

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : SUIT FOR INJUNCTION

Date of decision: 21st March, 2013

CS(OS) 1375/2010 IA No.8887/2010 (u/O 39 R-1&2), 9663/2011 (u/S 151 CPC) , 10192/2011 (u/O 11), 10193/2011 (u/O 11 R-1), 16223/2011 (objection of plaintiff no.2 to settlement deed) & 5594/2012 (U/O 39 R 2A).

BELA KAPOOR & ORS

.....Plaintiffs

Through: Mr. Harish Malhotra, Sr. Adv. With Mr. Anuj Aggarwal, Advs for Kiran Vihani.

Mr. Aman Lekhi, Sr. Adv. with Mr.Rajeshkher Rao & Ms. Simon Benjamin, Advs. for P-4.

Versus

VANDANA KAPOOR & ORS.

.... Defendants

Through: Mr. P. Banerjee & Mr. M. Baruah, Advs. for D-1 & D-2
Mr. Rajiv Talwar, Advs. for D-4.

AND

CS(OS) 2298/2010, IA No.15120/2010 (u/O 39 R-1&2), 15121/2010 (u/O 2 R-2) & 15122/2010 (u/O 11 R-12&14).

VANDANA KAPOOR

..... Plaintiff

Through:

Versus

SATISH KAPOOR AND ORS

..... Defendants

Through: Mr. Aman Lekhi, Sr. Adv. with Mr. Rajeshkher Rao & Ms. Simon Benjamin, Advs. for D-1.
Mr. Rajiv Talwar, Adv. for D-5

AND

CS(OS) 2299/2010 & IA No.15125/2010 (u/O 39 R-1&2)

VANDANA KAPOOR & ANR.
Through:

.... Plaintiffs

Versus

SATISH KAPOOR Defendant
Through: Mr. Aman Lekhi, Sr. Adv. with Mr. Rajeshekher Rao & Ms.
Simon Benjamin, Advs. for D-1

AND

CS(OS) 1642/2011, IA No.10535/2011 (u/O 39 R-1&2), 5541/2012 (u/O
VIII R-10), 5891/2012 (for delay), 9536/2012 (u/o39 R-4), 10187/2012 (u/O
7 R-11), CCP (O) 26/2012

SATISH KAPOOR Plaintiff
Through: Mr. Aman Lekhi, Sr. Adv. with Mr. Rajeshekher Rao & Ms.
Simon Benjamin, Advs.

Versus

VANDANA KAPOOR & ORS. Defendants
Through: Mr. Raman Kapoor, Sr. Adv. with Mr. Mohit Chaudhary,
Pragya Singh & Mr. Harsh Sharma Adv. for D-3&4.
Mr. Harish Malhotra, Sr. Adv with Mr. Thehak, Adv. for D-8.
Mr. Rajiv Talwar, Adv. for D-5

AND

CS(OS) 741/2012, IA No.5511/2012 (u/O 39 R-1&2), 11183/2012 (u/O 39
R-1&2) & CC No.68/2012

SATISH KAPOOR & ORS Plaintiffs
Through: Mr. Aman Lekhi, Sr. Adv. with Mr. Rajeshekher Rao & Ms.
Simon Benjamin, Advs. for P-4.

Versus

ANKUR ARORA AND ORS

.... Defendants

Through: Mr. Raman Kapoor, Sr. Adv. with Mr. Mohit Chaudhary,
Pragya Singh and Mr. Harsh Sharma Adv. for D-1 to 3.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

J U D G M E N T

21.03.2013

1. CS(OS) No.1375/2010 is filed, (i) for declaration that the four plaintiffs namely Ms. Bela Kapoor, Ms. Kiran Vijhania, Ms. Neelam Deewan and Mr. Satish Kapoor and the defendants No.1 and 4 namely Ms. Vandana Kapoor and Ms. Anu Kawatra, being the legal heirs of late Sh. Raja Ram Kapoor, are the owners of property No.B-5/81, Safdarjung Enclave, New Delhi-110029; (ii) for declaration that the mutation of the said property and conveyance of freehold rights in the land underneath the same by the Delhi Development Authority (DDA) in favour of the defendants No.1 and 2 namely Ms. Vandana Kapoor and Ms. Sonika Pruthi is null and void; (iii) for injunction restraining the defendants No.1 & 2 namely Ms. Vandana Kapoor and Ms. Sonika Pruthi from dealing with the property No.B-5/81, Safdarjung Enclave, New Delhi; and, (iv) for damages for use and occupation.

2. CS(OS) No.2298/2010 is filed by Ms. Vandana Kapoor against Mr. Satish Kapoor, Ms. Kiran Vijhania, Ms. Neelam Deewan, Ms. Bela Kapoor, and Ms. Anu Kawatra, (i) for declaration that Mr. Satish Kapoor has no right whatsoever in the estate of late Sh. Raja Ram Kapoor, having been disowned and disinherited in the lifetime of Sh. Raja Ram Kapoor; (ii) for declaration that property No.F-130/4, Western Avenue, Sainik Farms, New Delhi is an integral part of the estate of late Sh. Raja Ram Kapoor; (iii) for partition of, (a) Shop No.1251, Kaccha Bagh, Chandni Chowk, Delhi-06; (b) Shop No.1253, Kaccha Bagh, Chandni Chowk, Delhi-06; (c) Shop No.4E, New Market, Kamla Nagar, Delhi-06; and, (d) Property No.F-130/4, Western Avenue, Sainik Farms, New Delhi, between Ms. Vandana Kapoor, Ms. Kiran Vijhania, Ms. Neelam Deewan, Ms. Bela Kapoor, and Ms. Anu Kawatra; (iv) for mandatory injunction to Mr. Satish Kapoor to give accounts of movable assets of late Sh. Raja Ram Kapoor removed by him; (v) for partition of the movable assets of late Sh. Raja Ram Kapoor; and, (vi) for injunction restraining Mr. Satish Kapoor from dealing with the estate of late Sh. Raja Ram Kapoor.

