

Manali Singhal & Anr vs.ravi Singhal & Ors

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Court : Delhi

Decided On : May-16-2017

Appellant : Manali Singhal & Anr

Respondent : Ravi Singhal & Ors

Judgement :

* % + IN THE HIGH COURT OF DELHI AT NEW DELHI Date of Decision:

16. h May, 2017. EX.P. No.209/2000, EA No.885/2012 & EA No.400/2016 (both of judgment debtors under Section 47 CPC). MANALI SINGHAL & ANR. Decree Holders Through: Mr. Saurabh Kirpal, Mr. Deepak Singh Rawat and Mr. Santosh Sachin, Advs. versus RAVI SINGHAL & ORS Judgment Debtors Through: Mr. Abhimanyu Bhandari, Mr. Tanmaya Mehta, Mr. Ankit Virmani, Mr. Rinkel Singh and Mr. Krishan Tewary, Advs. CORAM: HON'BLE MR. JUSTICE RAJIV SAHAI
ENDLAW1 Execution is sought of the order dated 28th October, 1998 (in IA No.11261/1997, IA No.2634/1998 and IA No.2635/1998 in CS(OS) No.2583/1997) by attachment of moveable and immoveable properties of the judgment debtors (JDs) including rent yielded by the said properties, and sale thereof.

2. The execution petition, pending for the last more than 17 years, along with a number of applications filed therein came up before the undersigned on 24th August, 2016 when the following order was passed:-

"1. The counsel for the decree-holder states that this execution is of order dated 28th October, 1998 in CS(OS) No.2583/1997 and the aspect today for consideration is execution of Para 40 of the said order whereby the defendants / judgment debtors were directed to provide a residence to the EX.P. No.209/2000 Page 1 of 19 plaintiff as agreed upon in the family settlement dated November 04, 1994 (vide Clause 4), within two months thereof. It is further stated that in the execution of the said para 40 of the order, the farmhouse of the judgment debtors at Samalkha was attached and has been ordered to be sold but the sale has not been effected as yet. EA No.673/2000 (of the decree holder under Order 21 Rule 13 CPC) 2. This application was filed seeking a direction to the judgment debtors to disclose complete list of their movable and immovable properties and for attachment of the said properties.

3. Now that the attachment of one of the properties has been effected and the same has been ordered to be sold, this application is disposed of with liberty to the decree-holder to apply again if occasion therefor arises. EA No.674/2000 (of the decree-holder for impounding the passport of the judgment debtors) 4. Dismissed as not pressed. EA No.543/2001 (of the decree-holder under Section 151 CPC) 5. Vide this application sale of the farmhouse at Samalkha was sought. The same having already been ordered, this application has also become infructuous and is disposed of. EA No.330/2008 (of the judgment-debtor no.1 for setting aside of the order dated 21st July, 2008) 6. The counsel for the judgment debtors have no idea of this application.

7. Dismissed. EA No.529/2010 (of the judgment debtors under Section 151 CPC) 8. By dismissal of the execution with costs.

9. The counsel for the judgment debtors states that this application has been disposed of vide order dated 2nd July, 2012.

10. Be not shown in the cause list. judgment debtors sought this application, the EX.P. No.209/2000 Page 2 of 19 to be sold have been deposited EA No.722/2012 (of the decree-holder under Sections 151 & 152 of the CPC) 11. By this application the proclamation order dated 29th August, 2011 was sought to be corrected.

