

SATYA JAIN (D) & ORS.

v.

ANIS AHMED RUSHDIE (D) TH. LRS. & ORS.

(I.A. Nos. 3-5 AND I.A. No. D37212 of 2013)

IN

(Civil Appeal No. 8653 of 2012)

MAY 8, 2013

[P. SATHASIVAM AND RANJAN GOGOI, JJ.]

Interim applications - Judgment of Supreme Court - Decreeing suit for specific performance and directing execution of sale deed - Interim applications seeking impleadment and clarification of judgment - Held: In some applications facts on the basis of which modification/clarification sought, not brought to the notice of the court at the time of hearing of appeal or the judgment and in other applications facts and events forming basis for their claim occurred subsequent to the judgment - Therefore, applications are not maintainable - Applicants' endeavour to reopen the concluded issues and alteration of consequential directions not permissible - Parties have the option to seek remedies for their rights as may be open in law.

Supreme Court Rules, 1966 - Interim applications - Suit for specific performance - Decreed by supreme Court in its final order, setting aside the judgment of High Court - Defendants directed to execute the sale deed in favour of the plaintiffs at the market price as on date of the judgment - Interim applications and review petition by the plaintiffs - Seeking modification of the direction for execution of sale deed at the market price and correction of certain typographical errors - Held: An application for modification/clarification of the judgment passed by Supreme court not permissible - It is not contemplated by the provisions of

- A *Supreme Court Rules - The Rules provide only the remedy of review - The grounds on which the modification/clarification are sought, were not before the Court at the time of final hearing, therefore, those facts cannot be legitimate basis for any modification even if the interim applications are construed to be applications for review - The direction in the judgment of the Court to execute the sale deed at the market price came to be recorded as per "offer" made on behalf of the appellants/plaintiffs and there was no material available in this regard - It is, therefore, clear that the Court did not intend to lay down any law of general application while issuing the said direction - Typographical errors corrected - It is open to the parties to avail the remedies against the determination of the market price which would be done by trial court - Review.*
- B
- C

- D *Delhi Administration Vs. Gurdip Singh Uban and Ors. (2000) 7 SCC 296: 2000 (2) Suppl. SCR 496 and A.P. SRTC and Ors. Vs. Abdul Kareem (2007) 2 SCC 466: 2007 (1) SCR 888 - relied on.*

Case Law Reference:

- E 2000 (2) Suppl. SCR 496 Relied on Para 12
 2007 (1) SCR 888 Relied on Para 12

CIVIL APPELLATE JURISDICTION

- F I.A. Nos.3-5 & I.A. No. D37212 of 2013 in Civil Appeal No(s). 8653 of 2012.

- G From the Judgment & Order dated 31.10.2011 of the Division Bench of High Court of Delhi at New Delhi in RFA (OS) No. 11 of 1984.

WITH

- H IA Nos. 12-13 & 14-15 in Civil Appeal Nos. 8675-8676 of 2012.

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Shanti Bhushan, S. Ganesh, M.N. Krishnamani, Anoop A
Choudhary, June Choudhary, Aruna Gupta, M.L. Lahoty,
Pradeep Aggarwal, Lal Pratap Singh, Umesh Pratap Singh,
Brijesh Kumar Singh, Gargi B. Bharali, Ruchi Kohli, R.K.
Sanghi, Arun Maitri, Satyendra Kumar, Rajiv Singh, Prashant
Kumar, Triveni Patekar, Amulya Dhingra, Rajan Singh, Amit B
Singh, Merusagar Samantaray, Sanjay Sharawat, Rajiv Nanda,
N. Annapoorni for the appearing parties.

The Order of the Court was delivered by

O R D E R C

RANJAN GOGOI, J. 1. Civil Appeal No. 8653 of 2012 and
other connected appeals were allowed by this Court by
judgment and order dated 3.12.2012. The decree passed by
the Appellate Bench of the High Court of Delhi in RFA (OS) D
No. 11/1984 was set aside and the suit for specific
performance filed by the plaintiffs 1 (since deceased), 2 and 3
was decreed in the following terms :-

"30....We are of the further view that the sale deed that will
now have to be executed by the defendants in favour of E
the plaintiffs will be for the market price of the suit property
as on the date of the present order. As No material,
whatsoever is available to enable us to make a correct
assessment of the market value of the suit property as on
date we request the learned trial judge of the High Court F
of Delhi to undertake the said exercise with such
expedition as may be possible in the prevailing facts and
circumstances.

31. All the appeals shall accordingly stand allowed in terms G
of our above conclusions and directions."

2. I.A. Nos. 3-5, 12-13, 14-15 and D.No. 37212 of 2013
have been filed seeking impleadment/clarification/modification/
correction of the judgment dated 3.12.2012, in the H
circumstances noted below.

