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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI***Pronounced on: 21.07.2025*+ **CS(OS) 1906/2006**

CAPITAL LAND BUILDERS PVT. LTD &amp; ORS.....Plaintiffs

Through : Mr. T.K. Ganju and Mr. Vikas Dhawan, Sr. Advs. with Mr. Aquib Ali, Ms. Amreen Khaliq and Mr. Pranay Lakhanpal, Advs.

versus

M/S SHAHEED MEMORIAL SCTY. (REGD.) &amp; ORS....Defendants

Through : Mr. Ashish Mohan, Mr. Arjun Chowdhary, Mr. Samarth Chowdhary, Mr. Aveak Ganguly and Mr. Akshit Mago, Advs. for D-1 to D-6.

Mr. Anurag Ahluwalia, Mr. Arjun Chowdhary and Mr. Samarth Chowdhary, Advs. for D-1 to D-6.

**CORAM:****HON'BLE MR. JUSTICE VIKAS MAHAJAN****JUDGMENT****VIKAS MAHAJAN, J.****I.A. No. 9980/2024 (under Order XXXIX Rule 4 read with Section 151 CPC by D-1, 3 & 4 seeking modification of the interim injunction order dated 22.01.2024)**

1. The present application has been filed by defendant nos.1, 3 and 4 seeking modification of order dated 22.01.2024 passed by the Division Bench of this Court in FAO(OS) 90/2019, in view of the liberty granted by the Division Bench *vide* subsequent order dated 26.04.2024 to seek



modification/variation of the aforesaid order dated 22.01.2024. The relevant excerpts from the order dated 26.04.2024 whereby liberty was granted by the Division Bench to the defendants/applicants reads as under:

*“3. Present application has been filed on behalf of respondent nos.1, 3 and 4 (“applicants”) seeking modification of the consent order dated 22nd January, 2024 passed by this Court and seeking a direction to the appellant-plaintiff to maintain status quo with regard to the assets of the appellant company.*

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*6. The relevant portion of the order dated 22nd January, 2024 reads as under:-*

*“1. Learned counsel for the parties are in agreement that the appellant-M/s Capital Land Builders Pvt. Ltd. can sell the land or property on the following terms:-*

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*(ii) No sale of land will be made below the circle rate and entire consideration towards sale of land will be received through ordinary banking channels in accordance with law i.e. Cheque or RTGS. Capital Land Builders Pvt. Ltd. will furnish details of the sale transaction before this Court. **In the event it is discovered that cash transaction towards sale of land has taken place, the defendants i.e. Chowdhary Brahm Prakash fraction shall have the liberty to seek modification of the interim injunction order.**”*

*(Emphasis supplied)*

*7. This Court is of the opinion that as the allegations in the present application are disputed, it would be appropriate if this Court were to have the benefit of an adjudication by a learned Single Judge before examining this aspect. Consequently, this Court directs the applicants to file an application seeking modification/variation of the interim injunction order passed by this Court before the learned Single Judge. Learned counsel for the applicant states that he would ensure that his application is listed before learned Single Judge within a week.*

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9. *Consequently, the present application is disposed of with liberty to the applicants to file the application for modification/variation of this Court's order dated 22nd January, 2024. Needless to state that the rights and contentions of all the parties are left open and the matter would be decided by the learned Single Judge in accordance with law as expeditiously as possible."*

2.0. The relevant facts giving rise to the present suit are as follows:

2.1. An ongoing dispute between two families over the shareholding and management of plaintiff no.1/M/s Capital Land Builders Pvt. Ltd. [hereafter the 'Company'], as well as, control over the valuable assets of the Company, led to filing of the present suit by plaintiff nos. 2 to 4 ['Kishor Lal Sachdeva' faction] against defendant no.1/M/s Shaheed Memorial Society (Regd.) [hereafter the 'Society'] and defendant nos. 2 to 8 ['Chowdhary Brahm Prakash' faction] *inter alia* for – (a) permanent injunction restraining the defendants from holding themselves out to be shareholders, directors, agents or authorised representatives of plaintiff no.1 Company and from dealing with the assets thereof; and (b) mandatory injunction directing the defendants to hand over to the plaintiffs all records in their power and possession.

2.2. Chowdhary Brahm Prakash is stated to have acquired 500 shares of the Company out of the total share capital of 560 shares in the year 1962, which he subsequently transferred in the name of the Society, formed by him in the year 1963, of which he continued to be the president till his death in the year 1993.

2.3. It is the case of plaintiffs that the Society transferred all its shares to various parties between the years 1968 to 1989, thereby leaving it with no



shareholding in the Company. Consequently, name of the Society was removed from the Register of Members, and ROC was notified regarding the same at the relevant time. Annual return filed by the Company with ROC for the period 1989-90 and the subsequent years thereafter do not show Society as a member. The plaintiffs state that the aforesaid fact was never questioned by the Society or any of its members including Chowdhary Brahm Prakash as president of the Society.

2.4. It is stated that Sh. Kishor Lal Sachdeva was one of the first two subscribers of the Company with five shares, while the remaining ten shares were in the name of Smt. Satya Chowdhary, wife of Ch. Brahm Prakash. It is stated that the affairs of the Company have been managed by Sh. Kishor Lal and his family since 1989, after the Society lost its entire shareholding. In this regard it is stated that plaintiff nos.3 and 4 bought 20 shares each from the Society in the year 1974 and plaintiff nos.2 to 4 became the directors of Company between the years 1982 and 2005 as borne out from para 2.0 of the plaint.

2.5. On or about June 1997, the Society through Sh. Sidharth Chowdhary [defendant no.7], instituted proceedings under Section 108 & 111(4) of the Companies Act, 1956, registered as Company Petition No.15/111/97 before the Company Law Board, praying for rectification of the share register and for restoration of the name of Society in the said register in respect of 500 shares of the Company.

2.6. However, the said petition came to be dismissed *vide* order dated 29.05.2006 upon filing of an application for withdrawal by Sh. Ajay Chowdhary [defendant no.3] claiming himself to be the president of Society.