3. CS(OS) No.2299/2010 is filed by Ms. Vandana Kapoor and Ms. Sonika Pruthi against Mr. Satish Kapoor for (i) possession of Shop No.1252, Kaccha Bagh, Chandni Chowk, Delhi-06; (ii) permanent injunction restraining Mr. Satish Kapoor from dealing with the said shop; (iii) recovery of Rs.36 lakhs towards past mesne profits with respect to the said shop; and, (iv) for future mesne profits/damages for use and occupation of the said shop.

4. The aforesaid three suits were vide order dated 24th May, 2011 referred to the Delhi High Court Mediation and Conciliation Centre and the parties i.e. Ms. Bela Kapoor, Ms. Kiran Vijhani, Ms. Neelam Deewan, Mr. Satish Kapoor, Ms. Vandana Kapoor, Ms. Sonika Pruthi and Ms. Anu Kawatra agreed to Mr. Atul Batra, Advocate being appointed as Mediator.

5. It may be clarified that while Ms. Bela Kapoor, Ms. Kiran Vijhani, Ms. Neelam Deewan, Mr. Satish Kapoor, Ms. Vandana Kapoor and Ms. Anu Kawatra are all children of late Sh. Raja Ram Kapoor and late Smt. Raj Rani Kapoor, Ms. Sonika Pruthi is the daughter of Ms. Vandana Kapoor.

6. A Settlement Agreement dated 7th June, 2011 accompanied by a Memorandum of Settlement also dated 7th June, 2011 was signed by all the said parties, their respective Advocates and the Mediator and forwarded to the Bench of this Court before which the aforesaid three suits were pending and tagged to the file of CS(OS) No.1375/2010.

7. It may be mentioned that the reference to mediation was in pursuance to I.A. No.8616/2011 in CS(OS) No.1375/2010, I.A. No.8617/2011 in CS(OS) No.2298/2010 and I.A. No.8615/2011 in CS(OS) No.2299/2010, all under Section 89 of Civil Procedure Code (CPC), 1908, of Ms. Vandana Kapoor. This Court while referring the parties to mediation vide order dated 24th May, 2011, imposed the condition that the Mediator will take up the matter only if all the parties appear before him.

8. CS(OS) No.1375/2010 was listed before this Court on 4th July, 2011 when it was informed that the matter had been settled before the Mediation Cell of this Court. Accordingly, the parties were directed to appear on 29th July, 2011 for recording of the settlement and the other two suits also directed to be listed on the same day.

9. The matter could not be taken up on 29th July, 2011 owing to a Full Court reference scheduled on that date and was renotified for 18th August, 2011.

10. It appears that on 18th August, 2011, there was some controversy and this Court expressed an opinion that the matter can be finally resolved with the intervention of the Court and directed the personal presence of all the parties on 25th August, 2011.

11. On 25th August, 2011, Ms. Bela Kapoor, Ms. Kiran Vijhani, Ms. Neelam Deewan, Mr. Satish Kapoor failed to appear and after some hearing the matter was adjourned to 1st September, 2011 for their presence.

12. On 1st September, 2011, the counsel for Ms. Kiran Vijhani stated that he wanted to file objections to the Settlement recorded before the Mediation Cell.

13. I.A. No.16223/2011 in CS(OS) No.1375/2010 came to be filed by Ms. Kiran Vijhani objecting to the Settlement Agreement.

14. It appears that Ms. Vandana Kapoor and Ms. Sonika Pruthi vide Sale Deed dated 8th June, 2011 registered on 20th June, 2011 sold property No. B-5/81, Safdarjung Enclave, New Delhi to Ms. Anshul Arora wife of Mr. Ankur Arora. CS(OS) No.1642/2011 has been filed by Mr. Satish Kapoor for declaration of the Sale Deed dated 8th June, 2011 as null and void and for cancellation thereof. Besides Ms. Vandana Kapoor, Ms. Sonika Pruthi, Ms. Anshul Arora and Mr. Ankur Arora, the aforesaid Ms. Anu Kwatra, Ms. Bela Kapoor, Ms. Kiran Vijhani and Ms. Neelam Deewan have also been impleaded as defendants to the said suit. It is the case of Mr. Satish Kapoor in the said suit that the said Sale Deed is in violation of interim orders in the earlier suits restraining Ms. Vandana Kapoor and Ms. Sonika Pruthi from dealing with the property and is also in violation of Clause 20 of the Settlement Agreement signed between the parties.

15. CS(OS) No.2532/2011 also was filed by Ms. Kiran Vijhani for cancellation of the Settlement Agreement dated 7th June, 2011 and for restraining Ms. Vandana Kapoor, Ms. Sonika Pruthi, Ms. Anshul Arora and Mr. Ankur Arora from dealing with the property No. B-5/81, Safdarjung Enclave, New Delhi. The other parties as aforesaid were also impleaded as defendants in the said suit.

16. CS(OS) No.741/2012 has been filed by Mr. Satish Kapoor, his son Mr. Ravi Kapoor, his daughter-in-law Ms. Ambika Kapoor and his minor son Master Raunak Kapoor against Mr. Ankur Arora, Ms. Anshul Arora, Ms. Vandana Kapoor etc. for restraining them from causing any harm to them and/or from dispossessing them from their residence at B-70, Sarvodaya Enclave.

