

(2020) 08 DEL CK 0111

In the Delhi High Court

Case No : Civil Suit (OS) No. 34 Of 1977, Miscellaneous Application No. 487,
860, 14786, 15583 Of 2019, 5697 Of 2020

Dewan Izzat Rai Nanda Thru Lr's

APPELLANT

Vs

Dewan Iqbal Nath Thru Lr's And Ors

RESPONDENT

Date of Decision : 25-08-2020

Acts Referred:

Citation : (2020) 08 DEL CK 0111

Hon'ble Judges : V. Kameswar Rao, J

Bench : Single Bench

Advocate : Arvind Kumar Gupta, Ritesh Khatri, Rajeev Sharma, D. Moitra,
Manish Sharma, Jigyasa Sharma

Judgement

V. Kameswar Rao, J

I.A. 5697/2020

1. By this order I shall decide this application filed by Radha Soami Satsang Beas (â??Beasâ?? in short) (applicant / defendant no.1) with the

following prayers:

â??WHEREFORE, in the light of facts and circumstances stated herein above, it is most humbly and respectfully prayed that this

Honâ??ble court may graciously be pleased to direct the appropriate office / registry I branch of this Hon'ble court to release the amount

of money qua 9 /48th share of the Applicant / Defendant No. 1, in the money lying deposited with High court against auction sale of RS

Pura Property; and or pass such other and or further order / direction that this Hon'ble court may deem it fit and proper in interest of

justice.â??

2. It is the case of Beas in the application and so contended by Mr. Ritesh Khatri, Advocate that the aforesaid suit being CS (OS) 34/1977, was for

partition in which preliminary decree was passed on July 17, 1998; and it was finally adjudicated on August 16, 2016. One of the properties which was

subject matter of partition was the property situated in Tehsil R.S. Pura, Jammu. The said property was put up for auction and bid of the auction

purchaser was accepted for a sum of Rs.18 Crores and this amount was deposited in this High Court, and has not been disbursed till date. In the final

decree dated August 16, 2016 this Court has in para 15 stated as under:

â??15. In this view of the matter, a final decree for partition is passed in the suit directing the partition by sale of all the properties subject

matter of the suit and distribution of the sale proceeds amongst the parties in accordance with their share under the preliminary decree and

with the following further directions:

(I) The original title document/s with respect to the property / and which have been auctioned to Lala Amar Nath Choudhary lying deposited

in this Court be released in favour of the auction purchaser Lala Amar Nath Choudhary himself (it is clarified that option has been given to

the counsel for auction purchaser for the documents to be handed over to him but he has refused and stated that he would like the auction

purchaser to personally come and collect the papers from the Court);

(II) List the matter for the said purpose before the Joint Registrar on 26th August, 2016 at 1600 hours;

(III) The auction purchaser Lala Amar Nath Choudhary is empowered by this Court to do all acts / deeds before the Courts / Authorities at

Jammu & Kashmir to have the land admeasuring 108 kanals and 9 marlas situated at Tehsil R.S. Pura, District Jammu transferred in his

own name; (IV) The amount of Rs.18 crores deposited by the auction purchaser in this Court together with interest accrued thereon be

disbursed by the Registry in favour of the parties to the suit in accordance with their share as per the preliminary decree;

(V) The parties to the suit, on the next date of hearing as aforesaid, before the Joint Registrar to give a joint statement of the share of each

of the parties in the said amount of Rs.18 crores along with the name/s in which the cheque/s is/are to be drawn by the Registry;

(VI) The Joint Registrar to, in the order of that date, clarify the said position and instruct the Registry accordingly.

(VII) Liberty is also given to the auction purchaser to, in the case of any difficulty encountered or if any further power being required,

approach this Court therefor and if any defect is found in the title of the parties to the suit, to intervene in the execution of this suit vis-a-vis

the other properties of the parties, for recovery of the price paid by him and for such other relief for which he may be entitled to.â??