Seemingly, the aforesaid was a result of an *inter se* dispute amongst the members of the Society.

2.7. Later, Sh. Sidharth Chowdhary filed an application seeking recall of order dated 29.05.2006 on the ground that Sh. Ajay Chowdhary had no right to extinguish the Society's cause of action in the company petition. There being no opposition to restoration of the petition, Company Law Board restored the petition on 29.06.2006. Later, Ajay Chowdhary filed a writ petition before this Court seeking to challenge the restoration order of Company Law Board. The said writ petition was directed to be registered as company appeal bearing Co.A.(SB) 9/2007.

2.8. Once again, learned counsel appearing on behalf of the Society made a submission in the said company appeal that the Society does not wish to prosecute the petition filed under Section 108 & 111(4) of the Companies Act, 1956. Accordingly, the learned Company Judge observed that notwithstanding the *inter se* dispute between the members, since the Society does not wish to prosecute the petition before the Company Law Board, thus it cannot be compelled to do so. The Company Petition No.15/111/97 was thus, dismissed as withdrawn.

2.9. In April, 2006, the plaintiffs came to know that defendant no.2, Ajay Chowdhary, filed Form 32 with the ROC signing it for the Society, stating therein that defendant nos.3, 4, 5 and 6 had been appointed as directors on 10.03.2006 and that plaintiff nos.2, 3 & 4 had been removed as directors on the same date. Around the same time, the plaintiffs received further information that some persons holding themselves out to be the directors of the Company were negotiating for sale of some of its properties. Plaintiffs also discovered that Forms 2, 5 & 18 had been filed with the ROC without



authority, thus falsifying the records of the Company. It is in this backdrop that the present suit for injunction and damages came to be filed by the plaintiffs against the defendants.

3. The defendant no.1/Society filed its written statement questioning the *bona fide* of the list of shareholders of the Company. It is averred by the Society that the list of shareholders given in the plaint is false as the Society, in spite of holding 500 shares of the Company, has been omitted from the list of shareholders and the shares have been illegally transferred to various current shareholders of the Company.

4.0. The suit along with an application under Order XXXIX Rules 1 & 2 of CPC on behalf of the plaintiffs, was first listed on 06.10.2006. While issuing notice to the defendants, this Court granted plaintiffs an *ex-parte ad interim* order, thereby restraining the defendants from representing themselves as shareholders/representatives of the Company till further orders. Subsequently, *vide* order dated 30.10.2006, this Court recorded the statement of the defendants that they will not hold any Extraordinary General Body Meeting of the Company.

4.1. Thereafter, plaintiffs moved several applications under Order XXXIX Rule 2A alleging *inter alia* that the defendant nos.1-6 and 8 wilfully disobeyed the *ex parte* injunction order, inasmuch as Sh. Ajay Yadav [defendant no.4] entered appearance before the Company Law Board on 12.03.2007 in Co.Pet. 15/111/97 as a director of the Company and further Sh. Arjun Chowdhary [defendant no.3] also wrote a letter dated 08.05.2007 to Manager, Mohan Co-operative projecting himself to be the director of the Company. That apart, at the behest of defendant nos.1, 2, 3, 5 and 6, Sh. Ajay Yadav had sold number of plots owned by the Company to various



persons and sale deeds in that behalf were executed by him portraying himself as Company's director and having the authorisation from the board of directors to do so. The said applications were disposed of *vide* order dated 20.04.2009 holding defendant nos.3, 4, 5 and 6 guilty of contempt and the 26 sale deeds executed by the defendants were set aside.

4.2. Subsequently, applications filed by the plaintiffs under Order XXXIX Rules 1 & 2 [I.A. No.11235/2006 and I.A. No.7514/2007] and for clarification of order dated 06.10.2006 [I.A. No.11671/2006], as well as, application filed by the defendant nos.2 to 6 and 8 under Order XXXIX Rule 4 of CPC [I.A.No.8816/2007], were decided together by the learned Single Judge *vide* order dated 06.08.2009 whereby plaintiffs were held to have failed in establishing a *prima facie* case in their favour. The restraint order dated 06.10.2006 was vacated and all the parties were restrained from disposing of any property of the Company during pendency of the suit.

4.3. The aforesaid order dated 06.08.2009 was appealed before the Division Bench, both by the plaintiffs, as well as, the defendants. The appeal of the plaintiffs was registered as FAO(OS) 337/2009, while FAO(OS) 423/2009 was that of the defendants. The Division Bench *vide* order dated 06.11.2009 reversed the order of the learned Single Judge, setting aside the restraint against plaintiffs and reinstating the stay against defendants.

4.4. Against order of the Division Bench dated 06.11.2009, SLP(C) No.1277-1278/2010 was preferred by the defendants. However, the same was dismissed as withdrawn *vide* order dated 19.03.2010.

4.5. Afterwards, the defendants approached this Court with applications under Order XXXIX Rule 4 of CPC [I.A. No.7483/2015 and two other I.As] stating change in circumstances to the effect that new information had been



received which strongly suggested forgery of the share transfer deeds *vide* which the shares of the Society were sold away. Till the pendency of the applications, the Court *vide* order dated 04.02.2019, restrained parties from selling or alienating the properties of the Company.

4.6. This Court disposed of the said applications by a common order dated 07.03.2019, wherein it was observed that the question as regards forgery of transfer deeds is already a subject matter of the suit for declaration filed by the Society pending before District Court and present suit pertains only to the injunctions sought against defendants. Holding plaintiff nos.2 to 4 as the *de facto* directors/shareholders of the Company, the Court went on to place a *status quo* on sale of the properties of Company, in an attempt to protect the right of the defendants, accruing thereupon in the event that they succeed in their claim.

