

(2012) 07 DEL CK 0093
In the Delhi High Court
Case No : EX. P. No. 209 of 2000

Manali Singhal and Another

APPELLANT

Vs

Ravi Singhal and Others

RESPONDENT

Date of Decision : 02-07-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 21, Order 21 Rule 32, Order 21 Rule 54, Order 21 Rule 58, Order 21 Rule 64

Citation : (2013) 1 AD 168

Hon'ble Judges : Manmohan Singh, J

Bench : Single Bench

Advocate : Pinky Anand with Mr. Saurabh Kirpal, Ms. Natasha Sahrawat, Ms. Kartika Sharma and Ms. Jyoti Taneja, along with DH-1 in person, for the Appellant; Y.P. Narula and Mr. Kirti Uppal, with Mr. Aniruddha Choudhury, for the Respondent

Judgement

Manmohan Singh, J.—The present execution petition has been filed by the decree holders for execution of the interim order dated 28th October, 1998 passed by this court in I.A. Nos.11261/1997, 2634 and 2635/1998 in Suit No.2583/1997 wherein it was directed, inter alia, to provide a residence in accordance with the family settlement dated 4th November, 1994 entered into between concerned parties. In view of the settlement, it was also directed to deposit school fee and other charges in connection with studies of decree holder No.2 and maintenance at the rate of Rs.40,000/- per month. The operative part of the order passed is reproduced hereunder :

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 to clear 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.

38. The defendants are further directed to pay future maintenance, month by month, at the rate of Rs. 40,000/- 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.

40. The defendants are further directed to provide a residence to the plaintiffs as agreed upon in the family settlement dated November 4, 1994 (vide clause 4) without two months from today.

Prayers of the decree holders in the execution petition, inter-alia is that the properties/assets (including shares and dividends) be attached and sold, in order to pay the decree-holders from such sale proceeds for the purpose of execution of order and to appoint a receiver in this regard.

2. The brief facts of the case are mentioned below:-

a) On 10th February, 1989, marriage was solemnized between Manali Singhal and Sri Ravi Singhal. A daughter named Shreya Singhal was born out of the wedlock on 18th March, 1991. The decree holder No.1/plaintiff No.1 and defendant No.1 lived at their matrimonial home at Vasant Vihar till November 1994. They used to live in joint family with defendant No.1's father, mother and younger brother.

b) It is stated by the decree holder No.1/plaintiff No.1 that she had to accompany her ailing mother abroad for treatment and returned to India on 31st October, 1994. It was also stated by the decree holder No.1 that while her mother was very serious, judgment debtor No.1 conveyed that he did not want to continue with marital relation and also told that he had already moved out of the marital home at Vasant Vihar.

c) The decree holder No.1 along with her daughter, i.e. decree-holder No.2 left her matrimonial home at Vasant Vihar and went to stay in her parent's house. There were some talks amongst the parties and their family members. On 4th November, 1994 there was an agreement/settlement between the parties, hereinafter referred to as the "said agreement".

3. The relevant clauses of the said agreement are mentioned as follows:-

i. As per clause (i), Respondents are to provide a residential house to the petitioners in South Delhi.

ii. Clause (ii) of the settlement states that defendants are supposed to pay a sum of Rs. 40,000/- towards the maintenance of the petitioners.

iii. Clause (iii) of the agreement states that the daughter will stay under the custody of her mother.

iv. Clause (iv) provides that the house will be provided to petitioner No. 1 will be within 3 months and it would be chosen by petitioner No.1

v. Clause (v) provides that the husband (respondent No.1) would provide the mother and the daughter a new car every 3 years for their use

vi. Clause (vi) states about the expenses of the school and college education would be borne by respondent No.1. If the daughter is to be educated abroad then the father should provide and bear all the necessary expenses.

vii. The husband shall provide fully paid 1st class vacation once a year for a period of 30 days to the petitioners.

viii. Husband to provide all the necessary medical expenses whether in India or abroad.

ix. Husband should agree and morally bound to provide at the time of marriage of daughter all the necessary expenses.

4. As regards the question of custody, it was decided that the daughter would be with her mother, i.e. decree holder No.1.

5. A suit was filed by the decree holder No.1 and decree holder No. 2/daughter of decree holder No.1 for specific performance being Suit No. 2583/1997 alleging that the judgment debtors have failed to discharge their obligations in accordance with the Memorandum of Settlement.

6. After hearing parties, a detailed order was passed as mentioned above, the same was challenged by the judgment-debtors in the Division Bench being FAO(OS) No.9/99 of this Court. By order dated 28th July, 2000, an appeal was dismissed by the Division Bench with costs.

7. Thereafter, the decree-holders on 12th September, 2000 filed the execution for enforcement of the order dated 28th October, 1998. In execution on 14th November, 2000, warrants of attachment of the farm land at Smalkha Village, Delhi, measuring 21 Bighas 20 Biswas as shown in item No.1 in Schedule-2 were issued.

8. Objections u/s 60 read with Order XXI, Rule 58 CPC being E.A. No.77/2001 was filed by judgment-debtor No.1 therein, mainly, on the ground that the attached agricultural land of the judgment-debtors cannot be sold and the said order dated 14th November, 2000 is liable to be recalled.