17. CCP(O) No.26/2012 in CS(OS) No.1642/2011 has been filed by Mr. Satish Kapoor against Ms. Vandana Kapoor, Ms. Sonika Pruthi, Ms. Anshul Arora and Mr. Ankur Arora for terrorizing and intimidating him.

18. All the aforesaid matters as well as CS(OS) No.2532/2011 were heard at length on 7th March, 2013 when,

A. CS(OS) No.2532/2011 was dismissed as not maintainable;

B. CS(OS) No.1642/2011 was held maintainable and the pleas of Ms. Vandana Kapoor, her daughter Ms. Sonika Pruthi, Ms. Anshul Arora and Mr. Ankur Arora for rejection of plaint in CS(OS) No.1642/2011 were negated;

C. All counsels agreed on that date, that if the objections filed by Ms. Kiran Vijhani vide I.A. No.16223/2011 in CS(OS) No.1375/2010 and supported by Mr. Satish Kapoor were to be dismissed and the Settlement Agreement to be upheld, then all suits/proceedings shall stand disposed of in terms of the said Settlement Agreement; however if the objections to the Settlement Agreement were to be upheld or to be put to evidence, then the suits will have to proceed;

D. The statement of counsel for Ms. Anu Kawatra to the effect that she was not challenging or opposing the Settlement Agreement and shall be bound by the same was also recorded on that date.

After hearing the counsels on the objections/opposition to the Settlement Agreement, orders thereon were reserved.

19. On 7th March, 2013, the counsel for Ms. Anshul Arora and Mr. Ankur Arora had also handed over the affidavit-cum-No Objection Certificate (NOC) stated to have been signed by Ms. Bela Kapoor, Neelam Deewan, Mr. Satish Kapoor and Ms. Kiran Vijhani disclaiming any right, title or interest in property No. B-5/81, Safdarjung Enclave, New Delhi and giving their no objection in view of the Settlement Agreement dated 7th June, 2011 and confirming receipt of monies in terms of the Settlement Agreement. However a doubt was raised on that day by the counsel for Mr. Satish

Kapoor about the signatures of Mr. Satish Kapoor on the affidavit-cum-NOC purportedly signed by him. Liberty was given to him to file an affidavit on the said effect. An affidavit dated 11th March, 2013 of Mr. Satish Kapoor has since been filed confirming his signatures on the said affidavit-cum-NOC.

20. Before I come to the challenge to the Settlement Agreement, it is deemed expedient to notice the relevant terms thereof.

21. The Settlement Agreement dated 7th June, 2011 records:

- (i) that the subject matter of CS(OS) Nos.1375/2010, 2298/2010 and 2299/2010 is the estate of late Sh. Raja Ram Kapoor and late Smt. Raj Rani Kapoor comprising of, (a) property No. B-5/81, Safdarjung Enclave, New Delhi admeasuring 199.1 sq. yds.; (b) property Nos.1251, 1252 & 1253 and terrace, Kaccha Bagh, Chandni Chowk, Delhi, and, (c) leasehold rights in property No.4, Badamshah Market, Kamla Nagar, Delhi under the tenancy of Kamal Jewellers;
- (ii) that meetings were held between the parties on 6th & 7th June, 2011 with the assistance of the Mediator;
- (iii) that in view of the assurances of Ms. Bela Kapoor, Ms. Kiran Vijhania, Ms. Neelam Deewan, Mr. Satish Kapoor, Ms. Vandana Kapoor and Ms. Sonika Pruthi that they would amicably resolve all their inter se disputes and would not raise any further claims in relation to the estate of late Sh. Raja Ram Kapoor and late Smt. Raj Rani Kapoor, Ms. Anu Kawatra has voluntarily given up her share in the estate of her parents in favour of her siblings to enable them to restore peace, harmony in the family and to enable them to amicably resolve their disputes and settle all their inter se litigations;
- (iv) that the parties had signed a separate Memorandum of Settlement on 7th June, 2011 to be read as part and parcel of Mediation Settlement;
- (v) that the Settlement Agreement shall be recorded in CS(OS) No.1375/2010 and the other two suits shall be withdrawn;
- (vi) that on signing of the Settlement Agreement, the parties were left with no other claims or demands against each other and all the disputes and differences stood settled by the process of Mediation/Settlement;

(vii) that the parties undertake to the Court that they shall abide by the terms and conditions contained in the Settlement Agreement and not dispute the same.

22. The Memorandum of Settlement dated 7th June, 2011 annexed to the Settlement Agreement, in addition records:

(a) that Ms. Vandana Kapoor and Ms. Sonika Pruthi relinquished their right, title and interest in shop No.1252, Kaccha Bagh, Chandni Chowk, Delhi in favour of Mr. Satish Kapoor and shall also have no claim in the remaining Kaccha Bagh shops/properties and Kamla Nagar shop/property and/or any other part of the estate of late Sh. Raja Ram Kapoor and late Smt. Raj Rani Kapoor including in their movable and immovable properties, if any;

(b) that Mr. Satish Kapoor shall be the sole and absolute owner of Kaccha Bagh shops/properties and Kamla Nagar shop/property and shall have the sole and exclusive rights in the family business and related commercial properties/tenancies to the exclusion of the other heirs;

(c) Ms. Anu Kawatra, Ms. Kiran Vijhane, Ms. Bela Kapoor, Ms. Neelam Deewan, Mr. Satish Kapoor acknowledged the mutation and conveyance of the property No.B-5/81, Safdarjung Enclave, New Delhi in favour of Ms. Vandana Kapoor and Ms. Sonika Pruthi and their no objection thereto;

