlement dated 8th March, 2019, the disputes persisted on account of the non-implementation of the Settlement and, therefore, the underlying suit has been filed seeking partition of the suit properties.

3. The Respondent No. 2, who was also a party to the Mediation Settlement dated 8th March, 2019 had entered appearance before the learned Single Judge. He, however, failed to file the written statement within the statutory period and, therefore, his right to file written statement was closed vide order dated 27th September, 2023.

4. The Respondent Nos. 1 and 2 herein made a statement before the learned Single Judge on 1st February, 2024 that they remain ready and willing to abide by the Mediation Settlement dated 8th March, 2019.

5. The Appellant herein had entered appearance and had filed his written statement wherein he admitted private written settlements entered into between 11th December, 2015 and 12th March, 2018 as well as the due execution of the Mediation Settlement dated 8th March, 2019; however, he was not agreeable to abide by the said Mediation Settlement. He was examined by the learned Single Judge on 15th March, 2024 and in his statement recorded before the learned Single Judge, he admitted that he is in possession of almost all the immoveable properties, which were agreed to be transferred to him by the Respondents in terms of the Mediation Settlement and that he has already transferred one of the immoveable properties which fell to his share. The immoveable properties in his possession included properties standing in the name of Respondent Nos. 1 and 2 as well as their family members.

5.1. In the aforesaid admitted facts, the learned Single Judge held that the Appellant cannot be permitted to resile from the Mediation Settlement and



accordingly, passed the directions contained in the impugned order for implementing the Mediation Settlement and in the interregnum protecting the suit properties.

Submissions of counsel for parties

6. Learned counsel for the Appellant stated that the Mediation Settlement dated 8th March, 2019 is not conclusive and hence, not binding. He stated that the said Settlement was to be implemented by 30th October, 2019 and since, none of the parties complied with the stipulated terms and conditions, the said Settlement has lapsed by efflux of time.

6.1. He stated that the Mediation Settlement though conducted under the aegis of the Delhi Government Mediation and Conciliation Centre, was thereafter not filed in any Court for seeking the imprimatur of the Court and, therefore, does not have the force of a decree. He stated that the said Settlement is only a private mediation and thus, cannot be enforced by the learned Single Judge.

6.2. He stated that the Mediation Settlement is unstamped and unregistered and, therefore, cannot have the effect of transferring the shares of parties *inter-se*. He stated that if the Mediation Settlement is implemented it will negate the binding provisions of Transfer of Property Act, 1882, the Registration Act, 1908 and the Indian Stamp Act, 1899.

6.3. He stated that the mediation proceedings, which culminated in Mediation Settlement dated 8th March, 2019 were subsequently declared failed by the Mediation Centre on 13th September, 2019 and in this regard, he relied upon the Mediation Report dated 13th September, 2019. He also relied upon the letter dated 26th April, 2019 written by the Appellant to the Mediation Centre.



6.4. He stated that some of the suit properties are co-owned by the Appellant and his wife, Mrs. Beena Chadha and she had not been arrayed as a party in the suit. He fairly stated that though the Appellant and Mrs. Beena Chadha are happily married and she is aware about the pendency of this suit, she has elected not to seek impleadment.

6.5. He stated that the suit properties enlisted in the Mediation Settlement dated 8th March, 2019 stand in the individual names of the parties and the other parties i.e., Respondents, do not have any pre-existing rights in the said properties. He stated that the suit properties have been purchased by individual's resources and are not joint properties; and, therefore, cannot be subject matter of partition.

6.6. He admitted that the Mediation Settlement dated 8th March, 2019 and the handwritten Memorandum of Understanding ('MoU') dated 26th January, 2017 have been signed and executed by the Appellant. He also admitted that Mrs. Beena Chaddha has signed and executed the earlier MoU dated 26th January, 2017. He stated that however, since it was not implemented by the parties, it is not binding on the Appellant and Mrs. Beena Chadha.

7. In reply, learned counsel for Respondent No. 1 stated that the terms of settlement recorded in MoU dated 26th January, 2017 and Mediation Settlement dated 8th March, 2019 are identical. He stated that the properties, which stood disposed of between 2017 and 2019 were excluded from the subsequent Mediation Settlement dated 8th March, 2019. He stated that the Appellant has himself acted upon the Mediation Settlement and has disposed of the joint property i.e., factory at Bawana¹ in the year 2020 to the exclusion of the Respondents. He stated that Respondent No. 1 remains ready and willing to abide by the Mediation Settlement dated 8th March,



2019. He relied upon the letter dated 13th August, 2019 addressed to the Mediation Centre seeking compliance of the Mediation Settlement dated 8th March, 2019 by the Appellant and Respondent No. 2.

8. In reply, learned counsel for Respondent No. 2 stated that with respect to suit property i.e., Ground Floor and 1st floor of property No. XIV, 3495-96, Gali Lallu Misser, Pan Mandi, Sadar Bazar, Delhi – 6 (‘Property No. XIV, 3495-96’), the same stands in the name of Mrs. Neeta Chadha (i.e., the wife of Respondent No. 2), however, the Appellant is exercising proprietary rights over the said property by collecting rent from the tenants.

8.1. He stated that Appellant was held entitled to exercise the proprietary rights qua Property No. XIV, 3495-96 as per the Mediation Settlement. He stated that despite benefitting from and acting as per the Mediation Settlement, the Appellant has failed to implement the terms in favour of Respondent No. 2. He stated that Appellant cannot be permitted approbate and reprobate in this manner. He stated that Respondent No. 2 as well remains ready and willing to abide by the Mediation Settlement dated 8th March, 2019. He stated that Respondent No. 2 adopts the submissions of counsel for Respondent No. 1.

9. In response, learned counsel for Appellant admitted that the Ground Floor and 1st floor of Property no. XIV, 3495-96 are owned by Mrs. Neeta Chadha i.e., the wife of Respondent No. 2. He stated that, however, he has been in possession of the said Property No. XIV, 3495-96 prior to the execution of the Mediation Settlement dated 8th March, 2019. He admitted that the Appellant is collecting the rent from the tenants in this property. He stated that it is a matter of record that the Appellant is in possession and/or control of most of the properties listed in the Mediation Settlement He,

¹ Factory No. K-281 along with Flat no. 9/702, Sector – 3, Bawana, Industrial Area



however, stated that Appellant has been exercising such proprietary rights since the year 2016 i.e., prior to the Mediation Settlement dated 8th March, 2019.