9. Another set of objections were filed by Mr. Saurabh Singhal S/o Vivek Singhal (JD-2) therein, u/s 60 read with Order XXI, Rule 58 CPC being E.A. No.76/2001 for recalling the attachment order passed on 14th November, 2000, mainly, on the ground that the land in question cannot be divided or partitioned in execution of the decree without the consent of the owner and he is one of the owners of the said land and is not a party to the suit.

10. Being aggrieved by the order of the Division Bench passed in FAO(OS)

No.9/1999, the judgment-debtors filed the SLP (C) No. 3455-56/2001, after granting special leave, same were converted into Civil Appeals being No. 6955-6956 of 2001. The said appeals were disposed of by the Supreme Court vide order dated 1st October, 2001 without interference after recording the submissions of the parties. The Apex Court has also made certain observations in the order, the effect of which will be discussed in the later part of my order.

11. Judgment-debtor No.1 also filed another application being E.A. No.167/2002 for rejection of the execution petition as the decree-holder has claimed rent @ Rs.50,000/- per month from the month of January, 1995 in the execution petition.

12. When execution petition was listed on 2nd April, 2002, an order of proclamation was passed, by observing that the interim order passed on 28th October, 1998 was required to be complied with by the judgment-debtors who did not do the needful, thus, it was also directed the finalization of proclamation of sale in respect of the aforesaid property, with the direction to the Registry to prepare a proclamation of sale in accordance with law and place the same for approval before the Court on 10th April, 2002 for final execution of the proclamation of sale and for processing the matter further.

13. The judgment-debtors challenged the said order by way of an appeal being FAO(OS) No.130/2002. The said appeal was dismissed by the Division Bench on 25th May, 2004, with the following observations made in paras-6 & 7 of the order:-

6. It is pertinent to notice that during the pendency of these appeals, the appellants have complied with the order dated 28th October, 1998 in regard to the maintenance by paying the arrears of maintenance etc. However, so far as the compliance of the order in regard to the provision of a residential house in terms of clause (4) of the family settlement dated 4th November, 1994 is concerned, the parties could not reach unanimity inasmuch as the houses offered by the appellants are not acceptable to the respondent for one or the other reason while those indicated by the respondents is stated to be beyond the financial capacity of the appellants. As would be evident from the first ever order dated 14th November, 2000 passed in Execution No.209/2001 (supra), the question as to whether the decree holder is entitled to claim the arrears of rent from January, 1995 till August, 2000 @ Rs.50,000/- amounting to Rs.34 lacs, is still sub-judice before the learned Single Judge and the liability to pay this amount or any other amount by the judgment debtor on his failure to provide a house to the respondents within the stipulated period as envisaged by the order dated 28th October, 1998 is yet to be answered. We say so because the Court had issued notice to the judgment debtors on this aspect and had ordered the issuance of warrants of attachment of the property of the judgment debtors only in respect of the amount of Rs.14,14,061/- which was stated to be due as arrears of maintenance and medical expenses etc.

7. Mr. Narula next contended before us that the order dated 28th October, 1998 was incapable of execution through execution proceedings as it was passed on certain interim applications and was largely based on the family settlement dated 4th November, 1994 which settlement itself is in question in the suit. We see absolutely no merit in this contention because it is well settled legal proposition that even interim orders passed by the Courts are capable of execution by resorting to the provisions of Order XXI CPC.

14. Thereafter, the judgment-debtors filed an SLP against the said order of the Division Bench. When the same was listed before the Supreme Court on 16th September, 2005, the statement was made by the learned counsel for the judgment-debtors that the house/flat in Safdarjung Development Area is prepared to be given to the decree-holders as per the interim order. The statement was made by the decree-holder that the said house/flat is not having adequate facilities. When the matter was again listed on 17th July, 2006, the judgment-debtors had offered certain houses/flats to be occupied by the decree-holders, but the same were also not accepted by the decree-holders, as according to them, those were not suitable for accommodation keeping the status of the party. The judgment-debtor No.1 was directed to give further offers which were reasonable in accordance with the interim order passed, within three weeks. However, when the matter was listed on 20th April, 2007, the judgment-debtors sought leave to withdraw the Special Leave Petition. The said permission was granted and the SLP was treated as dismissed as withdrawn.

15. The order dated 2nd April, 2002 was also challenged by Saurabh Singhal who is the joint owner of the property by filing of an appeal before the Division Bench being EFA (OS) No.5/2002, mainly, on the ground that the learned Judge in his order dated 2nd April, 2002 could not have ordered issuance of sale proclamation without deciding the objections filed by him under Order XXI, Rule 58 CPC, as the agricultural land/property was purchased by six different sale deeds and the appellant Saurabh Singhal is one of the joint owners only in respect of the properties covered under the sale deeds executed on 16th December, 1985 and 10th January, 1986. The said objections of Saurabh Singhal, inter-alia, were confined to the extent of the land covered by the said two sale deeds. The said appeal was disposed of on 26th April, 2000 by giving reasons in para-4 of the order which reads as under:-

