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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Order: 13th April, 2018

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EX.P.197/2011

SREELATA CHAUDHURI

..... Decree Holder

Through: Mr.P.K. Agrawal, Ms. Mercy Hussain
and Ms. Tanmaya Sharma, Advocates

versus

LT COL (RETD) MAHAJIT CHAUDHURI & ORS

..... Judgment Debtors

Through: Mr.Kirtiman Singh and Mr. Waize Ali
Noor, Advocate for Judgment Debtor
no.1.

Mr. Manohar Lal Sharma and Ms.
Suman, Advocates for Judgment
Debtor no.2.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

G.S.SISTANI, J. (ORAL)

E.A.(OS).351/2014 in EX.P.197/2011

1. This is an application under Section 151 of the Code of Civil Procedure for directions and for modification of the orders dated 24.01.2014 and 13.03.2014 filed by the applicant/decree holder Sreelata Chaudhuri.
2. Mr. Agrawal, learned counsel for the applicant/decree holder submits that when the order dated 24.01.2014 was passed, he was not present in Court and his appearance has been incorrectly marked. He further submits that, in fact, his associate had sought a pass over, but ignoring the request the order dated 24.01.2014 was passed. Counsel further

submits that this Court could not have issued a direction that in case the parties were unable to bring any offer in Court on the next date, the Court would initiate proceedings for finalization of the sale proclamation of the suit property. He submits that the proper course would have been to appoint a Local Commissioner to suggest the mode of partition by metes and bounds or by selling the property thereafter, an option would have been given for the partition under Section 3 of the Partition Act.

3. Reply to this application has been filed by judgment debtor no.1, Lt. Col.(Retd) Mahajit Chaudhuri.
4. This application is opposed by Mr. Kirtiman Singh, learned counsel appearing on behalf of judgment debtor no.1. It is contended by Mr. Kirtiman Singh that the orders dated 24.01.2014 and 13.03.2014 were passed by this Court in continuation to the various orders passed by the Division Bench and in furtherance of a settlement arrived at between the parties and the decree which was drawn up thereafter. Learned counsel has drawn the attention of this Court to the order dated 01.03.2011 passed in FAO(OS)224/2010 by a Division Bench of this Court, where upon a settlement arrived at between the parties, statements of the parties were recorded before the Division Bench.
5. The statement of Smt. Sreelata Chaudhuri, is reproduced as under:

“Statement of Smt. Sreelata Chaudhuri w/o Late Shri Indrajit Chaudhuri, R/o 1/16, Shanti Niketan, Rao Tula Ram Marg, New Delhi, Age 68 years

ON S.A.:-

I am widow of Late Shri Indrajit Chaudhuri, who was the

son of Late Lt. Gen B. Chaudhuri and Late Smt. Dipty Chaudhuri. I have two sons namely Himavat Chaudhuri (who is present in Court) and Sauryajit Chaudhuri. We have jointly agreed with Ltd. Col. Mahajit Chaudhuri that the estate of Late Lt. Gen B. Chaudhuri and Late Smt. Dipty Chaudhuri shall be shared by us in the following manner, namely, that Dr. Biswajit Chaudhuri shall be the exclusive owner of B-59, Defence Colony, New Delhi and Lt. Col. Mahajit Chaudhuri and Smt. Dwipanjali Roy and I along with two sons shall be entitled to share from the sale proceeds of 1/16 Shanti Niketan, New Delhi. We have agreed that the property must be sold within three months from today and the sale proceeds thereof be shared in the following manner, namely, 28% share to Lt. Col. Mahajit Chaudhuri, 30% to my sister in-law Smt. Dwipanjali Roy and the remaining 42% of my branch of family, namely, me and my two sons. I undertake to hand over the vacant possession of the property to the purchaser thereof immediately on the sale of the suit property.”

6. The order dated 01.03.2011 is reproduced as under:

“Statement of the parties have been recorded who have come up with an agreement/arrangement between themselves. On their request CS(OS) Nos.644/1982 and CS(OS) No.2995/1996 be listed before this Bench on 8th March, 2011.

As requested, Counsel for the parties may file an application under Order XXIII Rule 3 of the CPC.

Renotify on 8th March, 2011.

VIKRAMJIT SEN,J.
SIDDHARTH MRIDUL,J.”

