

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

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EX.P.193/2009 & EA.No.460/2009

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Date of decision: 8th January, 2010

SH. TIGER SINGH

....Petitioner

Through: Mr. Manmeet, Advocate.

Versus

SMT. MANJEET KAUR & ORS.

... Respondents

Through: Mr. Samrat K. Nigam, Advocate for JDs 1-3.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

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| 1. | Whether reporters of Local papers may be allowed to see the judgment? | No |
| 2. | To be referred to the reporter or not? | No |
| 3. | Whether the judgment should be reported in the Digest? | No |

RAJIV SAHAI ENDLAW, J.

1. Execution is sought of the compromise decree dated 23rd January, 2009 in CS(OS)2285/2007. The decree holder seeks directions for signing /execution of the documents for conversion of lease hold rights in the land underneath the property No.C-6/31, Safdarjung Development Area, New Delhi subject matter of the decree into free hold. The decree holder further seeks a direction to the respondents/judgment debtors to sign the plans for redevelopment of the first, second and third floor of property No.C-6/31, Safdarjung Development Area, New Delhi and directions to the respondents/judgment debtors not to obstruct in the said redevelopment.

2. The parties being closely related to each other, attempts were made to bring about an amicable settlement. However, the same failed. During the said attempts directions were orally issued for free hold conversion and at present no further directions are deemed necessary with respect thereto. Suffice it is to clarify that in terms of the oral directions, the free hold conversion to which neither of the parties has any objection, does not happen and anything further is required to be done with respect thereto, the parties shall be at liberty to approach the court. Till now this court has hesitated from appointing a commissioner with authority to sign all documents and do all acts on behalf of the parties in this regard, for the reason of the costs which the parties will have to bear of such commission. The parties are, however, warned that if they do not mutually resolve the aspect of free hold conversion in terms of the compromise decree, this court shall have to appoint a commissioner for the said purpose and the costs whereof shall have to be borne by the parties.

3. The main issue between the parties is as to the right of the petitioner/decreed holder to redevelop the first, second and upper floor of the property. EA.No. 460/2009 in the form of objections has been filed by the respondents/judgment debtors in this regard only.

4. The compromise decree provides that the respondents/judgment debtors are the exclusive owners of the ground floor and the petitioner/decreed holder is the owner of the upper floors of the property. The petitioner/decreed holder under the said compromise decree is entitled to raise further construction at the level of third floor which at the time of compromise decree was shown as the *barsati* floor in the site plan annexed thereto; the petitioner/decreed holder also has right to raise construction above the third floor till the sky. The compromise decree further provides that both the parties shall be entitled to carry out addition, alteration in their respective portion without causing any damage to the portion of the other and as and when requested by the other party shall furnish no objection for permission

/sanction of plan for carrying out additions, alterations and constructions in their respective portions in accordance with law.

5. The petitioner/decreed holder has alongwith the execution filed proposed plans for redevelopment of the first, second and third floor of the property. At the level of the first and the second floor, the petitioner/decreed holder seeks to construct a 3 ft wide balcony protruding into the front open courtyard / space on the ground floor and to also raise construction in the rear side by covering the rear open courtyard on the ground floor. The petitioner/decreed holder also wants to fully construct the third floor which till now was merely a *barsati* floor.

6. The objections of the respondents/judgment debtors are –

1. to the coverage by construction at the level of the first, second and third floor above the rear open courtyard;
2. to the construction on the third floor.

7. The objection of the respondents/judgment debtors is that under the compromise decree the petitioner/decreed holder is not entitled to extend the then existing covered area of the first and second floor i.e. to portions above the front and the rear open space on the ground floor. As far as the construction beyond the *barsati* on the third floor is concerned, the contention of the counsel for the respondents/judgment debtors is that under the compromise decree the respondents/judgment debtors are entitled to the construction of the basement below the ground floor; that if the third floor is allowed to be fully constructed, the FAR may be exhausted and the construction of the basement thereafter may not be permitted. The respondents/judgment debtors therefore proposed that the plan for additional construction on the third floor be submitted simultaneously with the plan for construction of basement, even if to be not constructed by the respondents/judgment debtors immediately but so as to ensure that additional construction on the third floor will not deprive the respondents/judgment debtors from construction in future if they so desire of the basement under the ground

floor. The respondents/judgment debtors have also raised apprehensions/fear of the existing structure bearing the load of additional construction on the third floor. It is contended that the petitioner/decreed holder has not furnished any certificate of a structural engineer as to the viability of raising additional construction on the third floor and as to whether the existing structure would be able to bear the load thereof or not.