A 3. I.A. Nos. 3-5 have been filed by one Amit Jain, Rahul
 Jain and Smt. Aruna Jain contending that during the pendency
 of the Civil Appeal before this Court, out of total suit property
 measuring 5373 Sq. Yds., two parcels measuring 1500 Sq.
 Yds., in all, were sold by Ms. Sameen Rushdie Momen
 B (respondent No.1 in Civil Appeal No. 8653/2012 and
 Respondent 1B in Civil Appeals No. 8675-76 of 2012) in favour
 of the applicants. On the said basis, the applicants seek
 impleadment and clarification of the judgment dated 3.12.2012
 to mean that the successor-in-interest of the original defendant
 C (late Anis Ahmed Rushdie) i.e. Ms. Sameen Rushdie Momen,
 has been left with the right of ownership in respect of only 3873
 Sq. Yds. of the property situated at No. 4, Flag Staff Road, Civil
 Lines, Delhi.

D 4. I.A. Nos. 12-13 have been filed by Narender Jain and
 Arvind Jain (original plaintiffs No.2 & 3) seeking the following
 reliefs :-

- E “(a) modify/clarify/correct Paragraphs 29 and 30 of the
 judgment and order dated 3.12.2012 as mentioned
 in the present application;
- (b) correct the typographical errors in the judgment and
 order dated 3.12.2012 as mentioned in Paragraph
 8 of this application;
- F (c) pass such other and further orders as may be
 deemed fit and proper in the facts and
 circumstances of the present case.”

G 5. In the aforesaid I.As. the applicants have, *inter alia*,
 stated that Ms. Sameen Rushdie Momen who is the legal heir/
 successor-in-interest of the deceased sole defendant Anis
 Ahmed Rushdie (by virtue of a Will dated 9.1.1984 executed
 by Anis Ahmed Rushdie and accepted by the other legal heirs)
 had executed a irrevocable General Power of Attorney dated
 H 4.11.2010 with consideration in favour of one Fine Properties

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Private Limited disposing of all her rights, shares and interest etc. in the suit property "as on whereon basis" subject to the following salient terms:- A

"1. That, the FIRST-PARTY agrees to absolutely grant to the SECOND-PARTY all his rights, shares, interest, liens, registrations clear-titles, etc. in the un-encumbered plot/property/ house bearing no. 4, Flag Staff Road, Delhi-110054 alongwith: unauthorized Occupant/ User (i.e. late Sh. BHIKU RAM JAIN): and another unauthorized-Occupant/ User (i.e. legal-heirs of late Mr. I.M. Lal): and portion of the property in possession of the FIRST-PARTY. B C

And the SECOND PARTY has accepted to be the Attorney for the purchase acquisition and possessing of the entire-property, for the total CONSIDERATION of Rs.4,50,00,000/- (Rupees Four-Crores and Fifty Lacs) only through this presently executed and registered G.P.A. D

Sufficiency of the above CONSIDERATION for signing and executing of this G.P.A. is hereby acknowledged (payments and receipts) by both Parties. E

(vii) Para 6 of the said General Power of Attorney reads under:- F

6. That, the SECOND-PARTY shall pursue and bear the entire charge, costs, expenses, fees, etc. regarding the following:-

- . R.F.A. (OS) No. 11 of 1984; G
- . Special Leave Petition (S.L.P.) or equivalent, etc. before the Supreme Court of India), if subsequently filed thereafter; H

A Effective from the date of execution and registration of this G.P.A.

(vii) Para 8 of the said General Power of Attorney reads as under :-

B 8. That, on handing over the payment of: full-
C CONSIDERATION to the FIRST-PARTY, by the
SECOND-PARTY, the FIRST-PARTY ceases to
exercise any rights, interests, liens, titles, etc. (what-
so-ever) in the said plot/property/house; and the
Attorney for the same shall absolutely stand in
favour of the SECOND-PARTY (in all respects what-
so-ever).'

D (viii) Para 12 of the said General Power of
Attorney reads as under :-

12. That, the CONSIDERATION-amounts shall not
be returned/refunded, by the FIRST-PARTY to the
SECOND-PARTY.

E Also, the amount paid, incurred, etc. and expenses,
cost etc. and incidentals thereto towards the
Registration (eg. Stamp Duty, etc.) by the
SECOND-PARTY shall also not be returned/
refunded/reimbursed)."

F 6. In the light of the aforesaid facts, the applicants state
that directions contained in judgment dated 3.12.2012 requiring
the legal heirs of the deceased sole defendant, i.e.,
Respondents 1A to 1D (in Civil Appeal No. 8675-76 of 2012)
G to execute the sale deed in favour of the plaintiffs, at the market
price of the suit property as on the date of the judgment, would
require appropriate modification inasmuch as the defendant-
respondents are not entitled to the said reliefs having already
parted with the suit property.