9.1. He stated that with respect to the factory at Bawana, the same was sold in the year 2020 due to the financial hardships of the Appellant. He states that though the said property was a subject matter of Mediation Settlement, since the said agreement is not a binding Settlement, the Appellant proceeded to sell the property without seeking consent of the Respondents. He stated that the factory at Bawana was purchased by the Appellant and, therefore, there is no irregularity in selling the same.

Findings and analysis

10. We have heard the learned counsel for the parties and perused the record.

Admission of execution of Mediation Settlement dated 8th March, 2019

11. At the outset, it is noted that the drawing up and signing of Mediation Settlement dated 8th March, 2019 is unequivocally admitted by the parties. While, Respondent Nos. 1 and 2 remain ready and willing to abide by the terms of the Mediation Settlement dated 8th March, 2019, it is only the Appellant herein, who is seeking to resile from enforcement of this Settlement.

12. It is a matter of record that the parties herein initially entered into a hand written Memorandum of Understanding ('MoU') dated 26th January, 2017, the signing whereof is admitted by the Appellant and in fact, the same has been signed on each page by the Appellant and his wife Mrs. Beena Chadha. The said MoU enlists the 'immoveable properties', its division between the family of Appellant, Respondent Nos. 1 and 2 respectively, as well as the distribution of the 'businesses' between the said parties.



Pertinently, the suit properties are all enlisted in this MoU. After recording the details of the division, the MoU records that the said division is the final settlement between the parties and their families. The MoU records that it has been executed by the Appellant and Mrs. Beena Chadha in the presence of Mr. Amarnath Jindal, who as per the admission of the Appellant is a highly regarded individual and with whom the Appellant maintains a significant business relationship. The term of the MoU recording the conclusiveness of the settlement reads as under:

“All thing/aspects regarding portion/final settlement of the three brothers & their families are settled & no further discussions regarding this settlement will be discussed/Entertained.”

(Emphasis supplied)

13. It appears that in terms of MoU dated 26th January, 2017 transfer documents for giving effect to the partition and recording the individual title of the parties in the properties were not executed and therefore, the Respondent No.1 once again, approached the Mediation Centre established by Government of NCT of Delhi, as another attempt for resolution of disputes through mediation, on 1st February, 2019. The said request for mediation was registered as Ref.No.:104/PS/DIR/2019/**MED-112**. The Appellant and Respondent No. 2 as well joined the proceedings and subsequently, after few hearings, on 8th March, 2019, the parties entered into a written Mediation Settlement drawn up by the Mediator, which comprehensively dealt with rights of the parties with respect to ten (10) immovable properties and in addition, at clause 1 determined the obligation of Appellant and Respondent No. 2 with respect to payment of monies to Respondent No. 1 towards his share in these properties. The Mediation Settlement at clauses 2 and 4 expressly contemplated execution of duly registered documents in favour of the party, who was to receive the



immoveable asset. Pertinently, the Mediation Settlement expressly recorded that the immoveable properties dealt with in the Settlement were jointly owned and possessed by Appellant, Respondent No. 1 and Respondent No. 2 and at Clause 7, it recorded that with this Settlement, there was no more dispute left between the parties. The relevant recitals and terms of the Mediation Settlement reads as under:

"Party No.1 has approached Delhi Dispute Resolution Society for resolution of his dispute through Mediation. Accordingly both the parties appeared for mediation

....

All the following joint properties were jointly owned and possessed by 03 brothers namely Mr. Ravinder Chadha, Mr. Sanjeev Chadha and Mr. Virender Chadha.

...

The process of Mediation was explained to both the parties. The parties were heard jointly and separately. After discussions, the matter has now been settled between the parties voluntarily, amicably and without any coercion or pressure as per the following:-

1. It is agreed between the parties that Sh. Ravinder Chadha and Sh. Sanjeev Chadha shall pay Rs.40,00,000/- (Rupees Forty Lacs Only) to [Sh. Virender Chadha towards full and final settlement of all the properties jointly owned by them.

2. It is further agreed between the parties that said amount of Rs.40,00,000/- (Rupees Forty Lacs Only) shall be paid by way of PDC shall be encashed by Sh. Virender Chadha only after all the relevant papers in respect of all the above mentioned properties executed and registered before the concerned Sub-Registrar, Delhi, which shall be done on or before 30.10.2019.

3. It is further agreed between the parties that the details of the property in respect of which the papers are to be executed and registered are as follows:-

....

4. It is further agreed between the parties that the expenses inclusive of Stamp Duty incurred getting the documents registered in respect of all the properties shall be shared in equal proportion by all the three brothers i.e. Sh. Virender Chadha, Sh. Sanjeev Chadha and Sh. Ravinder Chadha.

...

6. Both the parties agrees to remain bound on this settlement.

7. No more dispute left between the parties.

...



The agreement /settlement has been read over and explained to both the parties in vernacular also, which is accepted by them to be up to their complete satisfaction.

The True Copy of the report/settlement duly signed was then given to the Party No.1 and Party No.2”

(Emphasis supplied)

14. This Mediation Settlement dated 8th March, 2019 bears Ref.No.:104/PS/DIR/2019/**MED-112** and with its signing, the reference filed by Respondent No. 1 was closed. The Mediation Settlement dealt with all the suit properties and as recorded at Clause 6, the parties agreed that it was final and binding on them. Further, the authenticated copy of the Settlement Agreement was provided to all the parties.

