

KIRPAL KAUR AND ANR.

v.

V.M. SINGH AND ORS.

AUGUST 30, 2007

[S.B. SINHA AND HARJIT SINGH BEDI, JJ.]

Interlocutory application—In appeal arising out of decision based on settlement, Supreme Court, while disposing of appeal, giving certain directions—Since directions not complied with, on an IA having been filed, applicant permitted to deposit money in Court—On contest by other party, applicant seeking to withdraw said IA—The said other party resisting withdrawal of IA, stating that incorrect and defamatory allegations were made therein—Held: In the interlocutory applications, Court is concerned only with regard to the question whether permission should be accorded to applicant to deposit the amount pursuant to an earlier order—Since applicant has expressed his intention to withdraw the said IA, interest of justice would be sub-served if applicant is permitted to withdraw his IA—IAs having become infructuous are rejected—In the instant proceedings, Court need not go into correctness or otherwise of allegations made by applicant in IA/affidavit—If any person is aggrieved by the said statement of the applicant he may raise such contention in appropriate proceedings.

CIVIL APPELLATE JURISDICTION : I.A. No. 16 in Civil Appeal No. 6327 of 2005.

AND

I.A. No. 17 in I.A. No. 16 in Civil Appeal No. 6327 of 2005.

From the Judgment and Order dated 04.03.2003 of the High Court of Delhi at New Delhi in FAO[OS] No. 162 of 2000.

WITH

I.A. No. 16 in Civil Appeal No. 6326 of 2005.

AND

I.A. No. 18 in I.A. No. 16 in C.A. No. 6326 of 2005.

A Lakshmi Raman Singh for the Appellants.

K.L. Janjani, Prashant Kumar, Manik Karanjawala, Arvind Minocha and G.S. Chatterjee for the Respondents.

Respondent-in-person.

B The Order of the Court was delivered by

O R D E R

C 1. Two suits of partition, one filed in the year 1975 and the other in the year 1989 were subject matter of the consent decree passed in or about April 1993. A deed of family settlement was executed between the parties to the suit. Applicant-Respondent herein was a beneficiary of the said family settlement. He had been acting on behalf of the appellants as their assignee. Appeals preferred against the said judgments and decrees were dismissed by the High Court by a learned Single Judge of the High Court by an order dated D 19.05.2000. Intra-court appeals preferred thereagainst were also dismissed by a Division Bench of the said Court by a common judgment and order dated 04.03.2003. Appellants herein filed applications for grant of special leave thereagainst before this Court. The said appeals by grant of special leave have been dismissed by this Court by an order dated 7.10. 2005 directing :

E “However, having regard to the facts that the disputes between the members of one family which are sought to be solved leaving no outstanding area, we pass the further direction that in the event KK and Guneeta execute the General Power of Attorney in terms of the first agreement in favour of VMS, VMS will pay the balance amount due to KK and Guneeta in terms of the agreement. Such execution of F the General Power of Attorney shall be within a period of our weeks from date the entire balance of amount must be paid within a period of four weeks thereafter.

G As far as AA is concerned, subject to her executing the necessary conveyance in respect of the 44 acres of land mentioned in clause - e of the second agreement in favour of VMS, VMS will pay the balance amount payable to AA in terms of the second agreement. Such conveyance must be executed within a period of four weeks from date and the payment must be made within four weeks thereafter.”

H 2. Allegedly, the said directions were not carried out. A contempt petition was filed by Respondent No. 1 which was dismissed. Applicant

herein, viz., Shri V.M. Singh (original first respondent), however, filed an application for grant of permission to deposit the amount in question before this Court, despite the fact that no Power of Attorney had been executed in his favour pursuant to the said direction of this Court. By an order dated 28.07.2006, the applicant was permitted to deposit the money as ordered in the Civil Appeal with the Registrar General of this Court. However, by an order dated 06.09.2006, he was permitted to deposit bank draft after rectifying the defects pointed out by the Registry.

3. An application being I.A. No. 18 had been filed by Shri Shri Anandamayee Sangha for permission to file an application for impleadment as a party respondent in I.A. No. 16 in C.A. No. 6327 of 2005. The said permission was accorded by this Court by an order dated 25.09.2006. The application filed by the applicant-respondent for depositing the amount in question has been opposed by the appellant.

4. Respondent-Applicant, who appeared in person, would submit that if the respondents or the appellants in the appeals have any objection in regard to acceptance of the amount deposited by him in this Court pursuant to the aforementioned order, he would withdraw his application.

5. Ms. Kamini Jaiswal, learned counsel appearing on behalf of original appellants, however, would draw our attention to the statements made in the additional affidavit affirmed by the applicant and submitted that this Court, in view of his conduct, should not permit him to withdraw this application at this stage as correctness of the statement made in the said additional affidavit is in question.

6. The learned counsel submitted that an affidavit had been affirmed by one Harish Kumar containing serious allegations against the original appellants which were defamatory in nature. The deponent of the said affidavit should be permitted to be cross-examined.

7. Mr. Bhaskar P. Gupta, learned senior counsel appearing on behalf of the applicants in I.A. No.17 filed in I.A. No.16 in C.A. No. 6327 of 2005, would submit that it has become necessary for his client to be impleaded as a party respondent to the proceedings as a deed of gift had been executed in its favour by the appellants even prior to the institution of partition suit.

8. In these Interlocutory Applications, this Court is concerned only with the question at this stage as to whether permission should be accorded to

A the applicant to deposit the amount as directed by this Court on 28.07.2006. It may be true that pursuant to the aforementioned order dated 28.07.2006, the amount in question has already been deposited. However, the applicant has expressed his intention to withdraw the said application. We do not see any reason as to why he should not be permitted to do so. In a proceeding of this nature, this Court need not go into the correctness or otherwise of the

B allegations made by the applicant against the appellants or any other person. The prayer of the appellants that a copy of the CD which has been filed along with I.A. No.16 should be given to them also need not be considered at this stage. In our opinion, interest of justice would be subserved if the applicant is permitted to withdraw his Interlocutory Application. If the appellant or any

C other person is/are aggrieved by the statements made in the additional affidavit of the applicant and/ or in the affidavit affirmed by one Harish Kumar, they may raise such contentions in appropriate proceedings as are permissible in law. A copy of the CD filed by the applicant be sent in a sealed cover to the executing court so as to enable the parties to file appropriate applications before the executing court in respect thereof, if they so desire.

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9. As we are permitting the applicant to withdraw his application, the application for impleadment has become infructuous. It is dismissed accordingly. The amount deposited by Shri V.M. Singh be returned to him.

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10. As the matter is pending for a long time, we would request the learned executive court to consider the desirability of disposing of the execution proceedings at an early date preferably within a period three months of the from the communication of this order.

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11. Subject to the observations made hereinbefore, I.A. No.16 in both the appeals is permitted to be withdrawn and other interlocutory applications are dismissed as having become infructuous.

RP.

I.A. No. 16 with and I.A. No. 18 dismissed.