H 7. The applicants further/alternatively contend that in view

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of the several decisions of this Court referred to in paragraph 5 of the I.A., the judgment of the Court directing execution of the sale deed by the defendant-respondents in favour of the plaintiffs at the market price as on the date of the said judgment i.e. 3.12.2012 would also require appropriate modification. A

8. In addition to the above, correction of certain typographical errors specifically mentioned in paragraph 8 of the I.A. have been prayed for by the applicants. B

9. I.A. Nos. 14-15 of 2013 have also been filed by plaintiffs 2 and 3, i.e., Narender Jain and Arvind Jain seeking to bring to the notice of the Court that Fine Properties Private Limited has filed an I.A. before the learned Trial Judge of the High Court seeking certain orders in respect of the execution of the sale deed in terms of the judgment of this Court dated 3.12.2012. The applicants contend that notice has been issued in the aforesaid I.A. by the learned Trial Judge of the High Court without any justifiable basis and the same needs to be appropriately interfered with by this Court. In any event, the proceedings in the aforesaid I.A. are required to be stayed till a decision is rendered by this Court in the present I.As. C D E

10. In addition to the above, I.A. D.No.37212 of 2013 has been filed by one Chopra Marketing Private Limited seeking impleadment in C.A. No. 8653 of 2012 on the basis that an agreement to sell the suit property was executed by and between the applicant and persons claiming to be the Attorneys of the defendant-respondents pursuant where to the applicant had parted with a sum of Rs. 2 crores as advance payment. According to the applicant it had subsequently come to its knowledge that rights in the suit property had already been created in favour of the Fine Properties Private Limited as well as the applicants in I.A. 3-5 for which reason a FIR dated 8.12.2012 has been filed by the applicant before the Jurisdictional Police Station, i.e., Economic Offences Wing, Delhi. F G

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A 11. We have heard the learned counsels for the parties.

B 12. An application for modification/clarification of a final order passed by this Court is not contemplated by the provisions of the Supreme Court Rules, 1966 which specifically provides the remedy of review and also lays down the procedure governing the consideration of a review application by this Court. In fact, filing of such applications for modification has been deprecated by this Court in *Delhi Administration Vs. Gurdip Singh Uban & Ors.* [(2000) 7 SCC 296] and *A.P. SRTC & Ors. Vs. Abdul Kareem* [(2007) 2 SCC 466]. It is in the above backdrop that we must proceed to examine the prayers made in the I.As. filed.

C 13. Insofar as I.A. Nos.3-5 are concerned, suffice it will be to note that the facts stated therein, on the basis of which the prayer for modification/clarification has been made, were not before the Court at the time when the judgment dated 3.12.2012 was rendered. In I.A. Nos.14-15 and I.A. D.No. 37212 of 2013 the reliefs sought are based on facts and events which have occurred subsequent to the order of this Court. Not only on the basis of the principles of law laid down by this Court in *Gurdip Singh Uban and Abdul Kareem* (supra), even otherwise, the said I.As. would not be maintainable and the prayers made therein cannot be granted. The applicants seek to reopen concluded issues and alteration of the consequential directions which have attained finality. Such a course of action is not permissible and at best the parties may be left with the option of seeking such remedies as may be open in law to vindicate any perceived right or claim. We, therefore, dispose of the I.A. Nos.3-5, 14-15 and D.No. 37212 of 2013 in the above terms.

G 14. Insofar as I.A. Nos.12-13 of 2013 are concerned, Shri Shanti Bhushan, learned senior counsel for the applicants has submitted that an application seeking review of this Court's judgment dated 3.12.2012, to the extent prayed for in the I.As., has been filed. That apart, Shri Bhushan has drawn our attention

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to some typographical errors in the judgment dated 3.12.2012. A
We, therefore, deem it proper to consider the aforesaid I.As.
on a slightly different footing.

15. Insofar as typographical errors and the suggested B
corrections mentioned in para 8 of the I.As. are concerned, we
have examined the contents of the relevant paragraphs of the
judgment dated 3.12.2012. On such consideration, we find that
the errors pointed out by the applicants in para 8, indeed, have
occurred. Consequently, we correct the said errors in the
following terms.