4.7. The Company preferred an appeal against the aforesaid order dated 07.03.2019 passed by the learned Single Judge, which came to be registered as FAO(OS) 90/2019. During pendency of the said appeal, the parties worked out an arrangement and with their consent, the following order was passed by the Division Bench on 22.01.2024:

*“1. Learned counsel for the parties are in agreement that the appellant – M/s Capital Land Builders Pvt. Ltd. can sell the land or property on the following terms:-*

- (i) Capital Land Builders Pvt. Ltd. will furnish its entire record of land, banks possessed/owned by it (at the moment) in a sealed cover within two weeks.*
- (ii) No sale of land will be made below the circle rate and entire consideration towards sale of land will be received through ordinary banking channels in accordance with law i.e. Cheque or RTGS. Capital Land Builders Pvt. Ltd. will furnish details of the sale transaction before this Court. In*



*the event it is discovered that cash transaction towards sale of land has taken place, the defendants i.e. Chowdhary Brahm Prakash fraction shall have the liberty to seek modification of the interim injunction order.*

- (iii) *In the event the dispute in the suit is decided in favour of the defendants (Chowdhary Brahm Prakash fraction), the plaintiffs (Sachdeva & Kishore Lal fraction) will render their accounts.*
- (iv) *If a settlement is reached before disposal of the suit, parties shall be free to approach for modification of the interim injunction order.*

2. *In accordance with the aforesaid consensual agreement, the present appeal and contempt petition are disposed of along with the pending applications. The learned Single Judge is requested to decide the suit as well as the contempt applications filed by the parties as expeditiously as possible.*

3. *It is clarified that the aforesaid consensual agreement has been arrived at without prejudice to the rights and contentions of the parties in the proceedings that are pending. This Court clarifies that it has not commented on the merit of the controversy.”*

5. By way of present application, the defendants have sought variation of the aforesaid consent order dated 22.01.2024 alleging that in March, 2024, defendant no.3 received information from some credible sources that the Company had entered into negotiation with buyers for entering into sale transaction with respect to its land banks which would involve significant and majority cash transaction, grossly undervaluing the properties and violating the order dated 22.01.2024.

6. It is further alleged that in order to verify the said information, defendant no.3 requested one Mr. Grijesh Singh to make inquiries for purchase of land belonging to the Company in Kailash Colony Area in Shahdara, Delhi and to record the audio/video of the discussion which



would so unfold with the officials of plaintiff no.1. Accordingly, Mr. Grijesh Singh contacted one Mr. Pramod Sharma, who is stated to be a local property dealer in the aforesaid area, posing as an interested buyer looking to purchase plots/land in Kailash Colony, Shahdara. Mr. Pramod Sharma, at the insistence of Mr. Singh, allegedly gave the contact number of Mr. Manoj Bansal who is the Manager/Authorized Representative of Company to Mr. Grijesh Singh.

7. It is the case of the applicants that subsequently, Mr. Manoj Bansal was contacted by Mr. Grijesh Singh regarding purchase of a plot in said Kailash Colony and a meeting was fixed for 15.03.2024 at the registered office of the Company at 5, Doctors Lane, Gole Market, New Delhi – 110001.

8. Thereafter, on 15.03.2024, Mr. Grijesh Singh along with one Mr. Ram Niwas Sharma seemingly visited the registered office of the Company to inquire and discuss about the plot with Mr. Manoj Bansal, as interested purchasers. It is the case of the applicants that Mr. Manoj Bansal explicitly sought significant amount of cash towards sale of plots of the Company while also suppressing the order dated 22.01.2024 passed in FAO(OS) 90/2019.

9. Premised on the aforesaid allegations, the defendants filed an application [CM No.24377/2024] before the Division Bench in the disposed of FAO(OS) 90/2019 seeking modification of consent order dated 22.01.2024. The said application was disposed of by the Division Bench *vide* order dated 26.04.2024 with liberty to the defendants/applicants to file an application for modification/variation of order dated 22.01.2024 passed by the Division Bench, as noted in the opening part of this order.



10. Mr. Ashish Mohan along with Mr. Anurag Ahluwalia, learned counsel appearing on behalf of the defendants/applicants at the outset invited attention of the Court to the transcript of audio recording of telephonic conversation as well as of the video recordings of the meeting held physically between Mr. Manoj Bansal, purported Manager/Authorised Representative of the Company with the prospective buyers sent by the defendants/applicants being Mr. Grijesh Singh and Mr. Ram Niwas along with Mr. Pramod Sharma (local property dealer), to substantiate the case of the defendants/applicants that the plaintiffs are attempting to receive substantial part of sale consideration of the land in cash.

11. Referring to the transcript of recorded conversation that took place during physical meeting on 15.03.2024, Mr. Ahluwalia submits that Manoj Bansal in his conversation explained that amount arrived at by evaluation of plot at circle rate will have to be paid in 'one number', i.e. through banking channels and rest in 'two number', i.e. unaccounted cash transactions.

12. He further submits that the meeting was held in presence of Mr. Ashish Kishor, who is the director of the Company, as stated by Mr. Manoj Bansal in conversation with Mr. Grijesh Singh. Mr. Manoj Bansal also stated that legitimate sale deed will be executed by a director of the Company or whosoever would be authorised by the directors to carry out the execution.

13. He submits that from the audio and video recording, transcript of which is on record alongwith the recordings, it is clear that Mr. Manoj Bansal has openly demanded illegal cash for sale of properties under the impression that Mr. Grijesh Singh and Mr. Ram Niwas are *bona fide* purchasers.



14. Mr. Ashish Mohan submits that the plaintiffs are offering to sell land of the Company at significantly undervalued price and taking balance consideration in cash. He submits that if, eventually, the defendants succeed in the present suit, the undervaluation of the sale transaction would cause irreparable loss to the defendants/applicants, as only a fraction of the actual market value of the properties would become available to the applicants.

15. He submits that the interim arrangement was made to balance the equities between the parties and plaintiffs have abused such concession. He submits that in view of the aforesaid acts, plaintiffs are not entitled to an equitable relief, there can be no new arrangement, and position has to revert back to the earlier interim direction that was put in place *vide* order dated 07.03.2019 passed by this Court.