12. The counsel for the decree-holder states that the application has become infructuous.
13. The application is disposed of. EA No.742/2012 (of the decree-holder under Section 151 CPC) 14. By this application, the decree-holder sought a direction to the judgment debtors to deposit the sale deeds, of the farmhouse which was attached and ordered to be sold, in this Court.
15. The counsel for the judgment debtors states that all the sale deeds of the farmhouse which have been attached and ordered in EFA(OS) No.30/2012 which has been disposed of.
16. This file as well as File of EFA(OS) No.30/2012 be put before the Joint Registrar on 29th August, 2016 at 1600 hours, on which date the parties will identify the sale deeds on the record of EFA(OS) No.30/2012 and the Registry is directed to make certified copies of the said documents / sale deeds and place the certified copies on record of EFA (OS) No.30/2012 and place the original sale deeds / documents on the file of this execution.
17. A copy of this order be also placed on the file of EFA(OS) No.30/2012.
18. With the aforesaid directions, the application is disposed of. EA No.885/2012 & EA No.400/2016 (of the judgment debtors by way of objections to the execution)
19. The senior counsel for the decree holders and the counsel for the judgment debtors have been heard at length.
20. Though EA No.885/2012 was filed by way of objection but now the judgment debtors vide EA No.400/2016 have offered to comply with para 40 of the order dated 28th October, 1998, of which execution is sought and have offered EX.P. No.209/2000 Page 3 of 19 the houses as listed in EA No.400/2016.
21. The following propositions emerge: (I) Whether the house to be provided by the judgment debtors is to be on ownership basis or can be a rented house?. The counsel for the judgment debtors has contended that since the order of which execution is sought is in the nature of interim order and which is capable of being set aside in the final judgment, the house cannot be on ownership basis and the to

provide rented accommodation to the decree holders. judgment debtors are entitled Prima facie it appears that since the order of which execution is sought, though an interim order, links the directions contained therein to the Family Settlement dated 4th November, 1994 and the said Family Settlement provides that the decree holder No.1 will have a life interest in the said house and the corpus thereof shall belong to the decree holder No.2, accordingly the house to be provided has to be on ownership basis and cannot be on rental basis. The only effect of it being held in the final judgment that the decree holders are not entitled to the house, would be that the life interest and corpus shall not vest the decree holders No.1&2 respectively and the house shall remain in the ownership of the judgment debtors. (II) If the parties are unable to arrive at a consensus as to the house which is to be so provided, whether the order is to be executed by sale of the properties of the judgment debtors already attached or the Court can determine as to what accommodation would qualify as reasonable?. (III) Whether the house to be provided has to be an independent house or can be a flat?. in Prima facie it is felt that the use of the word house would not indicate that it will necessarily be a bungalow, as the house in which the judgment debtors were residing and which was the matrimonial house of the decree holder No.1 and can be a flat also. (IV) If the execution is to be by proceeding with the sale of the properties attached of the judgment debtors, what portion of the sale proceeds thereof, if any, is to be appropriated in EX.P. No.209/2000 Page 4 of 19 3. favour of decree holders towards the satisfaction of the execution of para 40 of the order dated 28th October, 1998?.

22. The counsels to consider on the aforesaid aspects and come forward with their proposals and argue on the aforesaid propositions.

23. List for further hearing on 2nd September, 2016.

24. The interim orders, as in force, to continue. The counsels were heard thereafter on 14th September, 2016, 19th October, 2016, 16th November, 2016, 6th December, 2016 and 19th December, 2016 when orders were reserved.

4. Before proceeding further, it is deemed apposite to give certain background.

5. The CS(OS) No.2583/1997, of order dated 28th October, 1998 wherein execution is sought, was instituted by the two decree holders (DHs) against the husband of the DH no.1 / father of the DH no.2 and his Hindu Undivided Family (HUF) and against his other family members inter alia for specific performance of the Memorandum of Settlement dated 4th November, 1994. The Memorandum of Settlement dated 4th November, 1994 was executed by the parties to suit/this execution in the backdrop of the husband of the DH no.1 desiring separation from the DH no.1 and for that purpose moving out of the matrimonial home, as a result whereof the DHs were forced to move to the house of the parents of the DH no.1, and to arrive at a settlement with regard to certain matters so that incidence of differences can be reduced and security provided to the DHs. Operative part of the said document is as under:-

"NOW THEREFORE THIS MEMO proceeds to accurately record this settlement arrived at between the EX.P. No.209/2000 Page 5 of 19 parties on 4.11.1994:-