15. The Appellant in his affidavit of admission/denial of the documents filed in compliance with Chapter VII Rule 3 of the Delhi High Court (Original Side) Rules, 2018, has unequivocally admitted the Mediation Settlement dated 8th March, 2019. Similarly, with respect to the handwritten MoU dated 26th January, 2017, the Appellant admitted the signatures, though it is stated in the affidavit that the contents of this MoU are denied. Pertinently, the MoU dated 26th January, 2017 is specifically pleaded in the plaint at para 6 and the Appellant in his written statement at corresponding para 6 has unequivocally admitted the due execution of the MoU dated 26th January, 2017 and in fact attributed the responsibility of non-compliance on the Respondent No. 1. The para 6 of the plaint and relevant portion of the written statement containing reply to para 6 of the plaint read as under:

In Plaint

“6. That for the purpose of and recognition of this fact and equal division/distribution of said properties, the Defendant No. I prepared memorandum of understanding/ settlements on various occasions some of which were also hand written of Defendant No. I, these communications includes;

- (i) *Memorandum of understanding dated 11 December, 2015, (Not signed by any parties)*
- (ii) *final settlement dated 12.06.2016 (Not signed by any parties)*



(iii) Memorandum of understanding dated 26.01.2017 (Signed by Ravinder Chadha & Beena Chadha)

(iv) Memorandum of understanding dated 12.03.2018 (Not signed by any parties)

However the actual division could not be effected due to one or another reason.”

Reply in Written Statement of the Appellant

“6. The contents of Para 6 of the Complaint under reply are false, frivolous, wrong vexatious, concocted, misleading, fabricated and are specifically and vehemently denied and the Plaintiff be put to strict proof of the same. It is submitted that even though the properties of Defendant No. 1 and his wife are self-acquired properties being in their individual names, however to keep peace and maintain amicable relations among the family, Defendant No. 1 agreed to enter into Memorandum of Understanding/Settlement with respect to the said properties. But the Plaintiff miserably failed to honour his side of obligations under to said MoU's/Settlements and used to disappear for months and years at times after receiving some cash from Defendant No. 1 after these Settlements. Then on return, the Plaintiff used to initiate the entire process all over again to extort more money from Defendant No. 1. The true and correct facts have already been stated in the preliminary objections /submissions stated hereinabove and the same may be read as part and parcel of the reply to the present para which are not being repeated herein for the sake of brevity and being prolix.”

(Emphasis Supplied)

16. Similarly, the drawing up and signing of the Mediation Settlement dated 8th March, 2019 is pleaded at para 10 of the complaint, which is unequivocally admitted by the Appellant in his written statement. The para 10 of the complaint and relevant portion of the written statement containing reply to para 10 of the complaint read as under:-

In Complaint

“10. That in order to arrive at an amicable settlement, Plaintiff has filed an application being Ref. No.104/PS/DIR/2019/MED-112, before Delhi Govt. Mediation & Conciliation Centre, wherein the parties initially agreed to settle and distribute/partition the said properties, whereupon on 08.03.2019, a Mediation Settlement Agreement was executed between the parties and an order was passed by the Hon'ble Delhi Mediation & Conciliation Centre, Delhi Disputes Resolution Society.”

Reply in Written Statement of the Appellant

10. That the contents of para 10 of the Complaint under reply are matter of record and hence, need no reply.



(Emphasis Supplied)

17. The Supreme Court in its decision in *Gautam Sarup v. Leela Jetly*², has held that an admission made by a party to the *lis* in a pleading is admissible against him *proprio vigore*. The relevant portion of the said judgment reads as under: -

“14. An admission made in a pleading is not to be treated in the same manner as an admission in a document. An admission made by a party to the lis is admissible against him proprio vigore.

...

16. A thing admitted in view of Section 58 of the Evidence Act need not be proved. Order 8 Rule 5 of the Code of Civil Procedure provides that even a vague or evasive denial may be treated to be an admission in which event the court may pass a decree in favour of the plaintiff. Relying on or on the basis thereof a suit, having regard to the provisions of Order 12 Rule 6 of the Code of Civil Procedure may also be decreed on admission. It is one thing to say that without resiling from an admission, it would be permissible to explain under what circumstances the same had been made or it was made under a mistaken belief or to clarify one's stand inter alia in regard to the extent or effect of such admission, but it is another thing to say that a person can be permitted to totally resile therefrom. The decisions of this Court unfortunately in this regard had not been uniform. We would notice a few of them.

.....

22. Hiralal (supra) has been recently noticed by this Court in Sangramsinh P. Gaekwad & Ors. v. Shantadevi P. Gaekwad (Dead) through LRs. & Ors. [(2005) 11 SCC 314] wherein it is stated:—

“215. Admissions made by Respondent 1 were admissible against her proprio vigore.

216. In Nagindas Ramdas v. Dalpatram Ichharam this Court held:

“... Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary

² (2008) 7 SCC 85



admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong.”

217. *In Viswalakshmi Sasidharan v. Branch Manager, Syndicate* this Court held:

“On the other hand, it is admitted that due to slump in the market they could not sell the goods, realise the price of the finished product and pay back the loan to the Bank. That admission stands in their way to plead at the later stage that they suffered loss on account of the deficiency in service.”

218. Judicial admissions by themselves can be made the foundations of the rights of the parties.”

(Emphasis supplied)

18. Therefore, in view of the unequivocal admissions made by the Appellant in his written statement and the affidavit of admission/denial of documents with respect to the entering into and signing of MoU dated 26th January, 2017 and Mediation Settlement dated 8th March, 2019, we are proceeding to deal with the other grounds raised by the Appellant in this appeal to challenge the impugned order and resist the enforcement of the said Settlement, as directed by the learned Single Judge.

With respect to issue of joint ownership of suit properties

19. The recitals of the MoU dated 26th January, 2017 and the Mediation Settlement dated 8th March, 2019 unequivocally acknowledge the joint ownership of the parties in the immoveable properties enlisted in the Settlement. So also, the MoU dated 26th January, 2017 enlists details of thirteen (13) immoveable properties owned by the parties herein as well as five businesses owned by the family; and records that all these immoveable properties and businesses are held jointly by the Appellant, Respondent No.1 and Respondent No.2. The recital acknowledging the joint ownership reads as under:



*“This M.O.U. is made on 26-01-2017 among (1) Ravinder Chadha R/o J-354, IInd Floor, New Rajender Nagar, New Delhi -110060, (2) Virender Chadha R/o J-354, New Rajinder Nagar, New Delhi-I I 0060 and Sanjeev Chadha R/o J-354, IIIrd Floor, New Rajender Nagar, New Delhi-110060, All three sons of Late Sh. Kapil Dev Chadha, regarding distribution of assets/ business, works/ properties **purchased, tenanted, gifted** by / from relatives and **maintained jointly** by all three above detailed brothers & their families held in different names and detailed below with present owners.*

.....”