7. Mr. Kirtiman Singh further submits that in the FAO(OS)224/2010, an application CM.No 15049/2011 was filed seeking a direction from the Division Bench to effect the compromise arrived at on 01.03.2011/08.03.2011. Counsel submits that upon filing this application, an order dated 14.09.2011 was passed, which is extracted

below:

“CM.APPL 15049/2011 in FAO(OS) No.224/2010

“The applicant/appellant has filed this application seeking directions from this Court to effect the compromise dated 1.3.2011/8.3.2011 by appointment of a Court Commissioner. We may note that in terms of the settlement three of the parties are to get the sale proceeds of property No.1/16, Shanti Niketan, New Delhi as per the ratios agreed upon. This sale had to take place within a period of three(3) months. The sale has not taken place. In fact, respondent No.3 had come up with an offer of Rs.127.00 crore on 1.9.2011 but subsequently backed out.

Learned counsel for respondent No.3, on instructions of Mr. Himavat Chaudhari, son of respondent No.3 who is present in Court, states that two(2) weeks more time may be given to the co-owners of the Shanti Niketan property to carry out a joint sale failing which a Court Commissioner may be appointed to assist in the sale of the property.

SANJAY KISHAN KAUL,J.
RAJIV SHAKDHER, J.”

8. Mr. Kirtiman Singh submits that thereafter on 25.02.2013, the Division Bench passed the following order:

“CM No.15049/2011 (Directions)

The inter se disputes between the parties was resolved. Property No.1/16, Shanti Niketan, New Delhi fell to the share of the appellant, respondent No.2 and respondent No.3 while property No.B-59, Defence Colony, New Delhi fell to the share of respondent No.1. The statements of the parties were recorded on 1.3.2011 including of respondent No.2 giving up all rights in property No.B-59, Defence Colony, New Delhi and agreeing to the joint sale of the property No.1/16, Shanti Niketan, New Delhi. From the sale consideration the appellant

is entitled to 28 per cent, respondent No.2 to 30 per cent and respondent No.3 to 42 per cent.

The appeal was disposed of as compromised on 8.3.2011.

Thereafter applications came to be filed in the appeal proceedings and these were dealt with on 14.9.2011. One of the prayers was for appointment of a Court Commissioner for assisting in division of the sale proceeds of property at Shanti Niketan, which was to take place within a period of three (3) months of the date of the settlement. There were offers received but prospective purchasers had backed out. There was also a controversy over the title documents relating to this property.

On the other hand respondent No.1 was pressing for the vacation of the first floor and barsati of the Defence Colony property as according to him this aspect could not be delayed indefinitely. The Court noticed that the sale had to be effected within a period of three (3) months from the date of the settlement as recorded and respondent No.2 had to hand over possession within four (4) months, i.e., giving one (1) month's hiatus period in between. This Court, thus, appreciated the difficulty faced by respondent No.2 but was of the view that a direction ought not to be issued to respondent No.2 to vacate her occupied portion of the Defence Colony property till the Shanti Niketan property was sold.

Thereafter a Local Commissioner was appointed and keeping in view it was a family settlement, the Court made endeavour to see that the disputes qua mutation and conversion of the property into freehold was sorted out with the DDA so that the sale of the Shanti Niketan property could take place. In fact, notice was even issued to the DDA whose counsel appeared and assured that every endeavour would be made to see that the needful is done. We may, however, add that periodically we faced obstructions from the stands taken by respondent No.2 as noticed in our order dated 15.2.2012 but

her counsel kept on assuring that there would be co-operation to see that the settlement is implemented.

The fact remains that as on date conversion has taken place and proper documentation of Shanti Niketan property is available. However, the price which this property is fetching is not to the satisfaction of the appellant, respondent No.2 and respondent No.3. These parties could have waited for an opportune moment to sell the property but for the fact that respondent No.2 is in occupation of a portion of respondent No.1's property and respondent No.1 is not a beneficiary of the sale of the Shanti Niketan property. Despite various endeavours even till date none of the parties have been able to bring any customer for the Shanti Niketan property which would satisfy all the three concerned parties.