"1. That in discharge of filial obligations and other liabilities the husband as also the grand father and grand mother (including their HUF) agreed to provide a residential house in South Delhi consisting of a drawing room, dining room, three bed rooms, a servant quarter and a garage to the wife and the daughter in which the wife could have a life interest and corpus would belong to the daughter. The house maintenance and running expenses will also be provided by them. The maintenance of the house which has been provided include electricity, water and general maintenance including property tax. In addition thereto they agreed to provide a sum of 2. Rs.40,000/- (Rupees forty thousand only) per month free of income tax for the maintenance and upbringing of the daughter as also some money towards maintenance of wife. This amount of Rs.40,000/- would escalate in future years as the cost of living increases.

3. That the minor daughter will stay with the mother and in her custody.

4. That the house will be provided within a period of three months and it will be chosen by the wife and will be to her satisfaction and the maintenance will be provided from month to month from this date.

5. In addition to this the husband shall provide the wife and daughter a new car every three years for the use of the wife and daughter. If the car is in the ownership of the wife the sale price thereof shall be adjusted while buying a new car.

6. That in addition to the school and college education if the daughter at any state is to be educated abroad, the husband shall provide and be liable to pay the full expenses of the education of the daughter anywhere in India or abroad.

7. The husband shall provide for a fully paid vacation once a year for a period of thirty days to the daughter and wife. The expenditure towards this vacation shall be borne by the husband in full and will be commensurate with a first class EX.P. No.209/2000 Page 6 of 19 holidays of the choice of the wife and the daughter.

8. That the husband shall provide for all necessary medical expenses of the wife and daughter regardless of whether such medical expenses would be made in India or abroad.

9. That the husband is morally bound and agrees to provide at the time of the marriage of the daughter for all the expenses that would be incurred then. 6. IA No.11261/1997 was filed by the DHs/plaintiffs under Section 151 CPC for maintenance and interim measures. IA No.2634/1998 was filed by the JDs/defendants for recall of earlier order dated 15th December, 1997 in the suit directing the defendants to disclose on affidavit their assets. IA No.2635/1998 was filed by the JDs/defendants under Order VII Rule 11 of CPC.

7. Vide order dated 28th October, 1998, (of which execution is sought) IAs No.2634/1998 & 2635/1998 of defendants were dismissed and IA No.11261/1997 of DHs/plaintiffs allowed. We are now concerned with the execution of paras 37 to 40 of the order dated 28th October, 1998 allowing IA No.11261/1997 of the DHs/plaintiffs. The said paras are as under: 37. The plaintiffs are thus entitled to succeed. The interim maintenance is fixed at Rs.40,000/- per month in view of the settlement dated November 4, 1994. The defendants are liable to pay the maintenance fixed at the abovesaid rate from January 1, 1997 onwards. The defendants are directed the arrears of maintenance for the period from January 1,

1997 to September 30, 1998 at the rate of Rs.40,000/- per month amounting to Rs.8,40,000/- within two months from today. to clear 38. The defendants are further directed to pay future maintenance, month by month, at the rate of Rs.40,000/- EX.P. No.209/2000 Page 7 of 19 per month, on or before the 5th day of every English calendar month.

39. The defendants would also pay and deposit the school fees and other charges in connection with the studies of plaintiff No.2 straightaway with the school wherever she might be studying. The defendants are further directed to provide a 40. residence to the plaintiffs as agreed upon in the family settlement dated November 4, 1994 (vide clause 4), within two months from today. 8. That much for the backdrop. Now back to the present.

9. While the contention of the counsel for the DHs, in the hearings pursuant to the order dated 24th August, 2016 re-produced above, was that the questions as formulated therein already stand decided vide several orders in the proceedings, it was the contention of the counsel for the JDs that in none of the earlier orders the matter has been looked at in the perspective formulated in the order dated 24th August, 2016 and the issues as stated therein are still at large.