3. The aforesaid order / decree was challenged by the auction purchaser in an appeal being RFA (OS) 68/2016. The said appeal was rejected on

December 13, 2018. Mr. Khatri, also submitted that the auction purchaser later approached the Honâ??ble Supreme Court in SLP (C) 786/2019

which was decided by the Honâ??ble Supreme Court on September 20, 2019 whereby the Honâ??ble Supreme Court has directed that in order to

safeguard the interest of the auction purchaser, the respondents therein (who are plaintiff and defendants herein) shall furnish Bank Guarantee pari

pasu to the extent of their interest, the same to be kept alive till the title is cleared and also to furnish an undertaking to pay money along with the

amount of the interest, as may be ordered in case the refund of the auction money is required.

4. He stated that the defendants will cooperate with the auction purchaser for the due execution of the decree. The Beas, applicant herein

(applicant/defendant No.1) has submitted the bank guarantee which has been duly verified and marked as Ex.D1X4 by the order of the Joint Registrar

(Judicial) on March 04, 2020. Despite that the money has not been released to the applicant herein.

5. In fact, he submitted that the execution of the sale deed has been delayed by the auction purchaser for one or the other reason. He stated that the

parties to the suit have always supported the auction purchaser for getting the sale deed registered. In substance, he submitted that the condition

imposed by the Honâ??ble Supreme Court vide its order dated September 20, 2019 has been satisfied as the undertaking has already been given by

the Beas (applicant / defendant No.1), which is on record.

6. He highlighted the fact that during COVID-19, the applicant / defendant No.1 had extensively become part of social activities in providing large

sheds as temporary quarantine centres for affected people, shelters for lacs of migrants, helping the society at large. That apart, it is providing food

arrangements for lacs of people, inasmuch as the Delhi centres were processing about 2.5 lacs and 3 lacs food packets on daily basis for the period

April to mid June. In other words, the funds, if made available by this Court at this needy hour shall be used for the benefit of the society at large.

Already, due to the bank guarantee, a large amount of Beas (applicant / defendant No.1) has also got stuck with their bankers.

7. Mr. Manish Sharma, learned counsel for the auction purchaser would submit that the auction purchaser has already submitted a sum of Rs.18

Crores towards the sale consideration of the property situated in R.S. Pura, Jammu with the Registry of this Court. Vide order dated November 10,

2014, the sale was affirmed in favour of the auction purchaser and it had been further directed that the receiver shall ensure that the sale deed is

executed in favour of the auction purchaser by December 16, 2014.

8. He conceded to the fact that the suit was finally decreed on August 16, 2016. He also conceded to the fact that the auction purchaser had filed an

appeal being RFA (OS) 68/2016, which was dismissed by the Division Bench of this Court on December 13, 2018. That apart, he also referred to the

proceedings before the Honâ??ble Supreme Court initiated by the auction purchaser. He also stated that despite being aware of the directions of the

Honâ??ble Supreme Court in terms of order dated September 20, 2019 neither plaintiffs nor the defendants herein have complied with the order

within the time directed by the Honâ??ble Supreme Court. It was Beas (applicant / defendant No.1) only, which belatedly filed a bank guarantee and

that also not for complete amount. None of the other parties to the proceedings have till date deposited / furnished the bank guarantee in terms of their

respective shares neither have they submitted the undertaking and nor have executed the sale deed with respect to the subject land in favour of the

auction purchaser.

9. In fact, an application was filed before the Honâ??ble Supreme Court seeking modification of order dated September 20, 2019 by the plaintiffs and

the defendants to the extent of removal of the condition of depositing bank guarantees, however the said application was dismissed. Even thereafter

none of the parties except Beas (applicant/defendant No.1) who holds 9/48th

share in the subject property (situated in Tehsil R.S. Pura, Jammu) has filed the bank guarantee with respect to their share of the sale consideration.

10. According to Mr. Sharma, the bank guarantee on behalf of defendant No.1 is also defective. The order dated September 20, 2019 specifically

directed that the parties were to furnish bank guarantee for their respective shares along with their share of the interest. Even though the bank

guarantee of defendant No.1 is worded in a manner which states that the bank guarantee is towards the share of the defendant No.1 along with its

share of the interest, the amount of the bank guarantee is only equivalent to the share of the defendant No.1 in the sale proceeds. He also stated that

the allegation, the auction purchaser never approached the Sub-Registrar, Jammu for registration of the sale deed is denied.