4. During arguments, it transpired that aforesaid farm land property was purchased by six different sale deeds and the appellant Saurabh Singhal is the joint owner only in respect of the properties covered under the sale deeds executed on 16.12.1985 and 10.01.1986. Thus, the objections of the appellant, inter alia, are confined to the extent of the land covered by the aforesaid two sale deeds conferring co-ownership rights on the appellant. Faced with this situation, learned counsel for respondents No.4 and 5, on instructions, submitted that without prejudice to the rights and contentions of respondent Nos.4 and 5, they for the time being, have no objection if the area covered by the aforesaid

two sale deeds is excluded from attachment as well as sale proclamation subject to the rights of respondents No.4 and 5 to seek attachment, if occasion arises. This course of action is accepted by the learned counsel for the appellant who, on instructions of the appellant, submits that this is without prejudice to the rights of the appellant to object to the attachment in respect of the aforesaid land in which he has co-ownership rights if at a later stage, respondents No.4 and 5 press for attachment of the said property. We may note that learned counsel for the appellant has produced a copy of Aks-Shajra? which indicate demarcation of lands covered by different sale deeds which is taken on record.

16. After disposal of the said appeal, when the matter was listed before the Court on 4th May, 2010, both the parties agreed that the decree holder would identify property comparable to matrimonial home. It was directed that the decree-holder would file the proposal with regard to the said property within two weeks and the matter was adjourned to 13th July, 2010. On the said date, the judgment-debtors sought some time to examine the proposal given by the decree-holder and for instructions.

17. hereafter, the judgment-debtors filed another E.A. No.529/2010 for dismissal of the execution petition and the time was granted to the parties to file the reply and rejoinder.

18. The matter was heard from time to time by this Court. Both the parties made their submissions in the main matter rather in the pending miscellaneous applications and have also filed their written submissions in support of their contentions. Contentions of Decree-Holders

19. Ms. Pinki Anand, learned Senior counsel appearing on behalf of the decree-holders argues that the decree holders seek to execute an order, which is an interim order and is executable by this Court in terms of the provisions of Section 36 of the Code of Civil Procedure, 1908 ("the CPC?"), as the judgment-debtors failed to comply the interim direction issued by the Court in the order dated 28th October, 1998. She submits that Section 51 CPC empowers the Executing Court, inter alia, to execute in such manner as the nature of relief granted may require.

20. She has also argued that as an order dated 28th October, 1998 passed by the Court is in nature of order of injunction, another mode of execution is to be found in Order XXI Rule 32 CPC. Under the said provision, in case of failure to comply with the decree, the property of the judgment debtor is liable to be attached and sold, read with the provision of Order XXI Rule 54 which requires that the attachment is to be made by an order prohibiting the judgment debtor from transferring or charging the property in any way and all persons from taking any benefit from such transfer or change. Order XXI Rule 54 also requires that the order shall also require the judgment debtor to attend court on a specified date to take notice of the date to be fixed for settling the terms of the proclamation of sale which is required to be done by following the procedure prescribed in the CPC for the sale of property under Order XXI, Rules 64 and 66.

Thus, in the present case, only the formal orders are to be passed, as the order dated 2nd April, 2001 has been upheld by the Supreme Court and despite of various opportunities granted to the judgment-debtors even after passing the order of attachment and order of proclamation of sale, they have miserably failed to give any heed to comply with the orders. Therefore, there is no justification or reason of any nature to oppose the said prayer of the decree-holders.

21. Contentions of the Judgment Debtors:

(a) The contention of the judgment-debtors is that in terms of the order dated 28th October, 1998, the judgment-debtors purchased a residential premises situated at C-5/12, Safdarjung Development Area, New Delhi after it was selected by decree-holder No.1. The said premises has a four bed-room accommodation, situated at the second floor of the said property, constructed on a piece of land measuring 500 Sq. Yards, with dedicated life and full roof right and two car parking with the premises, forming part of the said accommodation. It is also stated that the judgment-debtors have no means or income to buy the properties valued in the affidavit dated 12th July, 2010 filed by decree-holder No.1.

(b) The order dated 28th October, 1998 cannot be read in isolation. The said order has to be read along with the order dated 1st October, 2001 passed by the Supreme Court and as per the said order, the judgment-debtors have to provide the residence to the decree holders. The said order is merely an interim order. The orders of the Single Bench and Division Bench were also interim orders. Both the orders were merged with the Supreme Court's order and have been modified. The appeals filed by the judgments debtors after recording reasons were disposed of, therefore, the doctrine of merger will apply.

(c) According to Mr Y.P. Narula, learned Senior counsel, the present execution is filed by the decree-holders, by which the order dated 28th October, 1998 is sought to be executed which merged with the order dated 28th July, 2000 of the first Appellate Court and finally, the first Appellate Court's order merged with the Supreme Court's order dated 01.10.2001, as no execution in terms of the Supreme Court's order was/has been filed. Hence, the present execution petition is not maintainable, as the implementation of the order of the Supreme Court is not an execution of the decree which may or may not be passed in the suit after trial. As regards the payment of the school fees of the child, according to the counsel, the decree-holder No.1 has filed the false claim of money in her affidavit which cannot be considered by the Executing Court and the said amount is not payable.