(Emphasis supplied)

19.1. Further, the Mediation Settlement dated 8th March, 2019 as well records that the immoveable properties dealt with in the said Settlement are jointly owned and possessed by the Appellant and Respondents. The Settlement records the division of the immoveable properties and the undertaking of the parties herein to execute registered transfer documents in respect of all properties in favour of the identified beneficiary. The relevant extract of the said Settlement reads as under: -

*“All the following joint properties were **jointly owned and possessed** by 03 brothers namely Mr. Ravinder Chadha, Mr. Sanjeev Chadha and Mr. Virender Chadha.*

.....

*The process of Mediation was explained to both the parties. The parties were heard jointly and separately. After discussions, the matter has now been settled between the parties voluntarily, amicably and **without any coercion or pressure** as per the following :-*

.....

4. It is further agreed between the parties that the expenses inclusive of Stamp Duty incurred getting the document registered in respect if all the properties shall be shared in equal proportions by all the three brothers i.e. Sh. Virender Chadha, Sh. Sanjeev Chadha and Sh. Ravinder Chadha”

(Emphasis Supplied)

19.2. In view of these recitals and clauses, the joint ownership of the suit properties stands unequivocally admitted by the Appellant herein. Therefore, the grounds in the memo of appeal that since the title to the properties stand in the name of individual family members respectively and thus, the family arrangement recorded in the family agreements cannot be given effect to, is



contrary to the terms of the admitted MoU and the Mediation Settlement, wherein the parties have undertaken to execute duly registered documents of transfer in favour of the family member, who is entitled to receive the specified immoveable property.

19.3. The Supreme Court in *Kale and Others vs. Deputy Director of Consolidation*³ at para 10(5) has categorically held that under a family settlement, the parties can agree to transfer of title of an immoveable property in favour of a family member, who otherwise does not have recorded title in the same and even then, such a family arrangement would be binding on the parties and enforceable in Court. Therefore, in view of the recitals and terms in MoU dated 26th January, 2017 and Mediation Settlement dated 8th March, 2019, the Appellant herein having agreed to transfer of titles in favour of Respondent Nos. 1 and 2 and agreeing to receive transfer of titles in his own favour, is now estopped from raising the plea that the properties stand in the name of individuals, et al.

19.4. In view of the admissions recorded in the MoU and Mediation Settlement as well as the law settled by Supreme Court in *Kale (Supra)*, the contention of the Appellant as regards the recorded title of the suit properties in individual names does not give rise to a triable issue as the joint ownership of the properties and its mode of partition between the parties stands admitted.

Whether the mediation report dated 13th September, 2019 negates the Mediation Settlement dated 8th March, 2019?

20. The Appellant has himself acted upon the MoU dated 26th January, 2017 and Mediation Settlement dated 8th March, 2019 and is, in fact, enjoying proprietary rights over the immoveable property i.e., Ground Floor

³ (1976) 3 SCC 119 (Paragraphs Nos. 9, 10, 19, 24, 27, 35, 36 and 38)



and 1st floor of property no. XIV, 3495-96, in terms of said Settlement. Admittedly, the said property is standing in the name of Mrs. Neeta Chadha i.e., the wife of Respondent No. 2, but it fell to the share of the Appellant herein in terms of the Mediation Settlement. The Appellant admits that he controls the said property and recovers rent from the tenant even though admittedly, he does not have the recorded ownership rights.

21. In our considered opinion, the Respondent No. 2 is, therefore, right in contending that the Appellant is approbating and reprobating with respect to the binding nature of the Mediation Settlement. Further, in view of the fact that the Appellant is deriving benefit in terms of the Mediation Settlement, he is estopped from resiling from the said Settlement, as held by the Supreme Court in **Kale** (supra), the relevant extract whereof reads as under:

“24. This Court has also clearly laid down that a family arrangement being binding on the parties to the arrangement clearly operates as an estoppel so as to preclude any of the parties who have taken advantage under the agreement from revoking or challenging the same. We shall deal with this point a little later when we consider the arguments of the respondents on the question of the estoppel. In the light of the decisions indicated above, we shall now try to apply the principles laid down by this Court and the other courts to the facts of the present case.”

(Emphasis Supplied)

22. In fact, the Appellant’s willingness to abide by the Mediation Settlement is evident from a perusal of his own subsequent letter dated 26th April, 2019 addressed to the Mediation Centre expressing his willingness to abide by the terms of the Mediation Settlement. The said letter dated 26th April, 2019 read as under:

*“To,
Renu Aggarwal, Addl. Director
Govt. Mediation & Conciliation Centre
Disputes Resolution Society (Regd.)
Deptt. of Law, Justice & Legislative Affairs
Parliament Street, Near Police Station,
New Delhi- 110001*



Respected Sir/Ma'am

Greeting of the Day

This is to inform you that Mr. Virender Chadha had approached this mediation centre and asked for assistance in a family settlement (previous settlement was all done except transfer of property papers) on the basis of which I had received a notice from your office in accordance to which I appeared in your office on 15/2/19 with Mr. Sanjeev Chadha.

Mr. Virender Chadha had Unjustifiable and wrong demands this time because as per previous settled settlement he and Mr. Sanjeev Chadha had taken all remaining money from me and only transfer of property papers were pending, in the presence of mutually appointed Arbitrator Mr. Amarnath Jindal. After giving enormous excuses and avoiding transfer of papers that was pending, Mr. Virender Chadha approached your centre and the remaining procedure of last settlement stopped.

After 2-3 hearing at your centre, it was decided that Mr. Virender Chadha will receive Rs. 40 lacs (Mr. Ravinder Chadha will pay = Rs. 20 lacs & Mr. Sanjeev Chadha to pay = Rs 20 lacs) ONLY after all transfers of properties takes place as per your order dated 8/3/19 and all three pays their share of 1/3rd expenses on total transfers of properties respectively.

It was decided that the cheque along with the copy of order from your centre shall be kept with a common relative/ friend /neighbour or known person and after all properties are transferred to the respective family person and all terms of the order are fulfilled, the cheque shall be released to Mr. Virender Chadha.

I have been consistently trying since past one and a half month approximately that the process initiates but none of the other two seems interested for transferring their respective share as per settlement dated 8/3/19.

It seems that only receiving the cheque is the primary concern and not meeting in the liabilities of transferring properties in respective names as per settlement.