(d) Ms. Vandana Kapoor and Ms. Sonika Pruthi were paying Rs.30 lakhs to Ms. Neelam Deewan and a sum of Rs.5 lakhs to Ms. Kiran Vijhane, Ms. Bela Kapoor and Mr. Satish Kapoor in full and final settlement of all disputes in relation to the estate of parents;

(e) Mr. Satish Kapoor had also paid Rs.1 lakh each in cash to Ms. Vandana Kapoor, Ms. Sonika Pruthi, Ms. Kiran Vijhane, Ms. Bela Kapoor and Ms. Neelam Deewan in full and final settlement of all disputes;

(f) that all the three suits shall be decreed in terms of the Settlement Agreement;

(g) that the parties shall execute all other documents in support of the Settlement and sign other papers for mutation of the properties in the names of the parties to whose share they had fallen under the Settlement Agreement;

(h) to present themselves before the Court for recording of the settlement;

(i) Ms. Vandana Kapoor, Ms. Sonika Pruthi, Ms. Anu Kawatra, Ms. Kiran Vijhane, Ms. Bela Kapoor and Ms. Neelam Deewan will have no share in the business of late Sh. Raja Ram Kapoor in the name of M/s Kishan Chand Kapoor & Company or in any movable property;

(j) that Ms. Anu Kawatra, Ms. Kiran Vijhane, Ms. Bela Kapoor and Ms. Neelam Deewan have also executed Relinquishment Deeds in favour of Mr. Satish Kapoor with respect to Kaccha Bagh and Kamla Nagar properties;

(k) Ms. Vandana Kapoor executed a Relinquishment Deed in favour of Mr. Satish Kapoor with respect to Kaccha Bagh and Kamla Nagar properties;

(l) that the property No.B-5/81, Safdarjung Enclave, New Delhi was being sold to Ms. Anshul Arora wife of Mr. Ankur Arora and the payments mentioned in the Settlement were being done from the monies received by Ms. Vandana Kapoor and Ms. Sonika Pruthi from the said Ms. Anshul Arora;

(m) that property No.F-130/4, Western Avenue, Sainik Farms, New Delhi did not form part of the estate of late Sh. Raja Ram Kapoor and late Smt. Raj Rani Kapoor and Mr. Satish Kapoor shall be free to deal with the same and had legitimately sold the same to the Aggarwal Family.

23. Ms. Kiran Vijhane in IA.No.16223/2011 objecting to the Settlement Agreement dated 7th June, 2011 has pleaded –

(i) that the plaintiffs in CS(OS) 1375/2010 had in April, 2010 learnt that Ms. Vandana Kapoor and Ms. Sonika Pruthi had vide Agreement dated 11th June, 2001 agreed to sell the Safdarjung Enclave property to Shikha Pahuja and who had filed CS(OS)1898/2003 for specific performance thereof and vide interim order in that suit, Ms. Vandana Kapoor and Sonika Pruthi stood restrained from dealing with the said property;

(ii) that during the pendency of CS(OS)1375/2010, the plaintiffs therein, in November, 2010 learnt of pendency of another suit for specific performance qua the Safdarjung Enclave property being CS(OS)1455/2010 filed by one Mascot Buildcon Pvt. Ltd against Ms. Vandana Kapoor and Ms. Sonika Pruthi with respect to Agreement to Sell dated 25th August, 2009;

(iii) that Ms. Vandana Kapoor and Sonika Pruthi surreptitiously entered into a compromise in CS(OS)1898/2003 by paying Rs.70 lacs to Ms. Shikha Pahuja aforesaid and on payment of which amount CS(OS) 1898/2003 was withdrawn on 6th May, 2011;

(iv) that similarly CS(OS)1455/2010 was also withdrawn by the plaintiff therein on 11th May, 2011, upon receipt of a sum of Rs.16 lacs from Ms. Vandana Kapoor and Ms. Sonika Pruthi;

(v) that both the amounts aforesaid had in fact been paid out of the account of Aroras to whom the Safdarjung Enclave property was ultimately

sold by Ms. Vandana Kapoor and Ms. Sonika Pruthi vide Sale Deed dated 8th June, 2011;

(vi) that the plaintiffs in CS(OS) 1375/2010 were in third week of May, 2011 approached by Aroras on behalf of Ms. Vandana Kapoor and Ms. Sonika Pruthi for amicable settlement, without disclosing about the withdrawal of CS(OS) 1898/2003 and CS(OS)1455/2010 for specific performance against Safdarjung Enclave property;

(vii) that immediately on learning of the withdrawal of the suits for specific performance, the plaintiffs in CS(OS)1375/2010 filed an application therein seeking interim orders and vide order dated 3rd June, 2011, Ms. Vandana Kapoor and Ms. Sonika Pruthi were directed to maintain status quo with respect to Safdarjung Enclave property;

viii) that at the time of the Settlement dated 7th June, 2011, Ms. Vandana Kapoor and Ms. Sonika Pruthi had informed the plaintiffs in CS(OS)1375/2010 that the Safdarjung Enclave property was being sold to the Arora's for a sale consideration of Rs.80 lacs and in support thereof stamp papers purchased by the Arora's stating the consideration price of Rs.80 lacs were shown;

ix. that Ms. Vandana Kapoor and Sonika Pruthi stated that they were paying Rs.30 lacs to Ms. Neelam Deewan and Rs.5 lac each to Ms. Bela Kapoor, Ms. Kiran Vijhani and Mr. Satish Kapoor under the Settlement Agreement out of the sale consideration of Rs.80 lacs being received by them from Aroras;

x. that Ms. Vandana Kapoor and Ms. Sonika Pruthi, even before getting the relinquishment deed/no objection certificate registered and in disregard of interim order and settlement agreement dated 7th June, 2011, executed the Sale Deed dated 8th June, 2011 and the said Sale Deed does not even mention the litigation pending in this Court and on the contrary mentions the property to be free from all encumbrances;

xi. that the sale was absolutely illegal and vitiated as it had been done fraudulently as revealed subsequently;

xii. that the plaintiffs in CS(OS)1375/2010 subsequently learnt that Ms. Vandana Kapoor and Sonika Pruthi had concealed the real amount for which the Safdarjung Enclave property was being sold to the Aroras and consequently had crafted the settlement terms on a lesser amount and pocketed the major share of sale proceeds to their advantage. It was learnt that Aroras had paid Rs.80,0000/- over and above the sum of Rs.30 lacs to Ms. Neelam Deewan and Rs.5 lacs each to Ms. Bela Kapoor, Ms. Kiran Vijhani and Mr. Satish Kapoor;