This Court faced with the aforesaid position on the last date of hearing of 5.2.2013 perused the report of the Local Commissioner. It has been noticed that there was a potentiality of the property to fetch between Rs.120-150 crore but this was not being achieved and by engaging the services of M/s. Cushman and Wakefield, who were hoping to complete the process within about six (6) to eight (8) weeks, there may be a possible solution as suggested by the parties. There were other real estate agencies/consultants were wanting more time. In view thereof we have put to learned counsel for respondent No.2 that since he is in occupation of the portion of the property of respondent No.1, this position could not continue indefinitely and either the property will be put to public auction or his client must agree to re-compensate respondent No.1 for overstaying in the property from 1.1.2013 till such time the property is vacated which will be after locating a suitable buyer for the Shanti Niketan property. Learned counsel took time to obtain instructions.

Learned counsel on behalf of respondent No.2 has taken the following stand before us:

- i. Respondent No.2 is not willing to pay any amount to

respondent No.1 as re-compensation.

- ii. Respondent No.2 is unwilling for a public auction.
- iii. Respondent No.2 is unwilling to have M/s. Cushman and Wakefield to deal with the property.
- iv. The only thing agreeable to respondent No.2 is for continued efforts of appellant, respondent No.2 and respondent No.3 to locate a customer till such time as a customer is found without any time period fixed.
- v. Respondent No.2 is also not willing to vacate the portion of property of respondent No.1 occupied by her.

Learned counsels for the appellant and respondent No.3 did seek to suggest some solutions within the conspectus of the dispute aforesaid but none of it is acceptable to respondent No.2. This Court is, thus, faced with a deadlock which cannot be permitted to prevail. Respondent No.2 cannot continue to occupy a portion which has fallen to the share of respondent No.1 on the pretext that the Shanti Niketan property is not getting the price which she was hoping it would get. The price cannot be illusory and would have to depend on the market situation prevalent. The best way to assess the market situation is to have an open auction in which it will be known as to what is the price the property can fetch.

The reports filed before the Local Commissioner by different well known property agents seek to assess the value at Rs.120.00 crore onwards. We are, however, concerned with the reserve price being fixed as the sale should not occur below that level and as to how much over that level occur would be determined by the market forces. We, thus, fix the minimum reserve price at Rs.120.00 crore.

We appoint Ms. Maninder Achyara, Advocate, 439, Lawyers Chamber, Delhi High Court, New Delhi-110003 (Mobile No.9810163078) as the Court Auctioneer to carry out

the court auction who will settle the terms and conditions of the auction. The fee of the Court Auctioneer is tentatively fixed at Rs.2.00 lakh apart from out of pocket expenses to be borne by the three parties in proportion to their respective shares. These amounts will remain a charge on the property. The auction will be subject to the final approval of this Court. Needful be done by the next date.

The Local Commissioner is directed to assist the Court Auctioneer.

Learned counsel for respondent No.1 states that he is suffering in the bargain as time is passing. This is an aspect we will examine after the auction is complete as to how to compensate respondent No.1 for continued occupation by respondent No.2 of the portion of the Defence Colony property.

Learned counsel for respondent No.2 states that now he seeks to dispute even the title of respondent No.1 to the Defence Colony property. This is one more endeavour at obfuscation and obstruction as that is not an issue and all those issues stand resolved much earlier when the settlement took place.

Application stands disposed of.

List for compliance on 16.4.2013.

SANJAY KISHAN KAUL, J.
INDERMEET KAUR, J.”

9. I may note that subsequently, CM.6104/2013 was filed seeking to set aside the settlement arrived at between the parties, which was application dismissed by an order dated 16.04.2013. The order dated 16.04.2013 is reproduced below:

“CM No. 6104/2013 (direction)

This is an application seeking to set aside the settlement arrived at on 08.03.2011 before the predecessor Bench. The

application is predicated on the fact that while getting the property converted into freehold in the name of respondent No. 1 qua the property at B-59, Defence Colony there are mistakes in the title document. The property originally stood in the name of Lieut. General Bijeta Chaudhuri son of Late Sh. R.C. Chaudhuri. Respondent No. 1-Dr. Biswajit Chaudhuri is the son of Lieut. General Bijeta Chaudhuri. Lieut. General Bijeta Chaudhuri passed away on 28.02.1982. In the portion where the endorsement of the Sub-Registrar's seal is qua the conveyance deed Dr. Biswajit Chaudhuri has been shown as the son of Sh. Ram Chandra Chaudhuri i.e. his grandfather's name has been mentioned instead of his father's name.