10. The counsel for DHs contended that in this Execution Petition, on failure of the JDs to comply with para 40 aforesaid of the order dated 28th October, 1998, to provide a residence to the DHs as agreed upon in Memorandum of Settlement / Family Settlement dated 4th November, 1994, the farm house of the JDs at Village Smalka has been attached and ordered to be sold and now only remains to be sold and the pleas urged by the JDs on 24th August, 2016 and the three proportions emerging wherefrom were recorded in the order dated 24th August, 2016 have been agitated by the JDs in several rounds of litigation till the Supreme Court in the past and the said EX.P. No.209/2000 Page 8 of 19 pleas cannot be now urged yet again and the JDs are barred and estopped from doing so and this Court cannot proceed to adjudicate the said proportions owing to principles of res judicata and constructive res judicata and issue estoppel.

11. The counsel for the DHs in support of his plea drew attention to:-

"(i) judgment dated 28th July, 2000 of dismissal of FAO(OS) No.9/1999 preferred against the order dated 28th October, 1998 of which execution is sought; (ii) order dated 1st October, 2001 of the Supreme Court of dismissal of Civil Appeal Nos.6955-56/2001 preferred by the JDs against the dismissal of their appeal aforesaid, refusing to interfere in the orders; (iii) order dated 14th November, 2000 in this execution proceedings of attachment of farm land ad measuring 21 bighas and 20 biswas at Smalka Village, Delhi of the JDs for failure to comply with the order dated 28th October, 1998 of which execution was sought; (iv) order dated 2nd April, 2002 in this execution proceedings of issuance of proclamation of sale of the farm house aforesaid, on failure of the JDs to comply with the order dated 28th October, 1998 of which execution was sought; (v) order dated 25th May, 2004 of the Division Bench in FAO(OS) No.130/2002 of dismissal of appeal against the order dated 2nd April, 2002 of issuance of proclamation of sale; EX.P. No.209/2000 Page 9 of 19 (vi) order dated 16th September, 2005 of the Supreme Court in SLP (C) No.20393/2004 preferred by the JDs against the dismissal of appeal vide order dated 25th May, 2004 supra recording the offer of the JDs of a flat in Safdarjung Development Area to the DHs in compliance of para 40 of the order dated 28th October, 1998 and non acceptance thereof by the counsel for the DHs stating that it was not having adequate facilities and was not in terms of the order dated 28th October, 1998 and further recording that the counsel for the JDs sought time to obtain further instructions; (vii) order dated 20th April, 2007 of the Supreme Court of withdrawal of SLP (C) No.20393/2004 by the JDs; (viii) order dated 4th May, 2010 in this execution proceedings recording the consent of the counsel for the DHs and the counsel for JDs that the DHs shall identify an immoveable property which is comparable to the marital house in which the DH No.1 lived with her daughter prior to separation and enabling the DHs to file proposals with regard to such properties in this Court; (ix) EA No.529/2010 filed by the JDs for dismissal of the execution petition on the grounds that (a) the DHs though offered residential accommodation at C-5/12, Safdarjung Development Area, New Delhi, refused to accept the same; and, that (b) the obligation of the JDs under the order dated 28th October, 1998 of which execution is sought is only to provide a residence and EX.P. No.209/2000 Page 10 of 19 as per law the words flat, home, and residence have the same meaning and the DHs are thus not

justified in refusing the residence offered by the JDs; (x) judgment dated 2nd July, 2012 in this proceedings recording:-