- xiii. that the defendant no.2 further stated in the Court that a sum of Rs.1 crore more was to be paid by Aroras as part of sale consideration;
- xiv. that Ms. Vandana Kapoor and Sonika Pruthi had thus concealed the sale consideration being received by them for the Safdarjung Enclave property;
- xv. that for this reason Ms. Kiran Vijhani had not encashed the cheque of Rs.5 lacs received by her under the Settlement agreement.

24. Ms. Vandana Kapoor and Ms. Sonika Pruthi in their reply to the said application have stated-

- a. that the Settlement Agreement was signed after serious and detailed deliberations between the parties;
- b. that all the parties were aware that Aroras would be making payments as per the Settlement Agreement; so much so the Aroras also paid on behalf of Mr. Satish Kapoor the sum of Rs.1 lac to Ms. Vandana Kapoor, Ms. Sonika Pruthi, Ms. Kiran Vijhani, Ms. Bela Kapoor and Ms. Neelam Dewan in cash;
- c. that each and every party quoted a specific figure which they wanted to be given to them to settle their claim;
- d. that the application is an attempt to resile from the settlement and to interfere with the administration of justice;
- e. that the quantum of the settlement amount paid to each party had no nexus whatsoever with the ultimate sale of Safdarjung Enclave property and was not a portion or percentage to be given from the sale value of Safdarjung Enclave property;
- f. that the application is a disguise to extort more monies;
- g. that there was no misrepresentation or fraud;
- h. that in the entire Settlement Agreement there is no mention of the sale value of Safdarjung Enclave property;
- i. that once Ms. Kiran Vijhani had consciously assessed her claim before the Mediation Centre, it is not open to her to reopen the entire settlement;
- j. that even as per the Settlement Agreement, Ms. Vandana Kapoor and Ms. Sonika Pruthi were free to deal with the Safdarjung Enclave property and have accordingly executed the Sale Deed.

25. Mr. Harish Malhotra, senior counsel for Ms. Kiran Vijhani has argued that Ms. Kiran Vijhani had agreed to receive Rs. 5 lacs only under the Settlement Agreement on the premise that two suits for specific performance

of Agreement to Sell with respect to Safdarjung Enclave property were pending and if it was known to her that the said suits stood withdrawn, she would have asked for a much higher amount inasmuch as the market value of the said property was otherwise much more than Rs. 80 lacs, being the sale consideration being paid by the Aroras as disclosed to her. He has thus argued that the consent of Ms. Kiran Vijhni to the settlement has been obtained by falsehood and by misrepresentation and the said questions cannot be decided without the matter being put to trial.

26. I have inquired from Mr. Malhotra, senior counsel whether there are any pleadings to the effect that the sale price of Safdarjung Enclave property was much more. He has fairly stated that there are no such pleadings.

27. The argument that Ms. Kiran Vijhni at the time of signing the Settlement Agreement did not know about the withdrawal of the two suits for specific performance is contrary to pleadings. Ms. Kiran Vijhni before signing the Settlement Agreement dated 7th June, 2011 was fully aware of the withdrawal of the two suits for specific performance and in fact in her application being IA.No.16223/2011 has expressly pleaded that the occasion for approaching the Court by IA No.9663/2011 on 3rd June, 2011 while mediation was still on, was the knowledge of the withdrawal of the suits for specific performance.

28. Though I would have been inclined to dismiss IA.No.16223/2011 of Ms. Kiran Vijhni on the ground of making a false argument alone but this being the first Court, it is deemed expedient to deal with the other arguments also.

29. Mr. Malhotra, senior counsel has next shown, that the stamp papers for the sale deed executed on 8th June, 2011 by Ms. Vandana Kapoor and Ms. Sonika Pruthi in favour of Aroras were purchased on 25th May, 2011 disclosing the sale consideration as Rs.80 lacs and contends that the said stamp papers were shown to Ms. Kiran Vijhni to convince her that Aroras were paying a total of Rs.80 lacs only and out of which Rs.30 lacs was being paid to Ms. Neelam Deewan and Rs. 5 lac each to Ms. Bela Kapoor, Ms. Kiran Vijhni and Mr. Satish Kapoor.

30. It is further argued that Ms. Vandana Kapoor and Ms. Sonika Pruthi in their reply to the application have not denied having made a statement that they are entitled to a further sum of Rs.1 crore from Aroras. It is stated, that

it is for this reason only that though the Sale Deed dated 8th June, 2011 records possession to have been given but admittedly till date possession has not been given.

31. It is argued, that had Ms. Kiran Vijhani known that Ms. Vandana Kapoor and Ms. Sonika Pruthi were getting Rs.1,80,00,000/- from Aroras, she would have demanded a higher amount than Rs.5 lac. It is contended that once Ms. Kiran Vijhani succeeds in showing that her consent to the compromise was obtained by misrepresentation, the compromise being nothing but an agreement, would be voidable and should not be accepted by the Court.