It is to note that this settlement is absolutely same as decided previously EXCEPT Mr. Virender Chadha receiving Rs. 40 lacs unnecessarily. Looking at my past experience I wish to make clear that I respect the orders of your honorable department but I request that all terms should be fulfilled and all property transfers should take place ONLY after which money should be released.

Also Mr. Virender Chadha and his family members are residing in a flat no. 136, Mandakni Enclave in GK-2, New Delhi and not in J-354, New Rajinder Nagar, New Delhi 110060 from last 3-4 years and his identity papers of this address are false and misleading.

I have offered below mentioned 3 names of persons known and respected by all three of us

1. Mr. Ramesh Anand (Our Mama Ji)
2. Mr. Arvind Mahajan (common friend)
3. Mr. Rajiv Thakore (our next door friend)''



He/We will hand over the copy of the settlement order and cheques to them (who so ever is decided) and after finalization of the transfers of properties in respective names or family members names and after payment of expenses for transfer of respective share, the cheques be handed over, NOT before so that the cheques are not deposited before fulfilling all details of the settlement (because I have been a sufferer in the past as after paying all amount that was decided still papers are pending) and this is harassing for me and my family members.

The date of cheque will be 30/10/19 but can be changed to earlier date if all transfers done before.

Please assist.

Warm Regards,

Mr. Ravinder Chadha

\R/o J-354, New Rajinder Nagar, New Delhi-110060

Mobile No. 9810126860”

(Emphasis Supplied)

23. By this letter dated 26th April, 2019, Appellant called upon the Mediation Centre to facilitate implementation of the Mediation Settlement dated 8th March, 2019. In this letter, the Appellant expressed an apprehension that monies i.e., Rs. 40 lacs should not be released to the Respondent No. 1 until the title documents of transfer qua immoveable properties are executed by all the parties. The Appellant by the letter dated 26th April, 2019, in fact, sought implementation of the Mediation Settlement.

24. This letter dated 26th April, 2019 of the Appellant was numbered by the Mediation Centre as Ref.No.:432/PS/DIR/2019 and notice dated 27th April, 2019 was issued to Respondent Nos. 1 and 2 by the Mediation Centre. The final report of the Mediator qua this reference is not available on record.

25. The Respondent No. 1 as well has placed on record a letter dated 13th August, 2019 addressed by him to the Mediation Centre requesting for implementation of the Mediation Settlement. The record evidences that the letter of Respondent No. 1 was separately registered by the Mediation Centre as Ref.No.:913/PS/DIR/2019/MED-210. With respect to Respondent No.1's letter dated 13th August, 2019, the Mediator filed a report dated 13th September, 2019 stating that the parties have raised triable issues qua the



letter dated 13th August 2019 and closed this proceeding i.e., Ref. No.: 913/PS/DIR/2019/**MED-210**.

26. In our considered opinion, the closure report of the Mediation Centre dated 13th September, 2019 has no bearing on the binding nature of the Mediation Settlement dated 8th March, 2019. The reference number of the report dated 13th September, 2019 is Ref. No.: 913/PS/DIR/2019/**MED-210**, whereas the reference number of the Mediation Settlement dated 8th March, 2019 is Ref.No.:104/PS/DIR/2019/**MED-112**, which is distinct and separate.

27. The closure report Ref. No.: 913/PS/DIR/2019/**MED-210** is qua the letter dated 13th September, 2019 addressed by Respondent No. 1 seeking implementation of the Mediation Settlement. The closure report in this context records the inability of the Mediation Centre to secure the implementation of the Settlement and in no manner diminishes the efficacy of the Mediation Settlement dated 8th March, 2019.

28. In view of the Appellant having derived benefit under the Mediation Settlement by renting out and collecting rent from ground floor and 1st floor of property no. XIV, 3495-96 and his letter dated 26th April, 2019 expressing willingness to abide by the terms of the Mediation Settlement, the said Settlement cannot be disavowed on the parties.

29. The letters dated 26th April, 2019 written by Appellant and 13th August, 2019 written by Respondent No.1 to the Mediation Centre only evidence that the parties have been unable to implement the terms of the Mediation Settlement dated 8th March, 2019. In the facts of this case and on the reading of the said letters, it appears that there is a trust deficit between the parties with respect to the implementation and no more.

30. In view of the findings above, we are of the considered opinion that the contention of the Appellant that the Mediation Settlement dated 8th



March, 2019 has been declared as failed by the Mediation Centre is incorrect in fact and law.

Whether the private Mediation Settlement dated 8th March, 2019 drawn up before the Mediation Centre is binding and enforceable?

31. In respect of enforceability of family settlements, the Supreme Court in **Kale** (supra) held that a family settlement or an arrangement between members of a family ascending from the common ancestors, executed with an intention to settle disputes, conflicting claims or disputed titles with a view to buy peace of mind, are enforceable. It was observed that family arrangements even though sometimes do not comply with the formal rules of contract, however, these family arrangements are governed by special equity and the intent of the Court is to lean in favour of family arrangements. More particularly, the Supreme Court observed that the Rule of estoppel would be pressed into service against the defaulting party so as to prevent such a party from unsettling the settled disputes. In this judgment, the Supreme Court set out the essentials of the family settlement at para 10, which reads as under: -

“10. In other words to put the binding effect and the essentials of a family settlement in a concretised form, the matter may be reduced into the form of the following propositions:

- (1) The family settlement must be a bona fide one so as to resolve family disputes and rival claims by a fair and equitable division or allotment of properties between the various members of the family;*
- (2) The said settlement must be voluntary and should not be induced by fraud, coercion or undue influence;*
- (3) The family arrangement may be even oral in which case no registration is necessary;*
- (4) It is well settled that registration would be necessary only if the terms of the family arrangement are reduced into writing. Here also, a distinction should be made between a document containing the terms and recitals of a family arrangement made under the document and a mere memorandum prepared after the family arrangement had already been made either for the purpose of the record or for information of the court for making necessary mutation. In such a case the memorandum itself does not create or extinguish any rights in immovable properties and therefore*



does not fall within the mischief of Section 17(2) of the Registration Act and is, therefore, not compulsorily registrable;

(5) The members who may be parties to the family arrangement must have some antecedent title, claim or interest even a possible claim in the property which is acknowledged by the parties to the settlement. Even if one of the parties to the settlement has no title but under the arrangement the other party relinquishes all its claims or titles in favour of such a person and acknowledges him to be the sole owner, then the antecedent title must be assumed and the family arrangement will be upheld and the courts will find no difficulty in giving assent to the same;

(6) Even if bona fide disputes, present or possible, which may not involve legal claims are settled by a bona fide family arrangement which is fair and equitable the family arrangement is final and binding on the parties to the settlement.”