There is no dispute that as per the settlement this property has fallen to the share of respondent No. 1. The appellant/respondent No. 2 does not get a share in the Defence Colony property but gets a share in the other property at Shanti Niketan. Even if this mistake is there, it makes no difference because if at all as it is respondent No. 1 who is to get any such correction made in the title document. In any case before the settlement, all parties were required to peruse the relevant documents and take their respective stands. The parties willingly settled their disputes after their statements were recorded. We cannot permit through this circuitous route the settlement to be set aside.

Dismissed.

SANJAY KISHAN KAUL,J.
INDERMEET KAUR, J.”

10. Mr. Kirtiman Singh further submits that by an order dated 01.08.2013 by which the Division Bench had directed that further proceedings be taken up before the executing court and it is pursuant to and in continuation of the orders of the Division Bench that the order dated 24.01.2014 came to be passed. Counsel further submits that there is no explanation as to why the present application was filed after a gap

of almost three months and during which period the applicant was represented in Court on 13.03.2014, when the following order was passed:

“No buyer is present in Court.

List the matter before the Joint Registrar on 03.04.2014 for finalizing the sale proclamation with respect to property bearing No.1/16,Shanti Niketan, New Delhi.

The Joint Registrar will carefully follow the directions of the Division Bench passed from time to time in FAO(OS) No.224/2010.

As and when necessary, the Local Commissioner will produce the original documents for scrutiny and inspection.

Mr. Sharma, learned counsel for the judgment debtor No.2 states that he would be moving an application before the Division Bench.

G.S.SISTANI,J.”

11. Mr. Kirtiman Singh submits that when the order dated 13.03.2014 was passed, no prayer was made, nor any protest was made with regard to the order dated 24.01.2014.
12. I have heard the learned counsels for the parties.
13. The first submission of Mr. Agrawal is that although his appearance is marked in the order dated 24.01.2014, in fact, he was not present and his associate had sought a pass over. I am not inclined to accept this submission of Mr. Agarwal as the records of the Court would reveal that he had appeared on 24.01.2014. It may also be noticed that post the passing of this order, it is not the case of the applicant/deeree holder that the matter was mentioned the same day or the Court was

informed that his consent had been wrongly recorded. In fact, on the next date of hearing on 13.03.2014, this Court recorded as under:

“No buyer is present in Court.

List the matter before the Joint Registrar on 03.04.2014 for finalizing the sale proclamation with respect to property bearing No.1/16,Shanti Niketan, New Delhi.

The Joint Registrar will carefully follow the directions of the Division Bench passed from time to time in FAO(OS) No.224/2010.

As and when necessary, the Local Commissioner will produce the original documents for scrutiny and inspection.

Mr. Sharma, learned counsel for the judgment debtor No.2 states that he would be moving an application before the Division Bench.

G.S.SISTANI,J.”

14. Even on the next date, there was no protest or opposition on the part of the applicant/deGREE holder nor any steps were taken to bring to the notice of the Court that no consent was given on 24.01.2014. Thereafter, the matter was listed on 03.04.2014 before the Joint Registrar when none has chosen to appear in the matter. The submission, thus made by the learned counsel for the applicant/deGREE holder is without any force and the same is rejected.
15. I have extracted in detailed the various orders passed by the Division Bench from time to time to show the nature of settlement arrived between the parties coupled with the fact that the settlement was being implemented under the directions of the Division Bench till the matter was marked to the executing court. It may be noted that the settlement

was arrived at between the parties in the month of March, 2011. If the submission of the learned counsel for the applicant is to hold good, then the same objection would have been raised by the learned counsel before the Division Bench that the three months for the sale of the property had expired and now recourse should be taken for dinsum of the properties by metes and bounds and that a Local Commissioner should be appointed for the said purpose. No such prayer was made. In fact, the applicant/deed holder continued to be present before the Division Bench which is evident upon reading of the orders, some of which I have extracted.

16. In the light of what has been stated above, I am of the view that the present application is mis-conceived and the same is liable to be dismissed.
17. Accordingly, the application is dismissed with cost of Rs.25,000/- to be deposited with the Delhi High Court Mediation and Conciliation Centre.

E.A.(OS).437/2017

18. The application be listed before the Roster Bench on 16.05.2018.

E.A.(OS).407/2017(u/O XXII Rule 4 CPC)

19. List before the Joint Registrar on 25.04.2018 for completion of pleadings and disposal of the application.

G.S.SISTANI, J

APRIL 13, 2018

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