16. He submits that the Company, through its director Ms. Alka Sahni, had also entered into a sale transaction with Ms. Usha Rani in respect of Company's land, however, the Sub-Registrar-IV, Seelampur, Delhi had refused to register the sale instrument *vide* order of May 2024. The said order was challenged by the Company by filing a writ petition being W.P.(C) 10067/2024 titled as '*Capital Land Builders Pvt. Ltd. v. Sub-Registrar*', in which order dated 23.07.2024 came to be passed wherein the statements given by the plaintiffs to this Court on 03.05.2024 and 22.07.2024 were deliberately suppressed.

17. Elaborating on his contention, Mr. Mohan submits that *vide* order dated 23.07.2024 passed in the aforesaid writ petition, the Court had recorded submission of the Company's counsel to the effect that there is no explicit stay from the Court of law, whereas the orders passed by this Court on 03.05.2024 and 22.07.2024 in the present suit show that there was an



assurance given by counsel appearing on behalf of the plaintiffs that there will be no change in the status till the next date of hearing.

18. He submits that the conduct of plaintiffs as demonstrated throughout is to deceive this Court and sell properties belonging to the Company, the shareholding of which is under adjudication.

19. *Per contra*, Mr. T.K. Ganju, learned Senior Counsel appearing on behalf of the plaintiffs/non-applicants invites attention of the Court to the order of the Division Bench dated 06.11.2009 wherein the impugned judgment of the learned Single Judge dated 06.08.2009, whereby the parties were restrained from disposing of any property of the Company, was held to be unsustainable. The Division Bench further restrained the defendants from representing themselves as shareholders or directors of the Company and consequently restrained from acting on behalf of the Company or dealing with the assets of the Company in any manner, whatsoever.

20. He submits that the said order of the Division Bench was challenged by the plaintiffs by filing a special leave petition before the Hon'ble Supreme Court which was dismissed as withdrawn on 19.03.2010. He, thus, contends that the injunction order dated 06.11.2009 passed by the Division Bench had attained finality.

21. He submits that the defendants further filed a review application before the Division Bench on the ground that some of the stamps affixed on the share transfer forms were of later date than the date of execution of transfer deeds, thereby alleging that the transfer of shares was fraudulent and illegal. He submits that the said review application was also dismissed by the Division Bench *vide* order dated 01.01.2011 passed in



Rev.Pet.No.153/2011. A special leave petition was then filed against the said order which was also dismissed by the Hon'ble Supreme Court.

22. He submits that subsequently, an application being I.A.No.7483/2015 was filed by the defendants seeking modification of the order of the Division Bench dated 06.11.2009, by suppressing the fact that the alleged ground of transfer forms being *ante* dated on the basis of the print date of stamps affixed thereon, was specifically taken before the Division Bench in the review application, which already stood dismissed. He submits that the order dated 07.03.2019 came to be passed by this Court on the said application of the defendants thereby restraining all parties, including the plaintiffs and the defendants, from dealing with, alienating, encumbering and/or parting with any of the assets or properties of the Company.

23. Mr. Ganju submits that insofar as the submission of the applicants that there is wilful disobedience of the orders of this Court as direction had been sought against the Sub-Registrar, in the writ, to register a sale instrument is contrary to the assurance given by counsel for plaintiffs to this Court to the effect that there will be no change in the status till the next date of hearing, is misconceived. Elaborating on his submission, he contends that after passing of the consent order dated 22.01.2024, sale of only one property was transacted by the Company *vide* sale deed dated 22.03.2024 in favour of Smt. Usha Rani which was the subject matter in the aforesaid writ petition, and the same was prior to the assurance given by learned counsel for the plaintiffs to this Court *vide* orders dated 03.05.2024 and 22.07.2024. In this regard, he assures this Court that the sale deed was executed at circle rate, and no cash transaction whatsoever was involved.



24. Further, he submits that reliance placed by the defendants/applicants on the transcripts of the telephonic and physical meeting conversation to suggest that the consent order has been violated by the plaintiffs, is again misconceived. Attention of the Court is invited to the consent order dated 22.01.2024, particularly to para 1(ii), to submit that the embargo contained therein is on the sale transaction in cash.

25. He submits that it is an admitted position that no sale whatsoever had taken place with any of the alleged purported purchaser sent by defendant no.3. He submits that the alleged conversation does not amount to sale as understood in law. To buttress his contention, Mr. Ganju has invited attention of the Court to the definition of 'sale' under Section 54 of the Transfer of Property Act, 1882.

26. Mr. Ganju further submits that the defendants/applicants have not deposited the original device on which the alleged conversation was recorded nor there is any report of FSL verifying the veracity of recorded conversations relied upon by the defendants/applicants. Therefore, the purported transcripts cannot be relied upon. To buttress his contention, Mr. Ganju has placed reliance on the decision of this Court in *Ashish Kumar Dubey v. State Thr. CBI, ILR (2014) IV Delhi 2331*.

27. That apart, he submits that Mr. Manoj Bansal was anyway not authorised to enter into any sale transaction. According to Mr. Ganju, the authority to execute sale deed(s) to finalise the deal exclusively rest with the directors of the Company. He submits that there is no General Power of Attorney in favour of Mr. Manoj Bansal to execute sale deeds on behalf of the Company.



28. He submits that even the director of the Company Smt. Alka Sahni, who had executed the aforementioned sale deed in favour of Smt. Usha Rani, had done so on the basis of a special resolution of the Board of Directors authorising her to execute the said sale instrument.

29. Mr. Vikas Dhawan, learned Senior Counsel, who also represents the plaintiffs/non-applicants submits that the plan hatched by the defendant no.3, Shri Arjun Chowdhary, was purposefully designed to entrap an unassuming employee of the Company and was carried out with the aim to somehow avoid the consent order passed by the Division Bench on 22.01.2024.