(Emphasis supplied)

32. The aforesaid judgment was passed by the Supreme Court in 1976 and in the context of a private settlement arrived between the parties through family members and yet the Supreme Court held that such Settlement would be binding and enforceable.

33. Since then, law has given statutory recognition to private settlements under Part III of Arbitration and Conciliation Act, 1996 ('Act of 1996'). The conclusiveness of a Settlement Agreement drawn up with the assistance of Conciliator is statutorily recognised under Section 73 of the Act of 1996. Section 73 recognises that when parties reach to an agreement on settlement of a dispute with the assistance of a Conciliator, draw up and sign a written settlement agreement, such an agreement becomes final and binding on the parties and the persons claiming under them. In the present case, the conditions stipulated under the Part III of the Act of 1996 are duly satisfied by the Mediation Settlement dated 8th March, 2019.

33.1. The parties herein approached the Mediation Centre established by GNCTD as contemplated under Section 62 of the Act of 1996, whereafter a Mediator was duly appointed and after deliberations between the parties, a settlement was arrived at and the written settlement agreement was drawn up



and signed by the parties. Upon execution of the settlement agreement, the same was authenticated and furnished by the Mediator to the parties. Such an agreement arrived before the Mediator is, therefore, final and binding on the parties as per Section 73 of the Act of 1996, and duly enforceable. The underlying suit proceeding initiated by the Respondent No. 1 is a forum available to the parties to seek enforcement of the Mediation Settlement.

34. The Supreme Court in *Haresh Dayaram Thakur v. State of Maharashtra*⁴ after examining the provisions of Part III of the Act of 1996 held that a settlement agreement signed by the parties upon conclusion of a conciliation proceeding is final and binding on the parties. The relevant portion of Paras 11 and 19 reads as under:

“11. In Section 64 provision is made that the appointment of conciliators shall be by agreement of parties or if the parties agree they may request a suitable institution or a person to appoint a conciliator on their behalf. In Section 65 it is provided, inter alia, that on being appointed the conciliator shall request each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party shall send a copy of such statement to the other party.

*19. From the statutory provisions noted above the position is manifest that a conciliator is a person who is to assist the parties to settle the disputes between them amicably. For this purpose the conciliator is vested with wide powers to decide the procedure to be followed by him untrammelled by the procedural law like the Code of Civil Procedure or the Indian Evidence Act, 1872. When the parties are able to resolve the dispute between them by mutual agreement and it appears to the conciliator that there exists an element of settlement which may be acceptable to the parties he is to proceed in accordance with the procedure laid down in Section 73, formulate the terms of a settlement and make it over to the parties for their observations; and the ultimate step to be taken by a conciliator is to draw up a settlement in the light of the observations made by the parties to the terms formulated by him. The settlement takes shape only when the parties draw up the settlement agreement or request the conciliator to prepare the same and affix their signatures to it. **Under sub-section (3) of Section 73 the settlement agreement signed by the parties is final and binding on the parties and persons claiming under them. It follows therefore that a successful***

⁴ (2000) 6 SCC 179



conciliation proceeding comes to an end only when the settlement agreement signed by the parties comes into existence. It is such an agreement which has the status and effect of legal sanctity of an arbitral award under Section 74.

(Emphasis Supplied)

34.1. The binding nature of the settlement agreement executed between the parties through the process of conciliation was reiterated by the Supreme Court in *Mysore Cements Ltd. v. Svedala Barmac Ltd.*⁵

35. In the facts of this case, since the Mediation Settlement dated 8th March, 2019 satisfies the mandatory conditions of Part III of the Act of 1996, the Appellant is precluded from contending that the said Settlement is not binding.

36. The contention of the Appellant that this Mediation Settlement is private and since it does not have the imprimatur of the Court, it is not binding or enforceable is incorrect and is in ignorance of Section 73 of the Act of 1996.

37. In these admitted facts, the impugned order passed by the learned Single Judge for enforcing the agreed terms of the Mediation Settlement dated 8th March, 2019 is legal and valid and does not merit any interference.

38. In view of the aforesaid observations, the grounds raised by the Appellant for resisting the enforcement of the Mediation Settlement are not valid in view of Section 73 of the Act of 1996.

39. Both the letter dated 26th April, 2019 issued by the Appellant and the closure report dated 13th September, 2019 issued by the Mediation Centre seek implementation of the terms of the Settlement dated 8th March, 2019 and do not affect the conclusiveness and binding effect of the Mediation Settlement dated 8th March, 2019.

⁵ (2003) 10 SCC 375 (para 16)



40. In fact, as is evident from the letters dated 26th April, 2019 and 13th August, 2019, the parties remained ready and willing to abide by the terms of the settlement. The dispute, if any, raised by the Appellant has been with respect to the delay by Respondent No. 1 in execution of transfer documents [for title], and the intent of the Appellant that the transfer documents must be executed [by Respondent No. 1] before payment of monies to Respondent No. 1 in terms of the Mediation Settlement dated 8th March, 2019.

41. Pertinently, the Respondent No.2 has made a statement before the learned Single Judge that he will deposit the sum of Rs. 20 lacs (payable by him) in terms of the Mediation Settlement before the Court and a direction has been issued by the learned Single Judge to the Local Commissioner to execute the title/transfer documents in terms of the said Settlement dated 8th March, 2019. Therefore, the precise grievance of the Appellant stated in the letter dated 26th April, 2019, stands satisfied and in view of the directions in the impugned order, he has no reasonable cause for opposing the implementation of the Mediation Settlement.

42. The Appellant's reliance on the judgment of the Coordinate Bench of this Court in *Shri Ravi Aggarwal v. Shri Anil Jagota*⁶ is not applicable to the facts of this case as those proceedings arose out of an execution petition and not a civil suit.