22. As regards identification of the houses by decree-holder No.1, the said demand of decree-holder No.1 is beyond the means of the judgment-debtors, as the value of per house is between 45 to 60 crores. As far as the further details given by decree-holder No.1 about the properties of judgment debtors in her affidavit are concerned, the same do not belong to the judgment-debtors who

live in a house in Vasant Vihar constructed on a plot of land measuring 1500 sq. yards. It is also argued by him that the order dated 28th October, 1998 is only an interim order and there was no direction that the judgment-debtors would buy the house for the residence of the decree-holders. There was no description of the residential accommodation in any of the orders. The order of the Supreme Court directs that the judgment-debtors should make the provision for residence of the decree-holders without stipulating any details about the accommodation and the judgment-debtors are still willing to settle the entire dispute between the parties with regard to the residential accommodation who have already offered a residential accommodation comprising of four bed rooms, living room, servant room, two car parking in Safdarjung Development Area on the second floor of the property constructed on 500 Sq. Yards land with full roof rights, in compliance with the interim order in question. The refusal of the decree-holders to accept the said premises shows the compliance of orders. The conduct of the decree-holder No.1 does not entitle her to any further relief claimed in the execution. The main matter be referred for trial.

23. Mr. Narula has also argued that the order of specific performance or that of injunction is to be executed under Order XXI, Rule 32 CPC, and under the said provision, the Court has to first decide as to whether the order in question can at all be complied with by the judgment-debtors, keeping in view their financial capacities. And in case, the judgment-debtors offer to comply with the order, the Executing Court would consider the said offer and if it comes to the conclusion that the compliance is not bonafide or that the offer is not as per the order of the Supreme Court or of the Division Bench or the Single Judge, the Court shall then proceed to decide the issue with regard to the means of the judgment-debtors and also it would decide as to whether the order sought to be executed is an executable order or not. The said question would be decided by putting the parties to trial in the execution or in the main suit. Therefore, no orders are required to be passed in the matter.

24. In nut-shell, by order dated 28th October, 1998, the following three directions were issued by the Court in the interim application:-

- (a) To pay future maintenance, month by month, at the rate of Rs. 40,000/- per month;
- (b) To pay and deposit the school fees and other charges in connection with the studies of plaintiff No.2; and,
- (c) To provide a residence to the plaintiffs as agreed upon in the family settlement dated November 4, 1994.

25. As far as the first direction about maintenance of Rs.40,000/- is concerned, it is not disputed by the decree-holders that the said amount is being paid. The learned counsel appearing on behalf of the judgment-debtors states that his clients undertake to pay the said amount regularly till further orders of the Court. In view of the abovementioned statement, no further orders are passed on

direction (a) till the time, it is modified in due course.

26. As regards second direction mentioned in the order to pay and deposit the school fee and other charges relating to the education of the child, i.e. decree-holder No.2, the submission of the decree-holders is that despite of clear direction of the Court and issuance of letters by their counsel from time to time, the judgment-debtors failed to comply with the said order and pay the school fee. As per details mentioned in the affidavit filed on 15th March, 2011 by the decree-holder No.1, total sum of Rs.15,67,238/- is due from the period of 2009 to March, 2011 after adjustment of the amount already paid by the judgment-debtors.

27. Vide order dated 28th October, 1998, inter-alia, it was held as under, for the purpose of compliance of second direction:

The defendants would also pay and deposit the school fees and other charges in connection with the studies of plaintiff No.2 straightway with the school wherever she might be studying.

It is not disputed by the judgment-debtors that they have been paying tuition fees and rent of living fee in England of decree-holder No.2, but, the same was not paid for the academic year 2009 till March, 2011. The decree-holders have given the details along with proof, which reads as under:-

5. I say that a sum of ? 12, 100 are due towards

living expenses of the Decree Holder 2. Following payments have been paid by me towards Decree Holder 2 living expenses relating to her educational pursuits:

1.

Sept. 2009 ? 4,100 @ Rs.82.09/-

Rs.3,36,569/-

2.

Sept. 2009 ? 2,000 @ Rs.82.09/-

Rs.1,64,181/-

3.

Feb. 2010 ? 1,000 @ Rs.72.85/-

Rs.72,850/-

4.

April, 2010 ? 500 @ Rs.69.60/-

Rs.34,900/-

5.

June, 2010 ? 400 @ Rs.69.00/-

Rs.27,600/-

6.

July, 2010 ? 600 @ Rs.72.85/-

Rs.43,713/-

7.

Sept./Oct., 2010 ? 1,500 @ Rs.73.13/-

Rs.1,08,195/-

8.

March, 2011 ? 2,000 @ Rs.73.87/-

Rs.1,47,740/-

Total

Rs.9,35,748/-

6. I say that Rs.2,57,505/- are due and payable by the Judgment Debtors towards travel expenses of Decree Holder 2 for travel between Delhi-London-Delhi in September, 2009, January, 2010, March, 2010 and June, 2010.

7. Further, as per the schedule provided in Court in May, 2008 out of a total arrears of Rs.6,05,565/-, the Judgment Debtors have paid only a sum of Rs.2,31,580/- and the balance of Rs.3,73,985/- is due and payable by them. This Hon?ble Court vide Orders dated 9-5-2008, 21-7-2008 and 28-7-2008 had directed the Judgment Debtors to make the said payments.

28. The judgment-debtors have opposed the said demand of the decree-holders by stating that as per the order dated 28th October, 1998, the decree-holders are not entitled for living and travel expenses. In case, the said direction is read in meaningful manner, it is clear that the said amount is covered in the order which includes "other charges in connection with studies of plaintiff No.2". Thus, there is no force in the submission of the judgment-debtors. I am of the considered view that the decree-holders are entitled for the amount mentioned in the affidavit dated 15th March, 2011.

