

## Fiitjee Ltd vs Sh Om Prakash Daral & Anr on 13 February, 2023

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IN THE HIGH COURT OF DELHI AT NEW DELHI  
RFA 314/2014 & CM APPL. 6930/2023  
FIITJEE LTD

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Through: Mr. Raaj Malhotra with  
Mr. Rahul Goyal, Advocate  
(M): 9650790151  
Email: raajmalhotra2020@gmail.

versus

SH OM PRAKASH DARAL & ANR

..... Respon

Through: Ms. Ruchira V. Arora, with  
Mr. Dhananjay Mehlawat,  
Advocates for respondent  
(M): 9911006159  
Email: dhananjay\_mehlawat@yahoo.co.

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA  
ORDER

% 13.02.2023 [Physical Hearing/ Hybrid Hearing] CM APPL. 6930/2023 (Application under Section 151 CPC on behalf of respondent no. 1 for release of the amount deposited by the appellant in terms of settlement agreement dated 07.10.2022)

1. This is an application under Section 151 CPC on behalf of respondent no. 1 for release of amount deposited by the appellant in terms of Settlement Agreement dated 07.10.2022.

2. It is submitted that the appellant had filed the present appeal challenging the judgment and decree dated 10.01.2014, passed by the learned District & Sessions Judge, South East, Saket Courts, New Delhi, in favour of respondent No. 1.

3. By order dated 19.08.2015, this Court had directed that subject to the appellant depositing the mesne profit and damages including the arrears of rent, as awarded by the learned Trial Court, within four weeks from the date of the said order, there shall be a stay on the execution of the impugned judgment and decree to the extent it relates to arrears of rent and mesne profit/damages. It was further directed by this Court that the amount to be deposited by the appellant will be kept in an interest bearing Fixed Deposit.

4. It is the case on behalf of the respondent that after the deposit of the decretal amount, from time to time, the respondent no. 1 has been getting the same released in terms of orders dated 23.12.2015 and 15.02.2016 passed by this Court. The last withdrawal by the respondent No. 1 was vide order dated 26.08.2019, whereby 34% of the total amount deposited i.e. Rs.19,64,158/- till March, 2019 by the respondent no. 1 was directed to be released. It is submitted that 66% of the aforesaid amount is yet to be released, as valuation report of the property furnished as security by the respondent no. 1 for the release of 66% of the aforesaid amount, is yet to be filed by the concerned Sub-Registrar and

SDM, with the Registrar of this Court. The amount released to the respondent no. 1 was of the amount deposited by the appellant till March, 2019 as mentioned by this Court vide order dated 06.05.2019.

5. It is submitted that the parties have subsequently entered into a Settlement Agreement dated 07.10.2022. Thus, the appellant and respondent no. 1 have amicably settled all their disputes between them. It is submitted that respondent no. 2 has already transferred the share to the appellant. Therefore, only respondent no. 1 has remained as the contesting party. Thus, in view thereof, a settlement has been entered into only between the appellant and respondent no. 1 before the Delhi High Court Mediation and Conciliation Centre.

6. It is submitted that in terms of the Settlement Agreement, the parties have agreed as follows:-

"For the purpose of this Settlement Agreement, it is hereby agreed that both the First Party and the Second Party shall hereby include their heirs, assigns, successors etc.

1. The Second Party agrees that they shall execute a Sale Deed in favour of the First Party within a period of 30 days from the date of execution of the present Settlement Agreement qua the 20% of the undivided share in the suit property for a sale consideration of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) which shall be paid by the First Party to the Second Party at the time of signing of the Sale Deed.

2. The First Party agrees that he shall pay Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) by way of Demand Draft in favour of the Second Party at the time of signing of the Sale Deed.

3. The parties agree that all the stamp duty and all other incidental, miscellaneous charges/expenses for registration of above Sale Deed shall be borne by the First Party only.

4. The parties also agree that in case of any objection raised by the concerned Sub-Registrar of assurance qua circle rate, the extra stamp duty shall be borne only by the First Party.

5. It has been admitted and verified by the parties that arrears of rent of the suit property have been deposited by the Second Party till September, 2020 and thereafter, the Second Party could not make the deposit in terms of orders dated 23.12.2015 and 15.02.2016, passed in RFA No.314 of 2014, which the Second Party has filed against the judgment dated 10.01.2014.

6. It has also been agreed by the parties that the First Party has waived off/set off the arrears of rent w.e.f. October, 2020 till date and thereafter and the First Party hereby acknowledge to have received the same.

7. The Second Party shall handover the keys of the suit property on receipt of the above said payment of Rs. 16,00,000/- (Rupees Sixteen Lakhs Only) to the First Party, simultaneously at the time of execution of the sale deed in terms of clause 1 hereinabove.