32. Mr. Aman Lehki, Sr. Advocate for Mr. Satish Kapoor has taken me through the Memorandum of Settlement to contend that even the same contemplated execution of the Sale Deed in favour of the Aroras, after the relinquishment deed with respect to other properties in favour of Mr. Satish Kapoor had been executed and after compromise had been recorded in the Court. It is contended that while Ms. Vandana Kapoor and Ms. Sonika Pruthi have encashed the Safdarjung Enclave property falling to their share, Mr. Satish Kapoor has been left in a lurch.

33. At this stage counsel for Ms. Vandana Kapoor and Sonika Pruthi has undertaken on their behalf to abide by the terms of the Memorandum of Settlement and denies that they have ever refused performing their obligations.

34. Though it was asked to Mr. Lekhi, senior counsel as to how Mr. Satish Kapoor suffers by different stages contemplated in the Settlement Agreement being not followed chronologically, specially when Ms. Vandana Kapoor and Ms. Sonika Pruthi are still ready to comply with their obligations thereunder, the only answer forthcoming was that even the title deeds of the property which had fallen to the share of Mr. Satish Kapoor had not been delivered. Upon being pointed out that there was no such obligation of Ms. Vandana Kapoor and Ms. Sonika Pruthi under the Settlement Agreement, the senior counsel contends that the same is an implied term of the settlement.

35. The counsel for Ms. Vandana Kapoor and Ms. Sonika Pruthi on their behalf has also given a statement that they are not in possession of the Sale

Deed or other title documents of the properties which have fallen to the share of Mr. Satish Kapoor and further confirm that they have not dealt with the properties in any manner whatsoever and have not deposited the said documents with any other person.

36. Mr. Lekhi, senior counsel has also argued that Ms. Vandana Kapoor and Ms. Sonika Pruthi have in the Sale Deed dated 8th June, 2011 dealt with Safdarjung Enclave property on the basis of a Will of Mr. Raja Ram Kapoor which was disputed by Mr. Satish Kapoor and without mentioning the Settlement Agreement. It is stated that the same casts a cloud on the bona fides of the case set up by Mr. Satish Kapoor in these proceedings.

37. Though the aforesaid contention is not found to be tenable, I may record that the counsel appearing for Ms. Vandana Kapoor and Ms. Sonika Pruthi has stated that they have no intention to take any action against Mr. Satish Kapoor for making false pleas and are bound by the settlement.

38. I may record that, experience of advising on transactions of sale / purchase of immovable properties show, a purchaser does not want any dispute/litigations to be mentioned in the title documents as the same tends to lower the price of the property and make the subsequent purchasers suspicious. It is thus not unusual to not include in the recitals of the title documents any past disputes once the disputes have been settled. Moreover, in the present case the mutation of property in the name of Ms. Vandana Kapoor and Ms. Sonika Pruthi and which in the suits was sought to be set aside and which claim in the Settlement Agreement was given up, was on the basis of Will and nothing unusual is found in the Sale Deed in favour of Aroras describing the title on the said basis only

39. The counsel for Ms. Vandana Kapoor and Ms. Sonika Pruthi and the senior counsel for the Aroras have contended that the Sale Deed dated 8th June, 2011 is not in violation of the Settlement Agreement and in any case after obtaining the NoC cum affidavits from all other parties and after making payments under the Settlement Agreement to the others. They have contended that under the same Settlement Agreement several other properties have fallen to the share of Mr. Satish Kapoor also. Reliance is placed besides on *Afcons Infrastructure Ltd. Vs. Cherain Varkey Construction Company Pvt. Ltd.* (2010) 8 SCC 24, on *Sait Bolumal Dharmdas Firm Vs. Gollapudi venkatachelapathi Rao* AIR 1959 AP 612, on

Kale Vs. Deputy Director of Consolidation (1976) 3 SCC 119 and on K.N. Govindan Kutty Menon Vs. C.D Shaji 2011(13) SCALE 232.

40. The senior counsel for the Aroras has also contended that they are the first cousin of the parties and were rather asked to buy the Safdarjung Enclave property to enable a settlement to be arrived at between the warring siblings. He has further contended that the pay orders for Rs.30 lacs and Rs.5 lac each in favour of Ms. Neelam Deewan, Ms. Kiran Vijhani, Ms. Bela Kapoor and Mr. Satish Kapoor respectively are of 24th May, 2011 which shows that the settlement as to the amount to be paid had been arrived at prior thereto only. It is explained that the Mediator had spent nearly two full days with Mr. Rajshekhar Rao and Mr. Banerjee, Advocates. It is thus contended that the arguments now raised of the stamp paper dated 25th May, 2011 for the Sale Deed registered on 8th June, 2011 being shown to convince to Ms. Neelam Deewan, Ms. Kiran Vijhani, Ms. Bela Kapoor and Mr. Satish Kapoor to receive Rs. 30 lacs and Rs. 5 lac each is false inasmuch as on 24th May, 2011 when the pay orders for the said amount were prepared, stamp papers of the sale deed were not even in existence. Attention is invited to the Mediation and Conciliation Rules, 2004 of this Court to contend that the challenge under Rule 25, if any to the Settlement agreement, is to be made within 14 days and which has not been done in the present case. It is contended that IA. No.16223/2011 challenging the Settlement Agreement dated 7th June, 2011 was filed only on 5th September, 2011.