(i) Para 2 of the judgment dated 3.12.2012 be read as C
follows :

"2. The appellants, Narendra Jain (original Plaintiff No.2),
and Arvind Jain (original Plaintiff No. 3) also claim to be D
the Legal heirs and representatives of the original plaintiff
No. 1 who had along with Narendra Jain and Arvind Jain
instituted suit No. 994/1977 in the High Court of Delhi
seeking a decree of specific performance in respect of E
an agreement dated 22.12.1970 executed by and
between original plaintiff No.1 (Bhikhu Ram Jain) and the
original defendants Anis Ahmed Rushdie in respect of a
property described as Bungalow No.4, Flag Staff Road,
Civil Lines, Delhi (hereinafter referred to as the 'suit
property'). The plaintiff Nos. 2 and 3 are the sons of the F
original plaintiff No.1. The suit was decreed by the learned
trial judge. The decree having been reversed by a Division
Bench of the High Court the present appeals have been
filed by the original plaintiff No.2, Narendra Jain and Arvind
Jain (original Plaintiff No.3) and the other appellants who G
claim to be vested with a right to sue on the basis of the
claims made by the original plaintiffs in the suit. It is,
however, made clear at the very outset that though all such
persons claiming a right to sue through the deceased
plaintiffs 1 and 3 are being referred to hereinafter as the H

A plaintiffs and an adjudication of the causes/claims espoused is being made herein the said exercise does not, in any way, recognize any right in any such impleaded 'plaintiffs' which Question(s) are left open for decision if and when so raised."

B (ii) In paragraph 4 of the judgment dated 3.12.2012 the date of the filing of the suit mentioned as 3.11.1997 be read as 3.11.1977.

C (iii) In paragraph 6 of the judgment dated 3.12.2012 the date 22.12.1977 be read as 22.12.1970.

(iv) Paragraph 8 of the judgment dated 3.12.2012 be replaced by following paragraph :-

D "8. Aggrieved by the aforesaid judgment and decree passed by the learned trial Judge, the original defendant had filed an appeal which was allowed by the impugned judgment dated 31.10.2011. During the proceedings of the appeal before the High Court the original plaintiff 1 as well as the original defendant had died. As already noticed, E while the original plaintiff No.2 and original plaintiff No.3 continue to remain on record as appellants, the remaining appellants claim to be the legal heirs/representatives of the deceased plaintiff No.1. In so far as the original defendant in the suit is concerned the legal representatives F of the said defendant are on record having been so impleaded."

G 16. This will bring the Court to a consideration of the prayer for clarification/modification of the direction for execution of the sale deed by the defendants in favour of the plaintiffs at the market price as on 3.12.2012. The first ground on which such modification has been sought is that during the pendency of the appeals all rights in the suit property have been transferred by the defendant-respondents to one Fine Properties Private H Limited for valuable consideration and therefore, the said

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defendant-respondents are not entitled to any relief much less the relief of the market value of the property. Additionally, it has been contended that instead of the defendant-respondents it is the Registrar of the Delhi High Court who should be directed to execute the sale deed in favour of the plaintiffs.

17. We have already observed that the facts surrounding the alleged transfer of the suit property or the rights over the said property by the defendant-respondents to Fine Properties Private Limited were not before the Court at the time of hearing of the appeals in question or even at the time when the judgment dated 3.12.2012 was rendered. Though the aforesaid facts along with the supporting documents were filed by way of an additional paper book no specific order of the Court was sought or granted to the appellants to rely on the said documents. In such circumstances, the aforesaid facts now sought to be brought on record cannot be a legitimate basis for any modification of our judgment even if the I.As. in question are construed to be applications for review of our judgment dated 3.12.2012.

18. The aforesaid prayer for modification is based on the additional ground that the same is contrary to the several decisions of this Court reference to which has been made in para 5 of the I.A. We do not consider the abovestated ground to be a justifiable or sufficient cause to alter our direction(s) for execution of the sale deed at the market price inasmuch as the said direction was passed by us in the peculiar facts and circumstances of the present case enumerated below.

19. In paragraph 10 of the judgment dated 3.12.2012, the statement made on behalf of the appellants (Plaintiffs) that they are ready and willing to offer an amount of Rs.6 crores for the property as against the sum of Rs.3.75 lakhs as mentioned in agreement dated 22.12.1970 has been specifically recorded. It is the aforesaid "offer" made on behalf of the appellants/ plaintiffs that had led to the direction in question inasmuch as no material was available to Court to find out as to whether the

A offered amount of Rs.6 crores was, in any way, indicative of the market value of the property. It is in such a situation that the direction to execute the sale deed at the market price and the request to the learned Trial Judge to determine the same came to be recorded in the judgment dated 3.12.2012. It is, therefore, clear that we did not intend to lay down any law of general application while issuing the direction for execution of the sale deed at the market price as on the date of the judgment i.e. 3.12.2012.

C 20. The exercise by the learned Trial Judge in terms of our judgment dated 3.12.2012 is yet to be made. The aforesaid determination, naturally, will be made by the learned single Judge only after affording an opportunity to all the affected parties and after taking into account all relevant facts and circumstances. Furthermore, any party aggrieved by such determination will be entitled to avail of such remedies that may be open in law to such a party. In view of the above, we do not deem it to be necessary to cause any variation or modification in the aforesaid direction contained in our judgment dated 3.12.2012.

E 21. Accordingly, I.A. Nos. 12-13 of 2013 shall stand disposed of in the above terms.

K.K.T.

IAs disposed of.