(2018) 12 DEL CK 0519

In the Delhi High Court

Case No : Execution Petition No. 205 Of 2014

M/S J.K. Goyal Estate Developers Pvt Ltd APPELLANT

Vs

Balwant Kaur RESPONDENT

Date of Decision : 11-12-2018

Acts Referred:

Citation : (2018) 12 DEL CK 0519

Hon'ble Judges : Rajiv Shakdher, J

Bench : Single Bench

Advocate : Ravi Sikri, Gaurav Goyal, Abhishek, J.K.Goyal, Parul Sharma, A.K. Singla, Ajay Verma, D.S. Chauhan, Ruchi Singh, Prashant Kumar, Mir Baby Lal, Kulbushan Rai Bajaj, Anish Dhingra, Mansi Chhabra, Sumeet Batra, Ishan Khanna

Judgement

Rajiv Shakdher, J

Ex. Appl. (OS) Nos. 501/2015, Ex. Appl. (OS) No.575/2016, Ex. Appl. (OS) No. 30/2017, Ex. Appl. (OS) No.211/2017, Ex. Appl. (OS) No.212/2017 530/2018, Ex. Appl. (OS) No.12/2018, Ex. Appl. (OS) No.71/2018, Ex. Appl. (OS) No.530/2018 & Ex. Appl. (OS) No.531/2018

1 The decree holder i.e. M/s J.K. Goyal Estate Developers Pvt. Ltd., seeks execution of the purported Award dated 29.01.2013. One of the main objections, which has been raised against the purported Award, is that, it is not an Award as envisaged under the provisions of the Arbitration and Conciliation Act, 1996 (in short '1996 Act').

1.1 This objection has been raised, in particular, by Mr. Singla, learned Senior counsel, who appears in Ex. Appl. (OS) No.531/2018. The said application has been filed by an entity known as M/s D.L. Nagpal Finance and Leasing Company Private Limited.

2 The record shows that there are other objectors as well, these being Canara Bank; UCO Bank; M/s Arora Buildwell Private Limited and Mr. Kulbhushan Rai

Bajaj in Ex. Appl. (OS) Nos. 71/2017; 30/2017; 575/2016 and 211/2017 respectively.

3 The record shows that on 15.03.2018, counsel for the parties had agreed to the sale of an immovable property belonging to the judgment debtor i.e. Ms. Balwant Kaur. This property, qua which warrants of attachment have been issued, is described as: D-24, Saket, New Delhi-110017 (in short 'Saket property').

3.1 The order dated 15.03.2018 is also indicative of the fact that warrants of attachment vis-a-vis Saket property were issued on 30.05.2014.

3.2 The Court, based on the consent of counsel for the parties, as is evident, appointed an Auctioneer as well. One, Mr. Bakshi Tajeshwar Singh, Advocate, has been appointed as Court Auctioneer, who is present in Court and says that pursuant to directions issued by District Court at Tis Hazari and Saket, albeit, on the administrative side he has been tasked with the work of carrying out public auction of the Saket property. To be noted, nothing has been shown from the record available before me which could establish that Mr. Bakshi Tajeshwar has been assigned the work of carrying out the auction. This may require gleaning information from the District Courts. The Registry is directed to place a report in this regard before the Court prior to the next date of hearing.

5 I am also informed that the matter is pending consideration before the Mediator i.e. Mr. Jitender Vashisht, appointed by Delhi High Court Mediation and Conciliation Centre.

6 Pertinently, counsel for the parties continue to hold that despite, perhaps, a legal lacuna in the Award dated 29.01.2013, the best way forward would be to sell the Saket property and divide the proceeds.

6.1 Clearly, in order to achieve this end parties will have to arrive at a mediated settlement, failing which appropriate orders would have to be passed in the instant proceedings.

7 I am also informed that the matter is coming up before the Mediator tomorrow i.e. 12.12.2018.

8 Accordingly, the Mediator is directed to file his report before the next date of hearing. Needless to say, in the proceeding before the mediator the parties will place before the Mediator the original documents, based on which the monetary claim is sought to be raised by each one of them.

8.1 In case of Canara Bank, a copy of the Recovery Certificate (in short 'RC') passed by the concerned Debts Recovery Tribunal (in short 'DRT') should suffice.

9. The Mediator will look into the original documents and, then, render a report before the Court in case a settlement is reached.

10 I may also indicate that the record shows that on 16.07.2018, the Joint Registrar (Judicial) had triggered the process of auction qua the Saket property.

A perusal of the said order would show that Canara Bank had filed a valuation report indicating that the Saket property was worth Rs.11.61 crores and that the realisable value was approximately Rs.9.30 crores.

11 It is made clear to all counsel that the auction process would have to be recommenced, once, a mediated settlement is arrived at as to the amounts that each of the contesting party before me would claim. Therefore, the benchmark for arriving at a settlement, for the moment, would be the estimated sum that perhaps may be realisable i.e. Rs.9.30 crores. In case upon sale, the money realised is less or more, proportionate haircut would have to be taken by each of the contesting party.

12 Needless to say, parties and their counsel will appear before the Mediator tomorrow.

13 I may also indicate that Mr. Singla says that as and when this Court recommences the process of sale, his client i.e. M/s D.L. Nagpal Finance Company Private Limited, will handover the possession of the Saket property to the Court Auctioneer and that till then, Mr. Singla's client will hold the Saket property as the custodian of this Court.

13.1 Mr. Singla's statement is taken on record.

14 Accordingly, renotify the matter on 13.02.2019.