29. Now, coming to the third direction issued in the order dated 28.10.1998 by which the judgment-debtors were granted two months? time to provide the residence to the decree-holders as agreed upon in the family settlement dated 4th November, 1994.

30. In para-15 of the order dated 28th October, 1998, it was observed that the family settlement was entered out of their own free will, without any threat, coercion or pressure.

31. In terms of the order dated 4th May, 2010 where the directions were given to the decree-holders to identify the immovable property, decree-holder No.1 has filed the affidavit where in para-6, the details of the properties, which she identified, were given.

32. The decree-holder No.1 in para-5 of the affidavit dated 12th July, 2010 has alleged that the judgment-debtors are a very well-known and wealthy family of Delhi. They have several businesses and prime properties all over Delhi, Mumbai, Udaipur and other places. The details of some properties were given in the said affidavit. The same read as under:-

(i) Property in Vasant Vihar (24, Olof Palme Marg, Vasant Vihar, New Delhi, measuring approx. 2500 Sq. Yards). (Matrimonial home of the decree-holder) Built up area 2 floors and a basement - approx. Rs.140 crore.

(ii) 7 storeyed building situated at 2 Local Shopping Centres, Masjid Moth and G.K. II (near Savitri Cinema), (approx. price Rs.25,000/Sq. ft.)

(iii) Farm land at Smalka Village, Delhi, measuring 5.6 acres (which is under attachment) approx. Rs.45 crore.

(iv) Office at Mittal Chambers, Nariman Point, Mumbai, approx. Rs.45,000-50,000/- per sq. ft.

(v) Flat in Jolly Maker-II, Cuffe Parade, Mumbai.

(vi) Flat in Jolly Maker-III, Cuffe Parade, Mumbai.

(vii) Flat in Jolly Maker-II, Cuffe Parade, Mumbai.

(viii) Flat in NISHIT Building, Malad, Mumbai.

(ix) Flat in SANDEEP Building, Malad, Mumbai.

(x) Flat in NISHIT Building, Malad, Mumbai.

(xi) Flat in VIRAL Building, Malad, Mumbai.

(xii) Flat in SUNITA Building, Malad, Mumbai.

(xiii) Noble House, Swarup Sagar, Udaipur.

(xiv) Factories in Noida.

(xv) Flat in Safdarjung Enclave, New Delhi.

33. Earlier, both the parties had tried to settle their disputes by way of settlement, and the proposed terms and conditions were also recorded in the order dated 31st May, 2007, but, the said compromise did not materialize and failed between the parties as recorded in the order dated 18th January, 2008.

34. Let me now deal with the first submission of Mr. Y.P. Narula, learned Senior Counsel, that the order of the learned Single Judge has been modified by the

Supreme Court.

35. As per Mr. Narula, the Supreme Court has directed the judgment-debtors to provide a "separate residence" to the decree-holders, which is not necessarily in terms of the family settlement. The judgment-debtors have already offered the 2nd floor accommodation at Safdarjung Development Area, thus, the compliance has been made, but, the decree-holders refused to occupy the said premises which is a four bed-rooms accommodation constructed on a piece of land measuring 500 Sq. Yards with dedicated lift and full roof rights and two car parking with the premises forming part of the said accommodation. Therefore, no further order is to be passed by the Court in this regard in the present proceedings.

36. It is important to reproduce a few passages from the order of the Supreme Court in the matter passed on 1st October, 2001 which read as under:-

4. The respondents filed a suit in 1998 alleging that the appellants failed to discharge their obligations under the Memorandum of Settlement and in the suit the Memorandum of Settlement was sought to be specifically enforced. By this interim order, the appellants were also directed to provide a house to the respondents in terms of clause (4) of the Memo of Settlement. Some other prayers sought for by the respondents were declined to be granted as interim arrangement for the respondents.

6. We heard the matter at great length. The counsel on either side brought to our notice series of decisions relevant to the points raised by the parties in the proceedings, but we do not propose to go into such disputed questions as the appeals now before us are only against an interim order. Any observation made by this Court may have great persuasive effect with regard to the matter which may be agitated finally in the suit.

10. The counsel for the appellants vehemently contended that the Memorandum of Settlement was signed by the appellants under special circumstances and the first appellant is financially not in a position to meet the alleged obligations under the agreement. The counsel argued that by the impugned judgment, the plaintiff-respondents have been given virtually the entire relief sought for in the suit and the appellants are unduly burdened with financial liabilities which are incapable of being performed by the first appellant. We notice the force in this contention, but at the same time it is to be borne in mind that this is only an interim order passed by the court in exercise of the discretionary power vested in it in such family proceedings. Further, the interim arrangement made under the order only covers payment of interim maintenance, arrears and current, deposit of school fees of the child and providing a separate residence. From the impugned judgment, it is clear that there was a long and elaborate debate by the counsel on either side regarding the financial capability of the appellants. Having regard to the fact that the order under challenge is an interim order, without expressing any opinion on merits we would only say that the discretionary power exercised

by the court cannot be said to be perverse or irrational so as to warrant interference by this court.