Fraud and coercion

43. The contention of the Appellant that this Mediation Settlement is coercive is a bald plea, without any merit and is contrary to the express recital of the said Settlement, which records that the agreement is voluntary and without any coercion and the said recital reads as “....*After discussions, the matter has now been settled between the parties voluntarily, amicably*



and without any coercion or pressure....”. This plea is further falsified by the contents of the letter dated 26th April, 2019 issued by the Appellant to the Mediation Centre requesting for implementation of the Mediation Settlement dated 8th March, 2019. This plea is also contrary to the admissions made in the written statement at paras 6 and 10 of para-wise reply. In fact, the impugned order gives effect to the suggestions for implementation made by the Appellant in the letter dated 26th April, 2019 and therefore, the Appellant can have no grievance.

Non-impleadment of Ms. Beena Chadha.

44. The plea of the Appellant that the Mediation Settlement cannot be given effect to in the absence of his wife Mrs. Beena Chadha, is without any merit. In the facts of this case, it is apparent that Appellant, Respondent No. 1 and Respondent No. 2 have acted as the agents of their respective wife’s while signing the Mediation Settlement dated 8th March, 2019. The immovable properties standing in the names of the respective wife’s have been admitted as joint properties in the family settlement.

45. The Appellant himself is dealing with the properties of Mrs. Neeta Chadha, wife of Respondent No. 2 as its proprietor in pursuance to the Mediation Settlement dated 8th March, 2019 and Mrs. Neeta Chadha is, admittedly, not a party to the Mediation Settlement.

46. Notably, Mrs. Beena Chadha despite being aware about the pendency of the present suit and passing of the impugned order has elected neither to seek her impleadment in the suit nor to challenge the impugned order. The silence and inaction of Mrs. Beena Chadha evidences that she is aware and participating in these proceedings through the Appellant but she has elected to sit out from the proceedings. The Supreme Court in ***S.V.R. Mudaliar v.***

⁶ 2009 SCC OnLine DEL 1475



Rajabu F. Buhari^{7&8} held that when the facts demonstrate that the spouse of a party to the transaction plays a lead role in the transaction acting as the agent of the party i.e., the wife therein, would be bound by the acts of her husband. The relevant para of the judgment reads as under:

“Whether Mrs Buhari was a Benamidar of Mr Buhari

17. The trial Judge has answered this question in favour of the plaintiff; the Division Bench has observed that it is not necessary to advert to this aspect of the case of the plaintiff. We also propose to traverse the path taken by the appellate court and resist from giving our finding on this aspect of the case. We have taken this stand because we are satisfied about the genuineness of Ex. P-1; so also about Kamal who had signed the same as being an agent of the defendants, because of which the understanding recorded in Ex. P-1 has to be regarded as binding on the defendants. For the sake of completeness, we may also observe that the understanding having had consent of Mr Buhari, and there being evidence a galore about Mr Buhari acting as an agent of Mrs Buhari, there is nothing to doubt that the understanding given by Mr Buhari has to be regarded as binding on Mrs Buhari. The leading role played by Mr Buhari in the entire episode is writ large and there is no escape from the conclusion that the consent of Mr Buhari has to be regarded as a consent given by Mrs Buhari.”

(Emphasis Supplied)

47. In the facts of this case as well, both Appellant and his wife Mrs. Beena Chadha initially signed MoU dated 26th January, 2017 and thereafter the Appellant entered into a Mediation Settlement dated 8th March, 2019. The terms of the Mediation Settlement dated 8th March, 2019, insofar as, pertain to the properties standing in the name of Mrs. Beena Chadha have remained identical in the MoU and the Mediation Settlement dated 8th March, 2019. The Appellant willingly agreed to the terms of the Mediation Settlement and, therefore, the directions in the impugned order have not caused any prejudice either to Appellant or to Mrs. Beena Chadha.

⁷ (1995) 4 SCC 15

⁸ *Ibid*. This judgment also dealt with the ‘scope of power’ of the Appellate Court to reverse the finding of fact returned by the Trial Court at paragraph 15. This aspect of the judgment vis-à-vis Section 100 CPC was not followed by Supreme Court Bench of Coordinate strength in Arumugham vs. Sundarambal (1999) 4 SCC 350 at paras 14 and 15. However, the findings of law in para 17 of the judgment in S. V. R. Mudaliar (Supra) have not been commented upon in Arumugham (Supra).



48. In any event, this ground of non-impleadment of Mrs. Beena Chadha is not available to the Appellant and it does not in any manner affect his binding liability qua properties standing in his name under the Mediation Settlement. Therefore, there is no merit in this ground of the Appellant.

Stamping and Registration of the Mediation Settlement dated 8th March, 2019

49. The contention of the Appellant that the Mediation Settlement is unenforceable, as it is unregistered and unstamped, is without any merit. The Mediation Settlement at Clause 4 clearly records the obligation of the parties to execute separate registered documents for transfer of titles in each of the immoveable properties in favour of the specific family member; and a Local Commissioner has been appointed by the learned Single Judge to execute the transfer documents in accordance with the Settlement so as to ensure compliance of the Registration Act, Stamp Act and Transfer of Property Act. The Mediation Settlement is, therefore, compliant with the said fiscal statutes and substantive law.

Impugned order dated 15th March, 2024

50. In view of our aforesaid findings, there is no infirmity in the directions issued vide impugned order dated 15th March, 2024, however, we are of the view that in fact, the suit itself is liable to be decreed; and this aspect is dealt with hereinafter.

Power of this Court to finally decide the underlying suit

51. In the present case, the parties have admittedly entered into a written Mediation Settlement dated 8th March, 2019, which is statutorily binding on the parties under Section 73 of the Act of 1996. The said Settlement is a family settlement and is, therefore, binding and enforceable as per the law laid down by the Supreme Court in ***Kale*** (Supra).



52. The Appellant who was earlier willing to abide by the Mediation Settlement, as is evident from his letter dated 26th April, 2019, is now resiling from the same by raising untenable grounds, which are not available to him in law. The Respondents as well have consented to and expressed their willingness to abide by the said Mediation Settlement⁹; and have thus, moulded their relief of partition in the underlying suit to a decree in terms of the said Mediation Settlement dated 8th March, 2019.