41. I have weighed the aforesaid rival contentions in the factual position aforesaid. I had during the hearing itself, upon Mr. Malhotra, senior counsel repeatedly contending that the pleas taken in IA.No.16223/2011 of the consent of Ms. Kiran Vijhani having been obtained by misrepresentation is a factual plea which could not be decided without evidence, invited attention of Mr. Malhotra to the proviso to Order 23 Rule 3 of the CPC which requires the Court to immediately adjudicate the challenge to the compromise, without adjourning the matter, except for reasons to be recorded in writing. It was put to Mr. Malhotra, senior counsel whether the same was not indicative of, not all challenges to a compromise being required to be adjudicated by putting the same to trial and the Court being required to form an opinion on the preponderance of probabilities whether there was any merit in the challenge to the compromise or not and only if found such case being made out, to put it to evidence or else reject the same summarily.

42. It was also pointed out to Mr. Malhotra, senior counsel during the hearing that the Settlement Agreement signed before the Mediation Cell of this Court could not be treated on the same pedestal as a private agreement, inasmuch as the same has been given a statutory colour under Section 89 of the CPC.

43. Neither Mr. Malhotra nor Mr. Lekhi, senior counsels argued that all objections under the proviso to Order 23 Rule 3 to recording of compromise, have to be put to trial. Similarly, nothing was urged to contend that in spite of Settlement Agreement being the culmination of mediation, statutorily recognized in Section 89 of the CPC as a mode of settlement of dispute, challenge to validity of the same is to be tested on the same anvil as a private agreement.

44. Though Section 141 of the CPC prescribes the same procedure as provided in the CPC in regard to suits, in other proceedings also and which would cover application as under proviso to Order 23 Rule 3 objecting to a compromise, but “as far as it can be made applicable.” I am of the considered view that the language of the proviso to Order 23 Rule 3 mandating “the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment” makes the procedure prescribed in the CPC in regard to suits, of putting all disputed questions of fact arising from pleadings to trial, inapplicable to decision of the objections to compromise. If the legislative intent had been that such objections, if raising factual controversy, are to be put to trial, the proviso would not have required immediate decision, without adjournment, save for reasons to be recorded in writing. The test, in my opinion, is to be akin to that in grant of leave to defend under Order XXXVII of the CPC. If the Court finds objections to the compromise being a moonshine or fantastic or vexatious or malafide, the same, even though raising a factual controversy, need not be put to trial and are to be dismissed summarily and the suit decreed in terms of compromise.

45. The Supreme Court recently in Mahalaxmi Co-operative Housing Society Ltd. Vs. Ashabhai Atmaram Patel MANU/SC/0202/2013 has held that Order 23 Rule 3 casts an obligation on the Court to decide the questions under the proviso at the earliest without giving undue adjournments. In that case also the objections raised were adjudicated without putting the same to trial.

46. We are thus to examine the objections in IA No.16223/2011 on the said parameters.

47. However before that, Naresh Kumar Vs. Ashok Arora MANU/DE/9778/2007 may also be noticed. A Division Bench of this Court (in the said judgment) approved the earlier dicta of this Court in Double Dot Finance Limited Vs. Goyal MG Gases Limited 117 (2005) DLT 330 to the effect that if such pleas are sustained, the sanctity and purpose of amicable settlements between the parties would stand totally eroded. It was held that amicable resolution of disputes and negotiated settlements is public policy of India and Section 89 of the CPC as well as Legal Services Authorities Act, 1995 call upon the Courts to encourage settlement of legal disputes through negotiations between the parties and if amicable settlements are discarded and rejected on flimsy pleas, the parties would be wary of entering into negotiated settlements and making payments thereunder as a shrewd party after entering into a negotiated settlement, may pocket the amount received under it and thereafter challenge the settlement and re-agitate the dispute causing immeasurable loss and harassment to the party making payment there under. This tendency has to be checked and such litigants discouraged by the Courts.

48. As far as challenge to the compromise by Mr. Satish Kapoor is concerned, it may be highlighted that he has not filed any application objecting thereto or pleading the Settlement Agreement to be not lawful or induced by misrepresentation. The challenge by him is only on the ground of the chronology in which the compromise was to be implemented having not been followed and the Sale Deed in favour of Aroras having been executed before recording of the compromise before the Court and while the order restraining Ms. Vandana Kapoor and Ms. Sonika Pruthi from dealing with the Safdarjung Enclave property was still in force. Mr. Lekhi, senior counsel being fully aware of the view taken by the undersigned in judgment dated 11th December, 2008 in CS(OS) No.2314/1994 titled A.K. Chatterjee Vs. Ashok Kumar Chatterjee (and appeal whereagainst was withdrawn) to the effect that sale in violation of Court injunction is not void or nonest also argued that the same requires reconsideration.

49. I do not find the above objection to be an impediment to the recording of the compromise and disposal of suits in terms thereof. The violation,

even if any, by Ms. Vandana Kapoor and Ms. Sonika Pruthi in chronology agreed to be followed in implementation of compromise is not found to be such as to vitiate the compromise. No prejudice is found to have been suffered by Mr. Satish Kapoor. Moreover, the Settlement Agreement envisages a decree in terms thereof and which decree can be executed against whosoever is in non-compliance of obligations thereunder. Ms. Vandana Kapoor and Ms. Sonika Pruthi against whom apprehensions are expressed, have already, as recorded above, undertaken to comply with their obligations and they are further ordered to be bound by the said statement.

50. The objection of Ms. Kiran Vijhni is predicated solely on the amount of Rs.5 lacs which she under the Settlement Agreement agreed to take, having been on the basis of Ms. Vandana Kapoor and Ms. Sonika Pruthi receiving only a sum of Rs.80 lacs from Aroras and out of which Rs.45 lacs was being disbursed, leaving them with Rs.35 lacs only and the subsequent discovery of their receiving more. The other argument of, not knowing about withdrawal of the suit for specific performance, has already been falsified as noted above.