37. The reference to the "separate residence? which is alleged to be a modification of the order passed by the learned Single Judge, it appears from the same passage which goes on to record that the order does not "warrant inference by this Court?. The said observations if read along with other part of the order, rather the order confirms an affirmation of the order of the Division Bench which had, in turn, refused to interfere with the order of the learned Single Judge. It is also pertinent to mention that an expression used in the order "separate residence to the decree-holders? cannot be given a conclusion that it amounts to modify the order of Single Judge and it did set-aside the term of the family settlement to provide a residence as per the choice of decree-holder No.1, otherwise specific order in this regard would have been passed by the Apex Court.

38. In case, the entire order passed by the Supreme Court is read in a meaningful manner, it appears that the Supreme Court, in fact, affirmed the order of the Division Bench which had refused to interfere with the order of the Single Judge. Any of the directions issued by the Single Judge in his order dated 28th October, 1998 is not modified/set-aside. No doubt, while describing the details of the interim arrangement as mentioned in the order dated 28th October, 1998, it was mentioned as one of the directions as "providing a separate residence? instead of residence to the decree-holders as agreed upon in the family settlement dated 4th November, 1998. Nowhere, in the entire order, there is even one reference that the said direction is modified or set-aside. Even the said reference is mentioned in the order by explaining the order passed by the Single Judge and not an independent view was taken by the Supreme Court. In the same para, the Supreme Court has observed as under:-

Having regard to the fact that the order under challenge is an interim order, without expressing any opinion on merits, we would only say that the discretionary power exercised by the court cannot be said to be perverse or irrational so as to warrant interference by this court.....

The above-said observations clearly indicate that none of the directions mentioned in the order dated 28th October, 1998 has been modified or changed.

39. There is no dispute that in the order, it was mentioned that the appellants/ judgment-debtors raised certain serious contentions which require consideration. However, in the same sentence, it was mentioned that the same required consideration at the hands of the Single Judge before whom the matter would come up for trial, and the observation was made for expeditious trial and also for amicable settlement with the help of friends and well-wishers. In the last portion of the order, it is clearly mentioned that any observation made by this Court or the High Court shall not have any persuasive effect when the matter is finally considered by the Court.

40. In view of the above-said, it cannot be said that the orders of the trial Court

were modified or set-aside. The contention of the learned counsel for the judgment-debtors is without any merit that in the order dated 1st October, 2001, the Apex Court has modified the order with regard to the residence. As a matter of fact, the Special Leave Petitions were filed from the interim orders passed in the suit, therefore, in the order, it was mentioned that the appellants have raised serious contentions which would require consideration at the hands of the trial Court before whom the matter would come up for trial. Similarly, in the last portion of the order, it was mentioned that any observation made by the Supreme Court or the High Court shall not have any persuasive effect when the matter is finally considered by the Court.

41. In the present case admittedly the Court is deciding the matter for the purpose of enforcement of the order and the execution has been filed by the decree-holders for alleged non-compliance of the directions issued by the Court in the interim arrangement. At present, this Court is not considering the fate of the trial, nor deciding the suit finally. Actually, the observations made by the Supreme Court require consideration at the time of trial which is yet to be commenced in the main suit and at the appropriate stage, all the objections and defences raised by the judgment-debtors in the suit have to be considered. Hence, the contention of the judgment-debtors has also no force that after passing of the order by the Supreme Court, there can be no execution of the order of the Single Judge, thus, the execution is not maintainable.

42. It appears to this Court that the said argument of the judgment-debtors is technical in nature as it is settled law that even if the order to be executed is that of an Appellate Court, the execution petition filed on the basis of the order of the trial Court does not become incompetent. The Executing Court has merely to record the factum of dismissal of the appeal and if necessary, amend the execution petition. In the present case, the decree-holders have already filed an application bringing on record the factum of dismissal of the SLP, being E.A. No.543/2001. Since the order of the trial Court has not been interfered by the higher Court, therefore, this Court is of the opinion that no amendment is necessary as the hearing in the matter is already delayed for more than thirteen years.

43. For the aforesaid reasons, I am of the view that even if doctrine of merger is applied in the matter, the objections raised by the judgment-debtors cannot help their case in any manner, as the order of the interim arrangement passed in the suit has not been interfered with any of the higher Courts and the factum of the orders passed by the higher Courts is already placed on record. As far as the decisions referred by the learned counsels for the parties are concerned, the said proposition of laws laid down in the said decisions cannot be disputed, but, the contention of the judgment-debtors cannot be accepted, as the facts in the present case are materially different.

44. Now, I shall deal with the next contention of Mr. Narula that the decree has been satisfied, inasmuch as the judgment-debtors have offered the decree-

holders a flat in Safdarjung Development Area as per the directions/order dated 28th October, 1998. The said order which is to be executed, requires the provision of the house in terms of the family settlement. It is necessary to reproduce the few clauses of the family settlement which read as under:-

AND WHEREAS the husband, grand-father and grand-mother in discharge of their duty and in settlement of claims of the wife and the daughter agree to provide a residential house and maintenance consistent and comparable with the living standards of the wife and daughter they had at 24, Olof Palme Marg, Vasant Vihar, New Delhi, which was the marital house of the husband and wife, as detailed below, and also look after the maintenance of the daughter.