30. He submits that soon after the said consent order, the defendants entered into a conspiracy with Mr. Grijesh Singh and Mr. Ram Niwas to target Mr. Manoj Bansal, an employee of the Company who has only been looking after the legal affairs of the Company and was not authorised to deal with any property of the Company.

31. He submits that the transcripts filed along with the present application suggest that the co-conspirators namely, Mr. Grijesh Singh and Mr. Ram Niwas, purportedly approached Mr. Manoj Bansal on their own accord and without invitation of the said employee or of the Company. He submits that from the transcripts itself, it is evident that the suggestion of cash emanated only from the said co-conspirators and at no point of time during the entire alleged conversation, did the said employee of the Company first hinted or suggested payment of any cash component.

32. Mr. Dhawan draws attention of the Court to the affidavits filed by Mr. Arjun Chowdhary, Mr. Grijesh Singh and Mr. Ram Niwas, to contend that it is clear from the said affidavits that Mr. Arjun Chowdhary had approached



Mr. Grijesh Singh and Mr. Ram Niwas to target Mr. Manoj Bansal of the Company and record the discussion concerning cash transaction. Therefore, the so called enquiries for purchase of land of the Company were bogus and manufactured to entrap Mr. Manoj Bansal in an attempt to create a false narrative and false evidence that the Company had violated the consent terms and that cash transaction towards sale of land had taken place.

33. In support of his submission, Mr. Dhawan has placed reliance on the following decisions:

- (i) ***Ramjanam Singh v. State of Bihar, (1954) 2 SCC 655.***
- (ii) ***Court on its Own Motion v. State, 2007 SCC OnLine Del 1662.***

34. Concluding the arguments on behalf of the non-applicants, Mr. Ganju submits that this Court on 14.05.2024 had suggested that in order to avoid the controversy in future, a Local Commissioner/Observer could be appointed before whom the sale deed could be executed. He submits that while the plaintiffs had no difficulty in accepting the said suggestion, however, the counsel for defendants sought time to seek instructions but later on, the defendants stated that they are not agreeable to the aforesaid suggestion.

35. He also submits that the contention of defendants that the sale transactions by the Company would prejudice the rights of the defendants in case they are ultimately successful is totally baseless, since no counter-claim has been filed by the defendants and the dispute is only with regard to the shareholding in the Company. He further submits that taking the best case of defendants, their shareholding in the Company would only constitute 2% of the total shareholding and that could not justify defendants' interference



with the running of business activity of the Company, as also observed by the Division Bench *vide* order dated 06.11.2009 in FAO(OS) 337/2009.

36. In rejoinder, Mr. Ashish Mohan submits that reliance placed by the plaintiffs on the decision in *Ashish Kumar Dubey* (supra) is misplaced inasmuch as the said decision was in the backdrop of a criminal case. Further, the said case pertained to analog records and not electronic records, as in the present case.

37. He submits that in view of the decision of Hon'ble Supreme Court in *Arjun Panditrao Khotkar v. Kailash Kushanrao Gorantyal & Ors., (2020) 7 SCC 1*, secondary evidence in the form of electronic record is admissible in terms of Section 65B of the Indian Evidence Act, 1872 without production of original. He submits that the decision in *Arjun Panditrao Khotkar* (supra) also distinguishes between analog and electronic record.

38. Insofar as the plaintiffs' contention that Mr. Manoj Bansal has no authorisation in his favour from the Company, therefore, any negotiations with Mr. Manoj Bansal were without authority, he submits that Mr. Manoj Bansal is the manager and authorised representative and Power of Attorney holder of Company fully authorised by Board Resolution dated 15.03.2020 to sell the plaintiff no.1/Company's properties.

39. He submits that Mr. Manoj Bansal at no point of time during conversation stated that he is not authorised to conduct the deal for sale of properties, rather he conducted the negotiations from the registered office of the Company in the presence of Mr. Ashish Kishor, who is admittedly a director of the Company.

40. He submits that even assuming that Mr. Manoj Bansal acted without authority, the Company shall still remain bound by his acts as he represented



himself as an agent of the Company. He places reliance on the decision in ***United India Periodicals Pvt. Ltd. v. Cmyk Printech Ltd., 2018 SCC OnLine Del 6991.***

41. He submits that the contention on behalf of plaintiffs that there has been no actual violation of the consent order dated 22.01.2024 is also not tenable, inasmuch as even the intention to violate or overreach the orders of the Court amounts to violation of such order and is punishable of contempt. To buttress his contention, he places reliance on the decision of this Court in ***Lalit Modi v. Bdr Builders & Developers Pvt. Ltd., 2021 SCC OnLine Del 3172.***

42. He submits that reliance placed by the plaintiffs on the decision in ***Ramjanam Singh*** (supra) as well as ***Court on its Own Motion*** (supra) is also misconceived, inasmuch as the said judgments relate to criminal proceedings under the Prevention of Corruption Act, 1988 which is under a completely different jurisdiction and the standard of proof required in such cases is '*beyond reasonable doubt*' as compared to civil disputes where the threshold of burden of proof is only '*preponderance of probabilities*'.

43. He submits that likewise, reliance placed by plaintiffs on the interim order dated 06.11.2009 passed by the Division Bench is also misconceived inasmuch as the said order was superseded by the *status quo* order dated 07.03.2019 and restraint order dated 29.04.2019 passed by the Division Bench in FAO(OS) 90/2019 and thereafter, the consent order dated 22.01.2024 came to be passed to dispose of FAO(OS) 90/2019.

44. Mr. Anurag Ahluwalia, learned counsel appearing on behalf of the defendants/applicants invites attention of the Court to the order dated 12.10.2020 passed in CS(OS) 1451/2012 filed by the defendants, to contend



that a detailed order was passed by this Court recording a finding that there is a *prima facie* case of forgery made out from the facts and evidence placed on record.

