

Smt. Payal Goel @ Payal Aggarwal vs The State & Ors on 7 August, 2020

Author: V. Kameswar Rao

Bench: V. Kameswar Rao

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* IN THE HIGH COURT OF DELHI AT NEW DELHI
+ TEST.CAS. 1/2018, I.A. 6659/2020

SMT. PAYAL GOEL @ PAYAL AGGARWAL

..... Petitioner

Through: Mr. S. Nandakumar and
Ms. Deepika Nandakumar, Advs.

versus

THE STATE & ORS

..... Respondents

Through: Mr. Madhu Sudan Bhayana, Adv. for
State.
Mr. Sudhir K. Makkar, Sr. Adv. with
Ms. Saumya Gupta, Ms. Veera
Mathai, Advs. for R-3 with
Mrs. Neeta Agarwal-respondent No.3
in person.
Mr. Lalit Gupta and
Mr. Siddharth Arora, Advs. for R-2

CORAM:
HON'BLE MR. JUSTICE V. KAMESWAR RAO
ORDER

% 07.08.2020 This matter is being heard through video-conferencing.

1. Earlier the petitioner has filed an application being I.A.3601/2020 with the following prayers:

"In view of the foregoing submissions, it is most respectfully prayed that this Hon'ble Court may be pleased to:

a) Record the terms of compromise as arrived at between the parties and dispose of the petition in terms thereof;

b) Pass such other and further order (s) as this Hon'ble Court may deem fit and proper in the facts and circumstances of the case."

2. The said application was listed before this Court on March 17, 2020. An early hearing application has been filed by the petitioner, the said application was taken up for hearing on August 04, 2020. On the joint request made by the learned counsel for the parties, the application for early hearing being I.A.6521/2020 was adjourned to October 15, 2020.

3. Now the present application being I.A. 6659/2020 has been filed by the petitioner with the following prayers:

"In view of the submissions made hereinabove, it is therefore, most respectfully and humbly prayed that this Hon 'ble Court may be pleased to:-

a) allow the Application filed for seeking Permission to withdraw the Test Case No. 1/2018 on recording the compromise entered by the Petitioner and Respondent No.3 under Order 23 Rule 3 of CPC filed in I.A. No. 3601/2020 on considering the facts and circumstances of the case; and

b) pass such further other order or orders as this Hon'ble court may deem fit and Proper in the above said facts and circumstances of this case."

4. It is the submission of Mr. Nandakumar, learned counsel for the petitioner that the petitioner and the respondent No.3 have entered into a settlement and the terms of settlement have been reflected in para 4 of the I.A. 3601/2020 which are reproduced as under:

"4. In pursuance of the settlement arrived at between the parties, the terms of the settlement / compromise are as follows;

i. The petitioner shall not claim any right title or interest in the estate of late Shri Padam Chand Gupta or late Kamlesh Rani Gupta nor shall she claim any rights under the purported will dated 21.09.2007.

ii. That Respondent No.3 shall relinquish / gift her share in immovable property bearing shop no. 8705/M-35, Connaught Place, New Delhi (hereinafter referred to as the. "Said Property"), belonging to late Kamlesh Rani Gupta and shall not claim her share of rent, being paid by Andhra Bank, in respect of the said premises, w.e.f. January 2020. However the Petitioner shall not claim reimbursement from Respondent No.3. of the rent received till December 2019 or in respect of the security deposit and six months advance rent paid by Andhra Bank to Respondent No. 3 or any other amounts paid by the Bank to her prior to January 2020. Subsequent to January 2020 the Petitioner shall be entitled to receive the rent in her name and shall be free to enter into the rent agreement with Andhra Bank. The Respondent No.3, undertakes to execute the requisite communication that may be required to be sent to Andhra Bank in this regard, to enable the Petitioner to start receiving the entire rent for the premises with effect from January 2020. The relinquishment / gift deed contemplated herein shall be executed by Respondent no. 3 in favour of the

Petitioner within a period of three months from the date of recording of terms of this settlement by the Hon'ble Court.