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.

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.

It is obvious that the said agreement gives the decree-holder No.1 the right to choose the house. The nature of the house has also been dealt with as being a house "consistent and comparable with the living standards of the wife and the daughter they had at 24, Olof Palme Marg, Vasant Vihar, New Delhi". The offer of the flat

does not conform to either of these stipulations.

45. The offer of the floor referred by the judgment-debtors in Safdarjung Development Area had been specifically mentioned in the SLP filed by the judgment-debtors against the order of attachment. The Supreme Court in order dated 16th September, 2005 has recorded the said offer. However, the learned counsel for the decree-holders made the statement that the said house (flat) is not having adequate facilities and the building is to be valued by anyone of the known valuers of the city to find out whether it fulfills the requirements of the accommodation agreed to be provided by the judgment-debtors to the decree-holders. The matter was thereafter adjourned. On 17th July, 2006, again the said offer was recorded in the order and the judgment-debtor No.1 herein was directed to give further offers which are reasonable in accordance with the interim order passed by the Court. He was also directed to give list of the houses within a period of three months and the matter was accordingly adjourned. When the matter was again taken up by the Supreme Court on 20th April, 2007, the judgment-debtors sought permission to withdraw the SLP which was dismissed

as withdrawn without prejudice to the rights of the parties to seek appropriate remedies, if any.

46. As a matter of fact, the factum of offering of house/flat by the judgment-debtors was considered by the Supreme Court in SLP No.20393/2004 which was withdrawn by the judgment-debtors on 20th April, 2007. As already mentioned that later on, by order dated 4th May, 2010 passed in the present execution petition, the decree-holder No.1 was given time to identify immovable property which is comparable to the marital house in which she live with her daughter prior to separation. In terms of the said order, decree-holder No.1 has filed the affidavit wherein para-6 thereof, she identified the following properties:

(i) 71, Poorvi Marg, Vasant Vihar, 800 Sq. Yards,

approx. Rs.45 crore.

(ii) B4/6, Vasant Vihar, 640 Sq. Yards, approx.

Rs.45 crore.

(iii) 57, Paschami Marg, 1000 Sq. Yards, approx. Rs.60 crore.

(iv) 53, Jor Bag, 626 Sq. Yards, approx. Rs.65 crore.

(v) H-15, Maharani Bagh, 800 Sq. Yards, approx.

Rs.46 crore.

47. The judgment-debtors have argued that the attachment order already passed is limited to the arrears of about Rs.14 lac, hence, the prayer in the execution petition is not maintainable. u/s 51 CPC, the Court has the power to direct sale of the property even without ordering the attachment thereof. In the main prayer of the execution petition, it is clear that the decree-holders in view of the decrees have sought for providing of the provision of residential accommodation. The judgment-debtors so far have not complied with the directions, despite of expiry of more than 13 years and also despite of various opportunities granted to them. The offer of second floor residential accommodation at Safdarjung Development Area is not acceptable to the decree-holders as and when the same was made, even after passing of the Supreme Court's order. The decree-holders have indicated time and again, and submitted that the judgment-debtors have failed to comply the direction strictly in terms of the order dated 28th October, 1998 which mandates to provide a residence as agreed upon in the family settlement. Therefore, the procedure of Order XXI, Rule 54 CPC was applied and by order dated 14th November, 2000, order of warrants of attachment of the immovable property, i.e. farm land at Smalkha Village, Delhi were issued for recovery of certain amount. The said order was upheld up to the Supreme Court.

48. In the execution petition, the following reliefs are sought by the decree-holders:-

(i) Attach and sell the assets/properties (as per schedule 2) including shares and

dividends from those shares (as per schedule 3 hereto) and also attach the bank accounts (as per schedule 4 hereto) of the Judgment Debtors and order that the aforementioned amount be paid to the Decree Holders from the said sale proceeds/bank accounts etc.

(ii) Order the Judgment Debtors to pay future maintenance month by month @ Rs.40,000/- per month on or before the 5th day of every English calendar month.

(iii) Order the Judgment Debtors to pay and deposit school fees and other charges in connection with the studies of the Decree Holder No.2/Plaintiff No.2 with the school wherever she might be studying.

(iv) Order delivery of the house ordered to be

furnished by the decree/order dated 28th October, 1998 within 2 months.

(v) Appoint a receiver in regard to the properties

detailed hereinabove.

(vi) Direct that the receiver will receive from the sale of the said properties detailed hereinabove monthly maintenance payable by the Judgment Debtors in accordance with the said Order dated 28th October, 1998 and confirmed by Order dated 28th July, 2000 including payment of school fees of Ms. Shreya Singhal (minor)."

49. Section 51 CPC gives power to Court to enforce execution including by attachment and sale or by the sale without attachment of any property, and way of many other modes subject to certain conditions and limitations.

50. On 2nd April, 2001, order of proclamation of sale in respect of the immovable property was passed after hearing of both the parties. The objections raised by the judgment-debtors now were also considered at the time of passing of the said order which has been affirmed upto the Apex Court. In the said order, it was noticed by the Court that despite of several opportunities granted to the judgment-debtors, payments have not been made, and as per interim order dated 28.10.1998, the direction towards providing a residence to the decree-holders is yet to be complied with as per the family settlement and on their failure to comply with the said order, the Court had no option but to direct issuance of proclamation of sale in respect of the aforesaid property.