"(a) that notwithstanding the objections filed by the JDs to this execution on the ground that the attached agricultural land cannot be sold or divided or partitioned in execution, proclamation of sale was issued; (b) that FAO(OS) No.130/2002 preferred against the issuance of proclamation of sale was dismissed; (c) that in SLP (C) No.20393/2004 preferred thereagainst to the Supreme Court though the JDs offered property No.C-5/12, Safdarjung Development Area, New Delhi and the same was not accepted by the DHs but the JDs thereafter on 20th April, 2007 withdrew the SLP; (d) EFA(OS) No.5/2002 also preferred against the issuance of proclamation of sale, on the ground that the objections to execution filed had not been decided, was disposed on 26th April, 2010 without interfering with the order of proclamation of sale; (e) thereafter, on 4th May, 2010 the JDs agreed to let DHs identify the property comparable to matrimonial home; (f) though the DHs gave certain proposals, but the JDs EX.P. No.209/2000 Page 11 of 19 sought time to examine the same; (g) thereafter the JDs filed EA No.529/2010 supra; (h) that it was the contention of the JDs (i) that the residences proposed by the DHs were of the value of Rs.45 to 60 crores and beyond the means of the JDs; (ii) that they were still willing to give the house in Safdarjung Development Area and the DHs in execution were not entitled to anything more as the order dated 28th October, 1998 of which execution is sought is only an interim order; (iii) that the order dated 28th October, 1998 of which execution is sought does not give the DH-1 the right to choose the house; holding:-

"(i) that the nature of the house has been dealt with in the order dated 28th October, 1998 and Memorandum of Settlement dated 4th November, 1994, as being a house consistent and comparable with the living standards the plaintiffs had at 24, Olof Palme Marg, Vasant Vihar, New Delhi; (j) the offer by the JDs of a flat does not conform to either of these stipulations; (k) that the second floor flat in Safdarjung Development Area which was offered had been specifically mentioned in the orders of the Supreme Court in the SLP filed by the EX.P. No.209/2000 Page 12 of 19 JDs; (l) in terms of the consent order dated 4th May, 2010, the DHs had identified (i) property no.71, Poorvi Marg, Vasant Vihar; (ii) property No.B4/6,

Vasant Vihar; (iii) property no.57, Paschami Marg; (iv) property no.53, Jor Bagh; and,(v) property no.H-15, Maharani Bagh but which had not been accepted by the JDs; (m) that the JDs having failed to comply with the order dated 28th October, 1998, law permitted execution by attachment and sale of the properties of the JDs and which had also been upheld by the Supreme Court; (n) that the offer of the JDs is not in terms of the order dated 28th October, 1998 of which execution is sought; and, accordingly, afresh proclamation of sale of the attached property was ordered to be drawn up and a Receiver appointed to sell the property; (xi) order dated 29th August, 2012 of this Court drawing up the proclamation of sale; (xii) order dated 3rd September, 2012 of dismissal of the petition for review of the judgment dated 2nd July, 2012 supra; (xiii) order dated 22nd April, 2016 of dismissal of EFA(OS) No.30/2012 against the orders dated 2nd July, 2012 and 3rd September, supra; and, (xiv) order dated 13th May, 2016 of dismissal as withdrawn of SLP EX.P. No.209/2000 Page 13 of 19 (C) No.13652/2016 preferred by the JDs against the order dated 22nd April, 2016 supra.

12. The counsel for DHs, on the basis of the aforesaid argued (i) that each time when the sale is imminent, applications as EA No.885/2012 and EA No.400/2016 are filed; (ii) that in the earlier orders all the contentions stand concluded and the principles of res judicata and constructive res judicata apply and only the sale of the farmhouse of the JDs remains; (iii) this is the fourth round of litigation on the same aspect; (iv) that EA No.885/2012 and EA No.400/2016 are by way of relitigation; attention was drawn to the SLP (C) No.13652/2016 last filed by the JDs to contend that the same grounds as urged before this Court were urged therein also and did not find favour with the Supreme Court; (v) that the arguments now raised are estopped; and, (vi) reliance was placed on (a) Forward Construction Co. Vs. Prabhat Mandal (Regd.), Andheri AIR 1986 SC391 (b) Ishwar Dutt Vs. Land Acquisition Collector (2005) 7 SCC190 and, (c) Kale Vs. Deputy Director of Consolidation (1976) 3 SCC119 13. Per contra, the counsel for the JDs (i) invited attention to the pleadings in EA No.400/2016; (ii) contended that sale of the properties of the JDs cannot be proceeded with without first giving a direction to the JDs to provide a particular residence to the DHs; (iii) that in the matrimonial home where the DHs were earlier residing, the entire family of the husband of the DH-1 was residing and the DH-1 and her husband were only in