iii. The Petitioner voluntarily without undue influence or coercion consents to withdraw all the claims/allegations made by her against Respondent No. 2 & 3 and / the contentions raised against Andhra Bank, on the basis of her alleged claim in the will dated 21.09.2007 executed by late Kamlesh Rani Gupta in view of the amicable resolution of the disputes between the parties.

iv. The Petitioner shall be liable to pay all taxes, cesses, house tax, maintenance charges to the bank or other government agencies including MDMC, L&DO etc. in respect of the said Property, whether such charges pertain to the period before or after the date of the relinquishment contemplated herein. However, the property tax and / or income tax pertaining to the rent received by Respondent no. 3 from Andhra Bank during the period of July, 2016 to December, 2019 shall be the liability of Respondent no. 3 in proportionate manner. v. The liability for payment of requisite, stamp duty payable in respect of. the relinquishment / gift of her share in the said property by Respondent No.3 in favour of the Petitioner, shall that be exclusively of the Petitioner.

vi. Respondent no. 3 confirms that she is not in possession of any original / title / ownership documents of the said property, However, copy of the rent agreements including the current rent agreement shall be provided to the Petitioner. vii. Petitioner agrees that Respondent No. 2 & 3 are the only heirs of late Shri Padam Chand Gupta & late Mrs. Kamlesh Rani Gupta and being the only legal heirs are exclusively entitled to succeed to the estate of late Smt. Kamlesh Rani Gupta and the petitioner shall not stake any claim in respect thereof.

viii. That in view of the compromise/settlement arrived at between the parties, the Petitioner shall withdraw the above stated petition with a prayer that the same be disposed of in terms of the compromise arrived at between the parties. The petition filed by the Petitioner shall thus be treated as withdrawn."

5. According to him, the terms of settlement between the petitioner and the respondent No.3 be taken on record and in view of the prayer now made in I.A. 6659/2020, the petitioner be allowed to withdraw the petition i.e. TEST.CAS. 1/2018 with liberty as sought in para 5 of I.A. 6659/2020 which is reproduced as under:

"5. That the petitioner submits that in case, Respondent No.3 violates the terms of compromise on any reason without complying the same, the liberty may be given to the petitioner to restore the Test Case No.1 of 2018 and to proceed in accordance within law. For the said reasons, the present application may be allowed, if the same is not allowed, the Parties will be put to irreparable loss and injuries. There is no prejudice or hardship will be caused to the Respondents herein. The balance of

convenience also in favour of the parties herein."

6. Mr. Sudhir K. Makkar, learned Senior Counsel appearing for the respondent No.3 on instructions from the respondent No.3 and the briefing counsel who are present states that the terms of settlement as reflected in para 4 of I.A. 3601/2020 (as reproduce above) be taken on record and the petitioner be allowed to withdraw the petition i.e. TEST.CAS. 1/2018.

7. Mr. Lalit Gupta, learned counsel for the respondent No.2 states that he has no objection on the settlement entered between the petitioner and the respondent No.3 as because the respondent No.2 is not privy to the settlement and further, the petitioner wants to withdraw the petition.

8. At this stage, Mr. Nandakumar and Mr. Makkar state that the petitioner and the respondent No.3 shall adhere to the terms of the settlement which have been reflected above.

9. I find that the application being I.A. 3601/2020, wherein the terms of settlement have been stated (in para 4), has been filed jointly by the petitioner and the respondent No.3 through their counsels. The application is accompanied by affidavits of the petitioner and the respondent No.3. The terms of settlement i.e. para 4 (i) to (viii) as reflected above are taken on record along with the statement made by Mr. Nandakumar and Mr. Makkar that the petitioner and the respondent No.3 shall adhere to the aforesaid terms of the settlement.

10. With liberty as prayed for in para 5 of I.A. 6659/2020, the I.As.3601/2020, 6521/2020 and 6659/2020 are disposed of.

11. The Test Case 1/2018 and connected application, if any, are dismissed as withdrawn.

12. The date already fixed stands cancelled.

V. KAMESWAR RAO, J AUGUST 07, 2020/aky