11. On the aspect of release of amount to Beas, (applicant/defendant No.1) he stated that the release of the auction money / sale consideration on a

pro-rata basis cannot be allowed. In fact, the Honâ??ble Supreme Court while directing the bank guarantees be furnished in order to safeguard the

interest of the auction purchaser has nowhere permitted release of the sale consideration in piecemeal. According to Mr. Sharma, as the defendant

No.1 holds only 9/48th share in the subject property situated at R.S. Pura, Jammu, and release of sale consideration equivalent to the share of the

defendant No.1, while not securing the balance sale consideration by way of bank guarantees shall cause grave prejudice to the auction purchaser, as

he has still not been able to enjoy the subject property even after having paid the sale consideration six years ago. He also stated that no fault lies with

the auction purchaser for not getting the sale deed executed. In substance, he opposes this application.

12. Having heard the learned counsel for the parties, at the outset, it may be stated that Mr. Manish Sharma has conceded that the Beas (applicant /

defendant No.1) is a beneficiary of 9/48th share in the property in question in view of its impleadment in the Suit vide order dated April 03, 2007 of this

Court. He also conceded the fact that in appeal and in SLP before the Honâ??ble Supreme Court, the Beas (applicant / defendant No.1) was a party

and that Beas had even filed an application before the Honâ??ble Supreme Court for extending the time to deposit / furnish the bank guarantee

which was allowed by the Honâ??ble Supreme Court and pursuant to which, Beas

(applicant / defendant No.1) has deposited / furnished the bank guarantee which has been exhibited by the learned Joint Registrar as Ex.D1X4 .

13. Having said that the auction purchaser through counsel Mr. Manish Sharma has opposed the application primarily on the grounds:

(i) The bank guarantee on behalf of the defendants is also defective, as the amount of the bank guarantee is only equivalent to the share of the defendant No.1 in the sale proceeds.

(ii) The release of the auction money / sale consideration on a pro-rata basis cannot be allowed, as the Honâ??ble Supreme Court while directing the bank guarantees be furnished in order to safeguard the interest of the auction purchaser has nowhere permitted release of the sale consideration in piecemeal.

(iii) The defendant No.1 holds only 9/48th share in the subject property at R. S. Pura, Jammu, and release of sale consideration equivalent to the share of the Beas (applicant / defendant No.1), while not securing the balance sale consideration by way of bank guarantees shall cause grave prejudice to the auction purchaser.

14. I am not in agreement with the pleas advanced by Mr. Manish Sharma for the reasons that (1) this Court on August 16, 2016 had directed for the disbursing the amount in favour of the parties to the suit according to their share; (2) The appeal against the said order has been dismissed by the Division Bench and; (3) The Honâ??ble Supreme Court vide its order dated September 20, 2019 secured money to be disbursed by way of bank guarantees.

15. I find that the bank guarantee bearing No. L41GOPG193020004 dated October 29, 2019 amounting to Rs.3,37,50,000/- has been furnished / filed by Beas (applicant / defendant No.1) in favour of the Registrar General of this Court and the same has been exhibited as Ex.D1X4.

16. That apart, even an undertaking has been submitted by the Beas (applicant / defendant No.1) (at page 59 of volume 3 of the Applications folder).

The plea of Mr. Manish Sharma that the Honâ??ble Supreme Court has not ordered the release of the sale consideration in piecemeal is also not appealing as there is no such order of the Honâ??ble Supreme Court. Once the bank guarantee as directed by the Honâ??ble Supreme Court has

been furnished / deposited for securing the auction purchaser, there is no bar to release the amount in favour of the Beas (applicant / defendant no.1)

to the extent of the amount of the bank guarantee and no prejudice is going to be caused to the auction purchaser as the money is secured.

17. Accordingly, the application is allowed, an amount of Rs.3,37,50,000/- (which is equivalent to the amount of the bank guarantee furnished by the

Beas) shall be released to the Beas (applicant / defendant No.1) from the amount deposited by the auction purchaser in the Court in terms of order

dated March 14, 2014. For this purpose, the matter shall be listed before the Joint Registrar on September 07, 2020 when the counsel for the Beas

(applicant / defendant No.1) / authorized representative of Beas (with proper authority) and the auction purchaser and / or his counsel shall be

present.

18. The application is disposed of.