occupation of barsati in the said house; (iv) that the DHs cannot thus seek the same accommodation as the entire family of JDs was occupying; (v) that if there is any ambiguity in the Memorandum of Settlement, the DHs have to face the EX.P. No.209/2000 Page 14 of 19 consequences thereof as the DH No.1 is the author of the said document; (vi) that the Memorandum of Settlement does not use the words kothi or bungalow; (vii) that it is only a kothi or bungalow which is understood as an independent residential unit; (viii) reliance was placed on The Tata Engineering and Locomotive Company Ltd. Vs. The Gram Panchayat, Pimpri Waghere (1976) 4 SCC177 and on Black's Law Dictionary; (ix) the propositions as have been highlighted in the order dated 24th August, 2016 have never been framed or dealt with in any of the earlier orders; (x) that the purport of the JDs is not to delay execution but to satisfy the order under execution and at the same time not allow their farmhouse to be sold; (xi) that the JDs have till date not been told as to how they are required to satisfy the order; (xii) it is not as if the execution petition has been decided; it is still pending and all issues are still at large; (xiii) estoppel and res judicata have the same purport in law and are not different from each other; (xiv) in the earlier orders, the issues as framed in the order dated 24th August, 2016 have not been dealt with. Reliance was placed on (i) Mathura Prasad Bajoo Jaiswal Vs. Dossibai N. B. Jeejeebhoy 1970 (1) SCC613 (ii) Order XXI Rule 32(5), 66 (2)(d); (iii) Pandurang Ramchandra Mandlik Vs. Shantibai Ramchandra Ghatge 1989 Supp. (2) SCC627 (iv) Fidelita Shipping Co. Ltd. Vs. V/o Exportchleb (1965) 2 WLR1059(C.A.); and, (v) C.A. Turner Vs. The London Transport Executive (1997) ICR952(C.A.). In the written submissions subsequently filed, reference is also made to (a) Bhavan Vaja Vs. Solanki Hanuji Khodaji Mansang (1973) 2 SCC40 (b) Sajjadanashin Sayed Md. B.E. EDR. Vs. Musa Dadabhai Ummer (2000) 3 SCC350 and, (c) City Municipal Council, Bhalki Vs. Gurappa (2016) 2 SCC200 EX.P. No.209/2000 Page 15 of 19 14. The counsel for the DHs contended (i) that in the last about 17 years since when this execution is pending, the understanding always was of the residence as directed in the order dated 28th October, 1998 of which execution is sought being purchased and the JDs for the first time in EA No.400/2016 are contending that they will not purchase but take on rent; (ii) it is not open to the JDs to do so; and, (iii) issue estoppel is a personal bar and res judicata is qua the cause of action; reliance was placed on

Ishwar Dutt supra.

15. The counsel for JDs also drew attention to Kunhayammed Vs. State of Kerala (2000) 6 SCC359 16. Having considered aforesaid contentions and gone through the record, I agree with the counsel for DHs that the propositions No.(II) and (III) as formulated in order dated 24th August, 2016 have been expressly dealt with in the earlier orders supra and it is not open for me at this stage, seventeen years after the institution of this execution petition and nineteen years after the order under execution, to proceed to adjudicate, whether the residence which the JDs have been directed to provide to the DHs as agreed upon in the Family Settlement dated 4th November, 1994 is to be an independent property or a flat therein. The said question has been gone into at several stages, culminating in the agreement on 4th May, 2010 that the DHs will identify the immovable property comparable to the matrimonial home in which the DHs earlier lived. It is now not open to the JDs to call upon this Court to adjudicate that they, in compliance of order under execution, are entitled to offer a flat to the DHs. Similarly, it is now not open to the JDs to call upon this Court to adjudicate, whether the order under execution is to be EX.P. No.209/2000 Page 16 of 19 executed by sale of the property of the JDs. Not only has the property been attached but proclamation of sale thereof ordered to be issued twice over and challenge thereto in appeals has failed. The counsel for DHs is indeed right in contending that the JDs are indulging in re-litigation.