45. I have gone through the relevant records and considered rival contentions of the parties. In sum and substance, the grievance articulated by the defendants in the present application is that there is *prima facie* evidence on record to suggest that the Company's directors are likely to sell the properties owned by the Company, through and in collusion with its employees, by undervaluing the properties for the purposes of registration and taking huge portion of the actual/balance sale consideration in the form of cash, which cannot be accounted for in case the defendants/applicants succeed in the present suit, thereby causing them irreparable harm.

46. It is trite that the relief of interlocutory injunction is an equitable relief granted by the court in order to preserve the *status quo* of the last non-contested status which preceded the pending controversy until the final hearing, when full relief may be granted. The courts must exercise judicial discretion while considering any application under Order XXXIX of CPC, in light of the facts and circumstances of each case. The court *inter alia* ought to analyse the comparative inconvenience which is likely to ensue to either of the parties from withholding or granting the injunction.<sup>1</sup>

47. The factual matrix in the backdrop of which present application has been filed, assumes relevance in deciding the prayer of defendants/applicants for modification of the interim order. The defendants/applicants have sought complete *status quo* against the plaintiffs with respect to the assets of the Company. Earlier also, the defendants have

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<sup>1</sup> Dorab Cawasji Warden v. Coomi Sorab Warden and Ors., (1990) 2 SCC 117



pressed for such a relief, and an endeavour has always been made to balance the rights of contesting parties during the pendency of the suit. In this regard, it would be appropriate to examine the rationale and findings behind the several interim orders passed by the Division Benches, as well as, this Court, which would assist this Court in arriving at a just conclusion to the present controversy.

48. At the first instance, this Court *vide* order dated 06.10.2006 had passed an *ex-parte ad* interim order restraining the defendants from representing themselves as shareholders/representatives of the plaintiff no.1/ Company. The said order was vacated by the learned Single Judge *vide* order dated 06.08.2009, observing *inter alia* that the plaintiffs have been unable to establish a *prima facie* case in their favour. It was further directed that neither of the parties shall be permitted to dispose of the assets standing in the name of M/s Capital Land Builders Pvt. Ltd. since both Kishor Lal faction and Ch. Brahm Prakash faction, without waiting for final outcome of the suit, were bent upon squandering away the valuable assets of the Company. The relevant paragraphs from the order dated 06.08.2009 read as under:

*“22. I am, therefore, of the view that no case has been made out for giving any directions to the defendants as have been sought for by the plaintiffs in IA No. 11235/06. As far as IA No. 7514/07 is concerned the same has already been rendered infructuous since this Court has already held while disposing of various contempt applications moved by the plaintiffs that those sale deeds having been executed in contravention of the ex-parte. **Since it has been held that plaintiffs have failed to establish a prima-facie case for grant of any of the ad interim directions to the defendants, prohibitory as well as mandatory, their application filed for clarification of order dated 06-10-2006 (being IA No. 11671/06)***



*has to be dismissed now and it is ordered accordingly. IA No. 8816/07 which was filed by some of the defendants for vacation of the ex-parte injunction order dated 06- 10-2006 stands allowed.*

23. *Although the right of the plaintiffs to get any interim relief has been negated and the ex-parte injunction order is being vacated but considering the facts and circumstances of the case to the effect that members of the Kishor Group as well as the Chowdhary Group are bent upon squandering away the valuable assets of the Company without waiting for the final adjudication of their respective claims this Court feels that at least during the pendency of this suit neither the plaintiffs nor defendants 1-8 should be permitted to dispose of the assets standing in the name of M/s. Capital Land Builders Pvt. Ltd. in any manner. They would, therefore, stand restrained from disposing of any property of the said Company during the pendency of the suit.”*

(emphasis supplied)

49. Both parties went in appeal [FAO(OS) 337/2009 and FAO(OS) 423/2009] before the Division Bench against the said order and the same was set aside *vide* order dated 06.11.2009. Division Bench observed that that the interim injunction order passed by learned Single Judge cannot operate against the plaintiffs or in favour of the defendants since the plaintiffs (appellants therein) had undoubtedly been able to satisfy the triple test of *prima facie* case, balance of convenience and irreparable loss and injury considering the fact they have been in-charge of the Company for decades having shareholding and the Society does not even figure in the list of shareholders. Once the Company is controlled by the plaintiffs, its functioning cannot be brought to a standstill by restraining both the parties from dealing with the assets of the Company. The same would amount to throttling the Company, thereby causing irreparable prejudice and harm to



the functioning of the Company which is primarily dealing with the landed estate.

50. The Division Bench, thus, vacated the injunction against plaintiffs and consequently, defendants were restrained from representing themselves as shareholders or directors of the Company or dealing with its assets thereof in any manner whatsoever, besides also injuncting them from filing any statutory forms or returns on behalf of the Company. It is not in dispute that the said order of the Division Bench has attained finality. The relevant extract from the order of the Division Bench dated 06.11.2009 reads as under:

*“34. The appellants, in our considered view, have undoubtedly been able to establish a prima facie case that they are In-charge of the Company having share holding and the Society does not figure in the list of shareholders. **Once the Company is controlled by the appellants group, its functioning cannot be brought to a standstill by the nature of the impugned order passed whereby both the parties have been restrained from dealing with the assets of the Company. This would amount to throttling the Company and would cause irreparable prejudice and harm to the functioning of the Company which is primarily dealing with the landed estate.** The balance of convenience has to be in favour of the appellants as they have been running the show for decades and the respondents kept silent from 1989 to 1996 when for the first time they instituted the petition before the Company Law Board claiming the exclusion of their shareholding from the register of members. The original documents filed by the appellants clearly show that after 1989 there is no shareholding reflected of the group of the respondents. Without first getting their rights to be entered into the shareholders register established the respondents cannot have a say in the running of the Company.*

*35. It is trite to say that the said Act is comprehensive enough to look after the aspects of management of the affairs of a Company.*



