

Surender Kumar and ors Vs. Seema and ors

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Court : Delhi

Decided On : Oct-27-2014

Judge : G. S. Sistani

Appellant : Surender Kumar and ors

Respondent : Seema and ors

Judgement :

\$~43 * IN THE HIGH COURT OF DELHI AT NEW DELHI + EX.P. 158/2014 & EX. APPL.(OS) 514/2014 % Judgment dated 27.10.2014 SURENDER KUMAR & ORS Decree Holders Through: Ms. Vibha Mahajan Seth, Adv. versus SEEMA & ORS Judgement Debtors Through: None CORAM: HON'BLE MR. JUSTICE G.S.SISTANI G.S. SISTANI, J (ORAL) 1. None has appeared on behalf of judgment debtors despite the matter being passed over twice and called for the third time. When the matter was called for the second time counsel for decree holders was requested to inform the counsel for judgment debtors. Ms. Mahajan, counsel for decree holders states that she has spoken to counsel for judgment debtors on her mobile who informed her that he has not received instructions from the judgment debtors and would, thus, be unable to appear 2. Order dated 10.10.2014 of the Division Bench has been filed. As per the order this Court has been asked to decide as to which party is to receive the interest accrued on the sum of Rs.75.00 lacs which was deposited by the appellant (plaintiff) in this Court. It may be noticed that a consent decree was passed by the Division Bench on 13.03.2014. It would be necessary to reproduce paras 23 and 24 of the order

dated 13.03.2014 passed by the Division Bench:

23. As regards the appeal, we dispose of the appeal setting aside the impugned order dated September 06, 2012. The suit filed by Seema, Jagdish Chand and Sh. Purushottam Kumar would be decreed in terms of the consent order dated January 06, 2014 which shall be treated as the decree. Rs.84,00,000/- (Rupees Eighty Four Lacs only) payable by Surinder Kumar and his wife Kiran as also Prem Chand would be paid by Surinder Kumar and his wife Kiran. We record that subject to realization of the three cheques totalling Rs.9,00,000/- (Rupees Nine Lacs only) balance sum of Rs.75,00,000/- (Rupees Seventy Five Lacs only) would be paid by Surinder Kumar and his wife Kiran. The payment would be made within two months from today. The payment would be by means of a Pay Order. Simultaneously with the tender of the amount to Seema, Jagdish and Purshotam Kumar such portions of the suit property in their possession would be handed over to Surinder Kumar and his wife Kiran. Prem Chand would continue to reside along with Surinder Kumar and Smt.Kiran in the suit property. If Surinder Kumar and Kiran have an issue of Seema, Jagdish Chand and Purshotam Kumar not receiving the pay orders prepared by them they would be entitled to move an application before the learned Single Judge depositing the amount which they have to pay under the decree in this Court. In such eventuality the decree would be executed as regards possession against Seema, Jagdish Chand and Purshotam Kumar.

24. If there is any breach by Surinder Kumar and his wife Kiran in tendering balance sum of Rs.75,00,000/- (Rupees Seventy Five lacs only) within two months, the same shall bear interest @ 15% per annum reckoned from the date when the amount is payable till when payment is made and till the amount is tendered, possession of Seema, Jagdish Chand and Purshotam would be protected.

3. A reading of paragraphs 23 and 24 of the order would show that Shri Surender Kumar and his wife were to pay Rs.75.00 lacs to Smt. Seema, Sh. Jagdish and Sh. Purushottam Kumar within two months with the tendering of the amount, portions of suit property in their possession was to be handed over to Shri

Surender Kumar and his wife. In paragraph 24 it was made clear that should there be any breach in tendering the balance sum of Rs.75.00 lacs within two months, the same shall bear interest @15% p.a. reckoned from the date when the amount is payable till the payment is made and till such time the possession of Smt. Seema, Shri Jagdish and Sh. Purushottam would be protected.

4. Ms. Mahajan, counsel for the decree holders points out that prior to the lapse of two months two legal notices dated 11.04.2014 and 24.04.2014 alongwith the copies of the pay orders were issued to Smt. Seema, Shri Jagdish and Sh. Purushottam calling upon them to handover the possession and receive Rs.75.00 lacs. Copies of the notices, postal receipts and photocopies of bank drafts have been placed on record.

5. Attention of the Court is drawn to the reply received from Smt. Seema, Shri Jagdish and Sh. Purushottam Kumar dated 30.04.2014 wherein in para 3 the said three persons agreed to accept the bankers cheque but sought six months time to handover the possession. Consequent to the receipt of this reply, the present execution petition was filed and by the order passed by this Court Rs.75.00 lacs was deposited in this Court on 12.05.2014. The legal notices and the reply placed on record leave no room for doubt that Smt. Seema, Shri Jagdish and Sh. Purushottam were not willing to handover the possession to the plaintiff/decreed holders in terms of the order of the Division Bench dated 13.03.2014. Consequently, being defaulters the said three persons cannot claim interest on the sum of Rs.75.00 lacs. The interest accrued on this amount shall be released in favour of the decree holder No.1 and 3 equally without any further notice to the judgment debtor.

6. Execution petition is disposed of in above terms. G.S.SISTANI, J OCTOBER27 2014 ns

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