17. As far as the proposition no.(I) formulated in the order dated 24th August, 2016 is concerned, though I do not find the same to have been dealt with in any earlier orders but do find that the residences offered in the past and even now to the DHs in compliance of the order dated 28th October, 1998 (of which execution is sought) have been on ownership basis. I also agree with the counsel for the DHs that the JDs having not taken the plea at any point in the past 17 years, are now not entitled to do so. Admittedly, the JDs have filed objections to the execution in the past. The JDs at one stage even contended that proclamation of sale of property of JDs has been ordered to be issued without disposal of their objections. However that also did not meet with any success. The JDs, on 24th August, 2016 also stated that though they have preferred EA No.885/2012 by way of objection but were now, by way of EA No.400/2016 offering to comply, again not pressing

their objection by way of EA No.885/2012. However the offer to comply is by offering a flat and which has not been accepted in the past and is thus no offer to comply with the order under execution. If such a course of action were to be permitted, no proceedings would attain finality. A JD cannot be permitted to deprive the DH of the relief granted by raising fresh pleas, after the same pleas earlier taken have been rejected.

18. Though I have hereinabove given reasons for proposition (I) to be not open to adjudication but may only add that vide Clause (i) of Memorandum EX.P. No.209/2000 Page 17 of 19 of Settlement dated 4th November, 1994 the JDs agreed to provide to the DHs a residential house in which the wife could have a life interest and corpus would belong to the daughter. Not only so, the JDs also agreed to provide maintenance of such house, including property tax. There would have been no question of life interest, Corpus or payment of property tax of a tenanted house and there can be no iota of doubt that the Settlement recorded in the Memorandum was of providing a residential house on ownership basis. The conduct of the JDs, on 24th August, 2016 contending otherwise, taking advantage of absence of senior counsel for DHs at the commencement of hearing is found to be mala fide and dilatory, to deprive the DHs, of which DH No.2 is the daughter of JD No.1, of what JDs agreed to give 23 years ago.

19. As far as the plea of the counsel for JDs, of the matter/issues, in the past having not been crystallised as done in the order dated 24th August, 2016 is concerned, it is not the language or the form which is determinative of whether an issue has been agitated and dealt with in the past and thus not open for adjudication. The execution proceedings themselves, in the 17 years for which they are pending, have passed through the pen of scores of Judges each of whom has his/her own ways of judgment/order writing. Reference in this regard can be made to Rohit Shekhar Vs. Narayan Dutt Tiwari AIR2012 Del 151(DB). What has to be seen is, whether or not a plea earlier taken or open to being taken, has been accepted or not and whether the proceeding has travelled beyond the stage when the plea ought to have been taken. Seen in this light, neither of the pleas now urged by the JDs and on which propositions were framed in the order dated 24th August, 2016 EX.P. No.209/2000 Page 18 of 19 arise for adjudication at this

stage.

20. That leaves only the proposition no.(IV) formulated in the order dated 24th August, 2016. This aspect, I am of the view is not to be considered at this stage and will be subject matter of decision after the sale is effected.

21. Accordingly, EA No.885/2012 and EA No.400/2016 are dismissed.

22. Proclamation of sale as drawn up vide order dated 29th August, 2012 be immediately given effect to and the Receiver already appointed to proceed to sell the property before the next date of hearing.

23. Liberty is also given to the DHs to apply for warrants of possession to remove the JDs from the property, to enable the property to fetch the market price.

24. The JDs are also directed to, as and when directed by the Receiver already appointed to sell the property, give access to prospective purchasers of the property and allow inspection of the property.

25. List on 25th July, 2017. RAJIV SAHAI ENDLAW, J.

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