53. In these circumstances, the learned Single Judge, on the basis of admission of the execution of the Mediation Settlement, vide impugned order had passed directions to enforce the said Mediation Settlement and in essence had passed a 'judgment on admission' of the said Mediation Settlement in exercise of the jurisdiction under Order XII Rule 6 CPC.

54. Therefore, in view of our findings above on the admitted documents and the admission in the pleadings by the Appellant, we are of the considered opinion that the evidence upon the record is sufficient to enable this Court to determine the underlying suit finally in terms of Section 107 read with Order XII Rule 6 of CPC. The Supreme Court in *State of Punjab v. Bakshish Singh*¹⁰, held that by the virtue of Section 107 read with Order XLI Rule 33 of CPC the Appellate Court steps into the shoes of Trial Court and possesses all the powers as of court of original jurisdiction. We are of the considered opinion that underlying suit is liable to be decreed under Order XII Rule 6 of CPC on the basis of unequivocal admission of Appellant qua execution of the Mediation Settlement, his willingness to abide by it as stated in his letter dated 26th April, 2019 and the final and binding effect of the Mediation Settlement under Section 73 of the Act of 1996. The pleas

⁹ Order dated 01st February, 2024 passed in underlying suit.

¹⁰ (1998) 8 SCC 222.



raised by the Appellant in the written statement do not warrant issues to be settled and the suit filed by Respondent No. 1 is liable to be decreed in terms of Mediation Settlement dated 8th March, 2019.

55. The relevant portion of the judgment in **Bakshish Singh** (supra) reads as under:

*“ 7. In this case, what we propose to do would be fully in consonance with the provisions of **Order XLI Rule 33 of the Code of Civil Procedure, 1908** which provides as under:*

*“**ORDER XLI — APPEALS FROM ORIGINAL DECREES***

33. Power of Court of Appeal.—The appellate court shall have power to pass any decree and make any order which ought to have been passed or made and to pass or make such further or other decree or order as the case may require, and this power may be exercised by the court notwithstanding that the appeal is as to part only of the decree and may be exercised in favour of all or any of the respondents or parties, although such respondents or parties may not have filed any appeal or objection and may, where there have been decrees in cross-suits or where two or more decrees are passed in one suit, be exercised in respect of all or any of the decrees, although an appeal may not have been filed against such decrees:

Provided that the appellate court shall not make any order under Section 35-A, in pursuance of any objection on which the court from whose decree the appeal is preferred has omitted or refused to make such order.”

8. This provision gives very wide power to the appellate court to do complete justice between the parties and enables it to pass such decree or order as ought to have been passed or as the nature of the case may require notwithstanding that the party in whose favour the power is sought to be exercised has not filed any appeal or cross-objections.

9. The discretion, however, has to be exercised with care and caution and that too in rare cases where there have been inconsistent findings and an order or decree has been passed which is wholly uncalled for in the circumstances of the case. The appellate court cannot, in the garb of exercising power under Order XLI Rule 33, enlarge the scope of the appeal. Whether this power would be exercised or not would depend upon the nature and facts of each case.

*10. **The powers of the appellate court are also indicated in Section 107 of the Code of Civil Procedure which provides that the appellate court shall have the same powers as are conferred on the original court. If the trial court could dispose of a case finally, the appellate court could also, by virtue of clause (a) of sub-section (1) of Section 107, determine a case***



finally. In *R. S. Lala Praduman Kumar v. Virendra Goyal* it was held that the appellate court could even relieve against forfeiture in a case under the Transfer of Property Act, 1882. This too was based on the principle that the power which was available to the original court, could be exercised by the appellate court also.”

(Emphasis Supplied)

58. Accordingly, in exercise of our powers under Section 107 read with Order XLI Rule 33 and Order XII Rule 6 CPC, we hereby decree the underlying suit in the ensuing terms.

Preliminary decree qua the immoveable properties and interim order of status quo

59. A preliminary decree is hereby passed qua the immoveable properties in terms of the Mediation Settlement dated 8th March, 2019 and Appellant, Respondent No. 1 and Respondent No. 2 are hereby declared to be the owners and/or tenancy right holders¹¹ of the immoveable properties in accordance with the distribution enlisted in Clause 3 of the said Settlement. It is clarified that the declaration qua tenancy rights is *inter-se* the parties and shall not affect the independent rights of the landlord qua the tenancy and the same shall be governed in accordance with law.

59.1. The directions issued by the learned Single Judge in the impugned order appointing a Local Commissioner for execution of the documents for giving effect to the terms of the Mediation Settlement shall continue and after the title and/or tenancy transfer documents have been executed, a final decree qua the immoveable properties shall be passed in the suit after recording the due satisfaction as regards the fact of the execution of the title and/or tenancy transfer documents.

59.2. Until the passing of the final decree qua the immoveable properties, the interim order of status quo passed against the Appellant by the learned Single Judge vide impugned order dated 15th March, 2024 shall continue.

¹¹ W.r.t premises held under the statutory tenancies



The Appellant shall ensure that the direction for filing of affidavit in terms of impugned order, is filed within two (2) weeks.

Final decree qua money

60. In addition, a final decree is hereby passed qua the liability of the Appellant and Respondent No.2 to pay a sum of Rs. 20 lacs each to the Respondent No.1.

60.1. However, in the first instance, the Appellant and Respondent No.2 are directed to deposit the amount of Rs. 20,00,000/- each with the Registry of this Court within four weeks, failing which, they will become liable to pay simple interest at Rs. 8% per annum w.e.f. the date of impugned order i.e., 15th March, 2024. The amount so deposited will be placed by the Registry in a fixed deposit for the highest interest amount with automatic renewal.

60.2. The amount of Rs. 40 lacs along with interest accrued thereon, if any, shall be released to the Respondent No.1 after all the title and/or tenancy transfer documents stand executed by the Local Commissioner in favour of each of the parties to the satisfaction of the learned Single Judge.

61. The Registry is directed to draw up the decree in the aforesaid terms and in accordance with law.

62. With the aforesaid directions, the appeal stands disposed of and the suit stands decreed.

63. List the matter before the learned Single Judge on the date fixed for further proceedings.

MANMEET PRITAM SINGH ARORA, J

ACTING CHIEF JUSTICE

JULY 01, 2024/hp/aa/AKT