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

Decided on:17.11.2022

+ **EFA(OS) 1/2019**

ARJUN SOMDUTT

..... Appellant

Through: Mr Pawanjit Bindra, Sr.
Advocate with Mr Aranyak
Pathak, Advocate.

versus

VIVAN SOMDUTT & ORS

..... Respondents

Through: Mr Abhimanyu Mahajan, Mr
Abhishek Chauhan, Mr
Munindra Dvivedi and Ms
Divya Bhalla, Advocates for
R-1.

Mr B. B. Gupta, Sr. Advocate
with Ms Meghna Mishra, Mr
Tarun Sharma and Mr
Abhishek Grover, Advocates
for R-2.

Mr Dhruv Mohan and Mr
Saurabh George, Advocates
for R-3.

Mr Samar Bansal, Mr Bhargav
Thali and Mr Vipul Kumar,
Advocates for Wadhwa's.

CORAM:

HON'BLE MR. JUSTICE NAJMI WAZIRI

HON'BLE MR. JUSTICE VIKAS MAHAJAN

NAJMI WAZIRI, J. (ORAL)

The hearing has been conducted through hybrid mode

(physical and virtual hearing).

CM APPL. 37411/2022

1. This application seeks modification of the order dated 23.05.2022, which, *inter-alia*, recorded as under:

“4. The learned counsel for the appellant states that the appellant would make an earnest endeavour to reconcile the matter and coordinate with the respondents to facilitate resolution of the lis including sale of the property, preferably within a period of eight weeks.

5. The parties agree that should nothing worthwhile transpire in this regard till the next date, the property auction would only be the last option.

6. At joint request, re-notify on 16.08.2022.”

2. The applicant contends that the recording of his earnest endeavour to reconcile the matter and coordinate with the respondents to facilitate resolution of the *lis*, including sale of the property within eight weeks, is erroneous. The said contention is incorrect as the order was passed on 23.05.2022 in open court in the presence of counsel for the parties.

3. Also, this application has been moved about eleven weeks thereafter. It is without merit and is dismissed.

EFA(OS) 1/2019 & CM APPL. 1191/2019 & CM APPL. 21772/2019

4. The partition suit filed in the year 2007 apropos a residential property: B-8, Maharani Bagh, New Delhi was decreed. This decree

was impugned in FAO(OS) 701-702/2010. The said appeal resulted in a consent decree passed by the Division Bench. It has attained finality. In terms thereof the property was to be sold-off through a private sale. However, in the eventuality of the private sale not materialising then it was to be disposed-off through a buyer at the best market rate. Neither of the aforesaid options fructified in sale of the property. Therefore, in the execution proceedings, it was directed that the property be sold-off through public auction, to which the appellant had no objection. The order dated 12.11.2018 records the consent of the parties, which reads as under:-

- “1. The counsel for the decree holder states that he has a buyer for the property no.B-8, Maharani Bagh, New Delhi – 110 065 for a total value of Rs.45.5 crores.*
- 2. The counsel for the judgment debtor no.2 states that the value of the property as per circle rates is over Rs.74 crores.*
- 3. The counsel for the judgment debtor no.1 has nothing to say in this regard.*
- 4. Though I had in order dated 17th April, 2018 referred to judgments holding that the court fees/stamp duty is not payable on a decree for partition by sale but since then, the Full Bench of this Court in **Indu Singh Vs. Prem Chaudhary** 2018 SCC OnLine 8951 has held that court fees/stamp duty is payable on such a decree also. No court fee has been paid.*
- 5. Though technically speaking there is no executable decree till the said court fees is paid but the counsels for all the parties state that they are not in a position to pay the court fee/stamp duty and all are agreeable that the court fees/stamp duty be made first charge on*

the sale proceeds.

6. Since the circle rate of the property is not disputed to be over Rs.74 crores and the buyer brought by the decree holder is for Rs.45.5 crores only, there is no option but to put the property to be auctioned by the Court Auctioneer. The parties have been cautioned of the charges of the Court Auctioneer.

7. The Court Auctioneer is directed to put the property no.B-8, Maharani Bagh, New Delhi – 110065 to auction in accordance with law. A copy of this order be forwarded to the Court Auctioneer.