*In case of an allegation of mismanagement the minority group, if has sufficient members, can always move the Company Law Board. The Company is a separate legal entity and it is not as if any shareholder irrespective of its percentage of shareholding can interfere with the affairs of the Company. They would, of course, have a right to speak in a shareholders meeting. The very pre-requisite of being a shareholder was absent in the case of the Society and thus as a recourse to their grievance they rightly preferred the Company Petition under Section 111 of the said Act before the Company Law Board. For the reasons best known to them they abandoned that remedy. During the pendency of that Petition they surreptitiously tried to steal a march by manipulating documents and having failed in the same appeared to have backtracked. Despite their failure to establish a status in the Company, they sought to deal with the properties of the Company and in fact, dealt with the properties and that too contrary to an injunction order of the court which has given rise to their conviction for contempt. Even before the Company Court they sought to represent themselves on behalf of the Company resulting in a reference of criminal contempt.*

36. We are, of course, in agreement with the submission of the learned counsel for the respondents that there can be no injunctive relief in such a suit unless triple test of prima facie case, balance of convenience and irreparable loss and injury is satisfied. This position is not even disputed by learned senior counsel for the appellant. The present proceedings are not in the nature of Sections 397 & 398 of the said Act where the Company Law Board is enshrined with the responsibility of protecting the assets of the Company. The lis is between two groups in the civil suit. The aforesaid would, thus, imply that once the triple test is satisfied in the case of the appellants, the appellants would be entitled to interim relief. **The appellants cannot be restrained during the pendency of the suit in view of the discussion aforesaid and the respondents cannot seek protection of the assets of the Company once prima facie they are found to have no status in the Company.**

37. We are, thus, of the considered view that the impugned judgement cannot be sustained and we hold that the **appellants**



***have made out a case for interim relief having satisfied the triple test for grant of interim injunction and no order can operate against them or in favour of the respondents. The respondents, their agents and employees are, thus, restrained from representing themselves as shareholders or Directors of the said Company and consequent thereto are restrained from acting on behalf of the Company by using any letterhead, bank accounts or dealing with the assets of the Company in any manners whatsoever and cannot be permitted to file any statutory forms or returns on behalf of the Company. This injunction would operate during the pendency of the suit.”***

(emphasis supplied)

51. Sequel to above, defendants filed applications under Order XXXIX Rule 4 of the CPC [I.A. No.7483/2015, I.A. No.4334/2019 and I.A. No.4355/2019] seeking vacation of the injunction order of Division Bench *inter alia* alleging that information obtained subsequently under Right to Information Act, 2005 reveals that the stamps affixed on the transfer deeds, relied upon by the plaintiffs to claim sale of shares held by Society, had been printed in the year 1978 and 1979 whereas the transfer deeds themselves were executed between the years 1968 to 1974. It was contended that the aforesaid shows that the share transfer deeds are forged and fabricated.

52. While disposing of the said applications of the defendants, this Court reiterated the view taken by the Division Bench in its aforesaid order dated 06.11.2009, and observed that till the time records are not rectified under Section 111 of Companies Act, 1956, plaintiff nos.2 to 4 would remain the *de facto* directors/shareholders of the Company. The Court also observed that the Society has already instituted a suit for declaration in regard to the forgery and till any decision is forthcoming in that suit, it cannot be said that the defendants are prejudiced in any manner if plaintiff nos.2 to 4 are shown



as shareholders/directors. However, it appears that to balance the equities, the Court again restrained all the parties from dealing, alienating, encumbering and/or parting with the assets or properties of the Company, till the decision of the suit. The relevant extract from the order dated 07.03.2019 reads as under:

***“11. I am of the view that as long as the plaintiffs no.2 to 4 are de-facto Directors / shareholders of the plaintiff no.1, they have to be shown as such on the website of the ROC and in the records till the correction thereof. The Companies Act also gives sanctity to the position as held in the records and provides a procedure under Section 111 of the Act for rectification thereof. The defendant no.1 SMS has now already, by instituting the suit aforesaid claimed the same relief. Till in the said suit orders are passed, it cannot be said that the applicants / defendants no.4 to 6 are prejudiced in any manner from the plaintiffs no.2 to 4 being shown as shareholders / Directors specially when the powers of the plaintiffs no.2 to 4 as shareholders / directors have been curtailed.***

***12. It is therefore felt that no prejudice is being suffered by the applicants/defendants no.4 to 6 from continuation of the interim order. On the contrary it is felt that vacation of the interim order will result in chaos and uncertainty with respect to directors of plaintiff no.1 company. As long as the property of the plaintiff no.1 company is protected, the plaintiffs no.2 to 4, acting as shareholders/directors, cannot cause any prejudice to appellants/defendants no.4 to 6.***

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***15. Thus, the applications are disposed of by making absolute till the decision of the suit the order dated 4<sup>th</sup> February, 2019, insofar as restraining all parties including the plaintiffs and the defendants, from dealing, alienating, encumbering and/or parting with any of the assets or properties of plaintiff no.1 company.”***

(emphasis supplied)



53. In FAO(OS) 90/2019, wherein the Company had appealed against the aforesaid order dated 07.03.2019, the Division Bench while issuing notice *vide* order dated 29.04.2019, stayed the operation of order passed by the learned Single Judge, insofar as it restrained the plaintiffs from dealing with the properties of the Company. However, the Court also directed that prior information, at least two weeks in advance, be furnished to the Court (Division Bench), as well as, to the defendants in case the Company decides to sell any of its landed assets. It appears that the Division Bench, while deciding not to curtail the rights of the plaintiffs, also decided to preserve the rights of the defendants that may accrue in future by ensuring that fairness and transparency is maintained in sale transactions of the Company's properties.