51. Therefore, there is no force in the submission of the judgment-debtors that the said attachment order was only for a part of the decree, as the provisions of Order XXI, Rule 54 CPC are mandatory in nature and the consequences provided therein follow, in case, the entire decree is not complied with.

As already mentioned, the judgment-debtors had taken the said plea in relation to the appeal filed against the order of proclamation of sale dated 02.04.2001 in which the challenge was made by the judgment-debtors in this regard, and the said SLP was, therefore, withdrawn by the judgment-debtors.

52. In the order dated 4th May, 2010, it was recorded that the decree-holder No.1 shall identify the immovable property which is comparable to the marital house in which she lived with her daughter prior to separation. The decree-holder No.1 already filed the details of the said houses. The judgment-debtors in their reply have submitted that the value of the property offered to the decree-holders is in crores of rupees. Further, the judgment-debtors do not have the means to satisfy the demand of decree-holder No.1. Under these circumstances, the procedure of Order XXI, Rule 32 CPC to be complied with, by which the Court has to first decide, as to whether the order in execution can at all to be complied with by the judgment-debtors keeping in view of their financial capacity. In case, the Court comes to the conclusion that the compliance is not bonafide or that the offer is not as per the order of the Court, therefore, the Court is to decide the issue with regard to the means of the judgment-debtors, and for the said purpose, the Court should put the parties to trial in the execution and in the main suit which is pending before the Court.

53. In a way, the judgment-debtors are trying to inform the Court that the third direction issued by the Court to provide a residence to the decree-holders as agreed upon in the family settlement dated 4th November, 1994 cannot be complied with keeping in view of their financial capacity and there is no bonafide on the part of decree-holder No.1 to accept the offer given by the judgment-debtors. On the other hand, the said direction indicates that the judgment-debtors have to provide a residence to the decree-holders as per the choice of decree-holder No.1 who has already in terms of the order dated 4th May, 2010 identified the immovable properties which are comparable to the marital house in which she lived with her daughter prior to separation. Thus, the judgment-debtors are not agreeable to provide the accommodation as per the choice of decree-holder No.1.

54. The trial in the suit is yet to be commenced despite of the order of the Supreme Court for expeditious trial in the year 2001. There is hardly any progress in the suit proceedings.

55. It is true that in the family settlement, the size of the residence and the value of the property, and the area in which the property is to be provided, are not mentioned. However, the fact of the matter is that the identified properties by the decree-holder No.1 are somehow comparable to the marital house in which she lived with her daughter prior to separation. Admittedly, the order of the compliance was passed on 28th October, 1998, i.e. more than 13 years ago and the immovable properties in the areas which are identified by the decree-holder No.1 are quite expensive. Judgment debtors have not shown any interest to buy the property in the area chosen by decree holder No.1 and want to bargain with her, in any manner, to purchase the same on a piece of land in less area except the offer of property, i.e., at Second Floor of Safdarjung Development Area, though admitting the said property is also worth crores of rupees.

56. Decree-holder No.1 in her affidavit has also provided the details of properties owned by judgment debtors, the details are mentioned in para-33 of my order, judgment-debtors have not property-wise denied their any interest in the said properties except vague reply is given.

57. Under these circumstances, this Court has no option, but to pass the order of proclamation. The attachment order of one of the properties is already passed by the Court on 14th November, 2000. The order of attachment and proclamation of sale of the attached property was also challenged by the judgment-debtors up to the Supreme Court and the same was upheld, except the Division Bench of this Court by order dated 26th April, 2010 passed in EFA(OS) No.5/2012 and E.A. No.10295/2004, the appeal filed by Mr. Saurabh Singhal son of Vivek Singhal, who was not a party and challenged the order of attachment and proclamation of sale. The said order was modified to the extent that the land covered in the aforesaid two properties in which Mr. Saurabh Singhal is the co-owner, shall be excluded from the sale proclamation and the share of Mr. Saurabh Singhal in respect of the said property covered by the two sale deeds is released from the said attachment.

58. At present, the Registry is directed to prepare the fresh proclamation of sale in terms of the order dated 2nd April, 2002 in terms of attachment order dated 16th November, 2000 and modified order dated 26th April, 2011 thereby excluding the share of Mr. Saurabh Singhal which covered in the said two sale deeds and the same is released from the attachment. The Registry shall prepare the proclamation of sale in accordance with law and under these directions and shall place before Court for approval on the next date.

59. Mr. Akshay Makhija, Advocate is appointed as a Receiver in the matter in regard to the properties as per details mentioned earlier as well as for the purpose of compliance of enforcement of decree of remaining part of the order dated 28th October, 1998. The Receiver is directed to receive the amount from the sale of the said property and after the compliance of order dated 28th October, 1998, he shall submit his report within the period of three months after finalizing the proclamation of sale. He shall follow the procedure of Order XXI, Rules 64 and 66 CPC. He shall be paid a sum of Rs.25,000/- per meeting by decree-holder No.1. The matter shall be listed before the Court on 6th August, 2012 for finalizing the proclamation of sale and for processing the matter further, when judgment-debtors shall appear before the Court for the purpose of settling the terms of the proclamation of sale.