8. On enquiry, it is stated that all the three parties are in possession of the different parts of the property.

9. It is made clear that the sale of the property will be with vacant possession of the property and if any of the parties at the appropriate stage fail to deliver vacant peaceful physical possession of the property, they shall be liable to be evicted therefrom as if in pursuance to a decree for possession.

10. The Court Auctioneer to also within one month of today submit the proposed sale proclamation along with reserve price, for approval by the Court.”

5. The appellant now states that since the stamp duty on the amount as mentioned in para 2 of the impugned order has not been paid, the decree is not executable. However, there is nothing in the said order which can be read as an objection by the appellant *apropos* sale through public auction. All it records is that the parties are not in a position to pay the court fee/stamp duty and further records that all are agreeable that the court fee/stamp duty be made first charge on the sale proceeds. It further records that there is no option but to put the property to be auctioned by the Court Auctioneer.

6. Mr Bindra, learned Senior Advocate for the appellant submits that he had paid extra monies towards satisfying one part of the decree, in favour of Wadhwa's, in execution petition Ex.P.61/2018, therefore, the monies lying in the court would first need to be adjusted/appropriated in favour of the appellant and the same may not be used towards adjustment or payment of stamp duty. Be that as it may, the letter and spirit of the compromise decree is clear that the property shall be disposed-off at the best market price. Private negotiations have not resulted in the disposal of the property. In the order dated 12.11.2018, it is recorded that the property shall be disposed-off by public auction. The issue of stamp duty cannot be a stumbling block because, on the sale proceeds, the first charge would be towards payment of stamp duty. The issue of adjustment and apportionment of the monies lying in the Ex.P.61/2018 is yet to be determined, apropos which the court would not say anything at the moment.

7. The effect of a decree without stamp duty would be that the purchaser would not be able to register the sale documents. Such transfer by a registered document would only be possible once the stamp duty is paid.

8. In *Indu Singh Vs. Prem Chaudhary* 2018 SCC OnLine 8951 reference was made to the decision of the dicta of the Supreme Court in *Hindustan Steel Ltd. v. Dilip Construction Co.*, (1969) 1 SCC 597, which reads, *inter-alia*, as under:

“...7. The Stamp Act is a fiscal measure enacted to secure revenue for the State on certain classes of

instruments: It is not enacted to arm a litigant with a weapon of technicality to meet the case of his opponent. The stringent provisions of the Act are conceived in the interest of the revenue once that object is secured according to law, the party staking his claim on the instrument will not be defeated on the ground of the initial defect in the instrument....”

(Emphasis supplied)

9. In terms of the aforesaid orders, the property is to be sold-off by public auction and from the receipts the first charge would be towards payment of stamp duty. Therefore, the interests of the State are secured and the apportionment of the proceeds between the decree holders and the transfer of rights would be done thereafter. It cannot be the case of any consenting party that the compromise decree be frustrated because the parties are unable to pay the court fee, especially when the suit property is said to be of far more value than the stamp-duty/ court fees.

10. The parties state that they do not have the financial wherewithal to pay the stamp duty, which is roughly Rs.26-27 lakhs. According to the learned counsel for the appellant, the property is otherwise stated to be over Rs.100 crores whereas the learned counsel for the respondents states that the market value of the property is around Rs.60-65 crores. The mutual consent of the parties as recorded in the compromise decree is not an issue. The parties desire that the property be sold-off at the earliest so that they can enjoy their apportioned shares. It is, therefore, in the interest of all parties that the property be put through public auction and on monies realised from the sale/ transfer of rights, the first charge shall be

towards stamp duty, which shall be deposited by the Court Auctioneer in the Registry of the court.

11. The learned counsel for the respondents submit that they will request the learned executing court to appoint a Court Auctioneer.

12. The learned Senior Advocate for the respondent no.2 submits that the *lis* is pending between the quarrelling siblings for the past decade and half and they would request that the pending execution proceedings be disposed-off at the earliest. The court is confident that when such a request is made before the executing court, it will be duly considered.

13. The appeal is disposed-off, in terms of the above.

NAJMI WAZIRI, J

VIKAS MAHAJAN, J

NOVEMBER 17, 2022
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