8. I find merit in the aforesaid objections of the respondents/judgment debtors. A reading of the compromise decree shows that though construction at the level of the third floor upto the sky and construction of the basement were envisaged but there was no discussion of construction at the level of the first floor and the above so as to cover or partly cover the front and the rear space on the ground floor. The consent of the respondents/judgment debtors to additions, alternations cannot be said to have extended to extensions on the first floor and above covering the open areas of the ground floor. The character /peculiarity of the ground floor and what distinguishes it from the other floors is the open spaces in the front and at the rear. If the petitioner/decreed holder intended to cover the same at the level of the first and the upper floors, he ought to have taken the explicit consent of the respondents/judgment debtors to the same. In the absence of explicit consent this court is unable to hold the compromise decree to be permitting the same. The petitioner/decreed holder for such construction also seeks to erect pillars from rear open space. There is no provision therefor also in the compromise decree. Once such works are not found to be part of the compromise decree the same cannot be permitted in execution and no direction as sought by the petitioner/decreed holder which would have the effect of permitting the petitioner/decreed holder to cover the rear open courtyard or to project the balcony in the front open space/courtyard can be issued.

9. The objections to that extent succeed and the execution dismissed. The petitioner/decreed holder is, however, under the compromise decree entitled to raise construction at the level of the third floor though only above the existing

construction and not extending beyond the same. The respondents/judgment debtors are liable under the decree to issue no objection for the same and sign any other documents required by the authorities to enable the petitioner/decreed holder to carry out the said construction. However, the right of the parties to make such additions, alterations, constructions was subject to, without causing any damage to the portion of the other. The apprehension of the respondents/judgment debtors with respect to the construction at the level of the third floor are justified. Accordingly, qua the said construction it is directed –

- i. the petitioner/decreed holder to have prepared the plan for raising additional construction on the third floor showing the existing construction as well as the proposed construction and without extending beyond the construction existing on the first and the second floor.
- ii. the petitioner/decreed holder to also obtain a report from a certified structural engineer as to whether the existing structure of the property would take the load of the proposed additional construction at the level of the third floor. The respondents/judgment debtors shall if the said structural engineer so requires give access to him to the ground floor to enable him to submit a report.
- iii. the petitioner / decreed holder to also alongwith the plans for sanction of additional construction on the third floor, have prepared and submit plans for construction of basement under the ground floor, to allay the fear of the respondents/judgment debtors that the additional construction at the level of the third floor will not in future deprive the respondents/judgment debtors from construction of the basement.
- iv. If the plans for additional construction on third floor as well as the basement are sanctioned and if the structural engineer also reports that the additional construction on the third floor will not endanger this existing structure of the property, the petitioner/decreed holder shall be

entitled to raise construction as per the sanctioned plan at the level of the third floor. The respondents/judgment debtors shall sign all documents required of them to be signed as owners of the ground floor for obtaining the sanction of additional construction on the third floor as well as in the basement and subject to the above.

10. It is further clarified that if the parties are unable to have the documents in terms of the above prepared / executed, the court will be left with no option but to appoint a commissioner for the said purpose and at the costs of the parties. The objections in the form of EA.No.460/2009 are disposed of and no further orders are necessary in the execution.

11. List the execution for further proceedings before the roster bench on 2nd February, 2010. All further applications in the execution to be also listed before the roster bench.

**RAJIV SAHAI ENDLAW
(JUDGE)**

**8th January, 2010
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