51. However there is nothing whatsoever in the Settlement Agreement to suggest so. In fact under the Settlement Agreement, the Safdarjung Enclave property falls to the share of Ms. Vandana Kapoor and Ms. Sonika Pruthi and several other properties fall to the share of Mr. Satish Kapoor and no valuation of any of the said properties is mentioned and only the amounts paid to the other parties are mentioned. Had the said amounts been in any case linked to the sale consideration being received by Ms. Vandana Kapoor and Ms. Sonika Pruthi, nothing prevented Ms. Kiran Vijhni and Mr. Satish Kapoor, ably represented before the Mediation Cell also by counsels of this Court, to have mentioned so in the Settlement Agreement. The argument, of having believed the sale consideration to be Rs.80 lacs only, on the basis of the stamp papers dated 25th May, 2011 is falsified from the pay orders having been prepared on a day prior thereto.

52. The fact that the amounts to be paid to Ms. Kiran Vijhni and Mr. Satish Kapoor under the Settlement Agreement had no nexus to the sale consideration of Safdarjung Enclave property is also borne out from the fact that a considerably larger amount of Rs.30 lacs was agreed to be paid to Ms. Neelam Deewan. There is no plea of, what percentage of the sale consideration was agreed to be paid. If a party to a Settlement Agreement, of its own arrives at some justification for settling for a particular amount, the

said party cannot be heard to challenge the said Settlement Agreement on the ground that her assumptions therefor were erroneous as long as there is nothing to show that such assumption had any linkage to the representation of the other. Lord Maugham, as far back as in *Martin Cashen Vs. Peter J. Cashen* AIR 1938 PC 103 said that where family arrangements have been fairly entered into, then although a party may have greatly misunderstood his situation and mistaken his rights, a Court of Equity will not disturb the quiet which is the consequence of that agreement. Under Section 22 of the Indian Contract Act, 1872, a contract is not voidable merely because it was caused by one of the parties to it being under a mistake as to a matter of fact. The plea even otherwise does not inspire confidence. Ms. Kiran Vijhani, as noted above, already knew of withdrawal of the two suits for specific performance with respect to the Safdarjung Enclave property; she could not have logically assumed such withdrawal to be without any consideration and such consideration flowing from anyone other than Aroras who were very much in the picture; she can thus be safely assumed to be knowing that the Aroras, besides the consideration of Rs.80 lacs, were also paying other amounts for having the pending disputes with respect to the property settled. Not only so, it is also not disputed that the amounts, payable under the Settlement Agreement by Mr. Satish Kapoor, were to be paid and were paid by Aroras. The plea of misrepresentation taken is also vague and without any particulars as required to be pleaded under Order VI Rule 4 of the CPC. The Supreme Court, in *Ranganayakamma Vs. K.S. Prakash* (2008) 15 SCC 67, in the absence of particulars of when the fraudulent representations were made, who made the representations, what type of representation was made and finding the documents to have been signed at a public place i.e. Advocate's Office and not in a hush-hush manner or in blank and further finding the vague allegations to be far-fetched and beyond the ordinary human conduct, negated the same.

53. I am even otherwise of the view that the legal procedure for setting aside a compromise, is not a procedure for setting aside a hard bargain.

54. Insufficiency of consideration can even otherwise not be a ground of challenge, neither of a sale nor would it be a ground in a compromise. This sentiment was expressed by this Court in *Hari Ram Vs. K.L. Gandhi* 110 (2004) DLT 190 also.

55. Mention may also be made of *Gangadeep Pratisthan Pvt.Ltd. Vs. M/S. Mechano* 2005 (11) SCC 273 where the High Court had accepted the plea

of the consent of a party to a settlement therein being vitiated by duress and/or coercion for the reason of some monies also having exchanged in cash. The Supreme Court however set aside the said judgment and held that where the parties had agreed not to make payments in cash a term of compromise and had made payment on the basis of mutual faith, the same cannot be interpreted to mean that the consent was vitiated by duress or coercion. The Supreme Court also gave considerable weightage to payment under the compromise having been accepted. In the present case also though Ms. Kiran Vijhni claims that she had not encashed her pay order of Rs. 5 lacs but the payment of Rs.30 lacs and Rs. 5 lacs each given by Arora's to Ms. Neelam Deewan, Ms. Bela Kapoor & Mr. Satish Kapoor respectively have been encashed.

56. There is merit also in the contention, of different considerations applying while considering challenge to family settlements. The Settlement Agreement in the present case is nothing but a family settlement through the medium of mediation. With the societal changes, the common elder relatives of the family who used to bring about amicable settlements amongst warring siblings, hesitate to or do not want to interfere. The said rule has been taken over by professional mediators. The Supreme Court in Ranganayakamma supra held that relinquishment of property amongst siblings stands on a different footing and held that where the underlying idea is to bring an era of peace and harmony in the family and to put an end to discord, disharmony, acrimony and bickering and the consideration is love and harmony, the challenge on the ground of Section 25 of the Contract Act which itself carves out an exception for the same, has to be brushed aside.

57. I therefore do not find any merit in the objections to the Settlement Agreement and dismiss IA.No.16223/2011. As already observed above, the effect of dismissal of the objections to the Settlement Agreement would be that CS(OS)1375/2010, CS(OS)2298/2010 and 2299/2010 shall stand decreed in terms of the said Settlement Agreement with the Settlement Agreement forming part of the decree sheet. Resultantly CS(OS)1642/2011 and CS(OS)741/2012 shall also stand dismissed. In the facts aforesaid, no case for pursuing the CCP(O) 26/2012 further is also made out and which is also dismissed. No costs.

Decree Sheets be prepared.

Sd/-
RAJIV SAHAI ENDLAW, J.

MARCH 21st , 2013