8. It has also been agreed by the parties that the Second Party shall clear arrears of the house tax, electricity and water charges of the suit property on or before execution of the sale deed.

9. The First Party also agrees that the liability of the Second Party to pay any rent/charges in respect of the suit property have been waived of and he shall not claim any damages/charges, whatsoever in respect of the suit property in future. The Second Party confirms that after the execution and registration of the sale deed the First Party shall be absolute owner of the said property/.

10. The parties also agree that the First Party shall be entitled to withdraw the entire arrears of rent deposited by the Second Party in Hon'ble High Court of Delhi after execution and registration of the sale deed. The Second Party shall withdraw the RPA No. 314/2014, where the said deposit has been made. The Second Party while withdrawing the said RFA, shall request the Hon'ble High Court of Delhi to remove the conditions of withdrawal of the said deposits by the First Party and the entire amount so deposited by the Second Party shall be released to the First Party, unconditionally and immediately.

11. The parties also undertakes to withdraw lis pending between the parties within four weeks from the date of execution/registration of the sale deed. The details of the same is given hereinunder:-

(i) Execution Petition no Ex. No. 05/16 (New No. 9096/2016) entitled as Om Prakash Daral Vs. Fiitjee Ltd., pending before Shri Jay Thareja, Learned ADJ-07, South- East District, Saket Courts, New Delhi.

(ii) Criminal Complaint bearing no CIS no 465403/2014 entitled as Fiitjee Vs Cm Prakash Daral, pending before Learned Metropolitan Magistrate, Saket Courts, New Delhi. In case there is any difficulty or bar in the withdrawal of said complaint, then the Second Party shall get the same quashed from the Hon'ble High Court of Delhi and provide all necessary help and assistant in the same.

(iii) RFA 314/2014 entitled as Fiitjee Vs Om Prakash Daral pending in the Hon'ble High Court of Delhi, New Delhi.

(iv) RFA (OS) 45/2014 entitled as Fiitjee Limited Vs Om Prakash Daral & Anr. pending in the Hon'ble High Court of Delhi, New Delhi.

(v) Cr. M.C. No.221 of 2014 entitled as Om Prakash Daral Vs. State & Another pending in the Hon'ble High Court of Delhi, New Delhi.

Both the Parties have arrived at the present settlement voluntarily without there being any pressure, coercion or force from any person or any circumstances and the present settlement has been arrived at with the consent of both the Parties as per their own free will. The Parties state that they both have read the terms of this Settlement Agreement before signing the same and understood the same in consultation with their respective counsel (s).

12. By signing the present Settlement, all the parties hereto state that they have no further claims or demands against each other and all their disputes and differences have been amicably settled, through the process of mediation.

13. The parties undertake before the Hon'ble Court to abide by the terms and conditions set out in the agreement and not to dispute the same hereinafter in future.

14. The parties agree that they shall appear before the Hon'ble court during the virtual/physical hearing to make their statements in terms of the present settlement agreement."

7. In view of the aforesaid Settlement Agreement and relying upon Clauses 1 and 10 of the Settlement Agreement, by way of the present application it is prayed that the entire arrears of rent as deposited by the appellant before execution and registration of the sale deed, be released in favour of the respondent no. 1 herein.

8. Issue notice.

9. Notice is accepted by learned counsel appearing on behalf of the appellant.

10. He submits on instructions that in view of the Settlement Agreement dated 07.10.2022, the appellant has no objection if the entire arrears of rent is released to the respondent no. 1.

11. In view of the aforesaid, it is directed that the amount as deposited by the appellant till September, 2020 along with interest accrued on it, be released to respondent no. 1 forthwith, upon the respondent no. 1 approaching the Registry in this regard.

12. With the aforesaid observations, the present application is disposed of.

13. Learned counsel appearing for the appellant submits that since Settlement Agreement dated 07.10.2022 has already been entered between the parties, no fruitful purpose would be served in keeping the present appeal pending. Thus, he submits that he has instructions to withdraw the present appeal.

14. In view of the aforesaid, the present appeal is dismissed as withdrawn.

15. Learned counsel for respondent no. 1 draws the attention of this Court to order dated 04.10.2016. In the order dated 04.10.2016, endorsement was made by this Court on the original sale deed of the property i.e. property bearing no. 59-A/1, plot no. 10 measuring 104 sq. yds. situated at Kalu Sarai, New Delhi-110016, as the said sale deed was taken as surety for the release of the arrears of rent. Since the present appeal is being disposed of and all the amounts have now been directed to be released to respondent no. 1 in terms of the settlement between the parties, it is directed that the aforesaid endorsement as made on the original sale deed in terms of order dated 04.10.2016, is hereby released.

16. The date of 20.03.2023 before this Court is cancelled.

MINI PUSHKARNA, J FEBRUARY 13, 2023 c