54. The said order, which was subsequently made absolute *vide* order dated 04.11.2019, reads as under:

*“Till the next date, the operation of the impugned orders shall remain stayed in so far as it restrains the appellant plaintiffs from dealing with properties of the plaintiff company – Capital Land Builders Private Limited.*

*However, in case, the appellant decides to sell any of the landed assets of the appellant company, prior information thereof shall be furnished to this Court as well as to the respondents at least two weeks in advance.”*

55. Thereafter, the appeal was disposed of *vide* order dated 22.01.2024<sup>2</sup>, a perusal of which shows that the defendants had voluntarily consented to the sale of landed properties of the Company by the plaintiffs not below the circle rate, the only rider being that in the event it is discovered that cash transaction towards sale of land has taken place, the defendants shall have

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<sup>2</sup> Reproduced in Para 4.7 herein



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the liberty to seek modification of the order dated 22.01.2024. To my mind, the arrangement worked out by the parties is in sync with the view consistently taken by this Court, as well as, the Division Benches that the plaintiffs have the right to manage and control the Company and its affairs.

56. As noted above, the only grievance of the defendants is that the plaintiffs are attempting to sell the properties of the Company by taking huge sums of cash and undervaluing the transaction for the purpose of registration. The defendants/applicants rely on the audio and video recordings of conversations between the Company's employee namely, Mr. Manoj Bansal and certain prospective buyers, admittedly sent by the defendants, in support of their apprehension. Both parties have advanced substantial arguments as to the evidentiary value of such recordings as well as transcript thereof.

57. However, this Court does not wish to dilate on the said submissions since at this stage, this Court need not delve into the aspect of authenticity or evidentiary value of the recordings relied upon by the defendants/applicants. The present application has not been filed seeking to invoke the contempt jurisdiction of this Court, rather it is under Order XXXIX Rule 4 praying for modification, varying or discharging the consent interim order dated 22.01.2024 based on the fact that the said order is causing undue hardship to the applicants. The contentions of the party with respect to the evidence relied upon and its admissibility thereof, apart from the assertion of wilful disobedience of the said order, are arguments that can be taken up in the appropriate proceedings. This Court, at the present, may need only take a *prima facie* view with regard to the recordings and transcripts placed on record.



58. Therefore, without undertaking the unnecessary exercise of adjudicating upon the veracity or manner in which evidence relied upon the defendants/applicants has been obtained, the Court proceeds to the real controversy at hand. The issue being likelihood of plaintiffs or their employees, agents etc. entering into sale transactions of the assets of plaintiff no.1/Company by undervaluing the properties and receiving cash in exchange, thereby defeating the interregnum rights of the parties as settled by them and recorded in order dated 22.01.2024.

59. The recordings and transcripts of the alleged meetings and phone calls, on a *prima facie* consideration, brings to light a probable situation which could be prejudicial to the rights of applicants/defendants. The situation so described shows that the current management of the Company or one of its employees seeking to dispose of its assets purportedly at circle rate, may still be able to receive substantial unaccounted amount in cash. It is not to say that the parties have or would indulge in such an act defeating the arrangement arrived at consensually, nevertheless, the apprehension expressed by the defendants/applicants does not seem to be without basis.

60. The order dated 22.01.2024 stipulates that '*no sale of land will be made below the circle rate*'. Circle rate is fixed by the State for the limited purpose of notifying the minimum value at which stamp duty is to be collected by the Registering Authority. It is a benchmark set by the government to enable the Registering Officer to mechanically ensure that the instrument of transfer of a property is not undervalued below the set threshold. However, the actual commercial/market value of a property may not coincide with the circle rate notified by the State. Reference in this regard may be had to the decision of the Division Bench of this Court in



*Govt. of NCT of Delhi Collectors of Stamps v. CTA Apparels Pvt. Ltd., 2019:DHC:6028-DB*, wherein it was held that the circle rates only provide guidance to the Collector for determination of the value under Section 47A of the Indian Stamp Act, 1899. Further, various factors apart from circle rate, such as the area of the plot, use and nature of the property, amenities in the area and other market factors like demand and supply that vary from time to time, contribute to the actual valuation of the property. It must also be noted that circle rates are not revised frequently.

61. Therefore, limiting sale of the properties belonging to the plaintiff no.1/Company to not be *below the circle rate* does not offer any protection to the defendants. Rather, any sale below the circle rate would itself not be registrable. Even the stipulation for receiving the sale consideration through ordinary banking transactions does not redress the grievance of applicants adequately, since on paper, the sale consideration could conveniently be shown to be at the prevalent circle rate and that amount can be received through a recorded bank transaction. However, there would still be scope for anyone dealing with the property of the Company, to ask and receive the balance value over and above the circle rate, in cash or kind that would not be traceable.

62. If the property is sold at a price lower than the market value, then circumstances as illustrated by the defendants/applicants would certainly be possible, whereby persons other than the Company would benefit.

63. Therefore, in the considered opinion of this Court, not taking into account the the market value of the properties being put to sale gives an unbridled discretion to the plaintiffs to sell them at any value above the circle rate, to the detriment of the defendants/applicants, making the



arrangement recorded in the order dated 22.01.2024 iniquitous for the defendants.

64. Having considered the factual backdrop of the present case, as well as, the case set up by the defendants/applicants in the captioned application, it would also be apposite to consider the prayer sought by them. The defendants/applicants, as noted above, have sought complete *status quo* with respect to the assets of the plaintiff no.1/Company.

65. In this regard, this Court cannot overlook the fact that rights of the plaintiffs to deal with the assets of the Company, and their control over the same has already been crystalised in the detailed order dated 06.11.2009 of the Division Bench as discussed hereinabove. No change in circumstances since then has been pointed out to suggest that the defendants, thereafter, have attained a better right in the Company. The only change in facts is the alleged new evidence which supposedly shows forgery and fabrication of the transfer deeds pertaining to shares of the Society. The said fact has already been considered by the learned Single Judge in order dated 07.03.2019 and the view taken therein is consistent with the view of the Division Bench, insofar as plaintiffs' status as directors and control over the Company is concerned. As such, it is settled that the plaintiffs are still the *de facto* directors of the Company, in-charge of the management thereby.

66. There is no subsequent declaration in favour of the defendants confirming the allegation of forgery of the transfer deeds. Thus, there does not seem to be any real change in the rights of the parties. It is settled law that once the interim rights of the parties have been decided finally by the Court at an earlier stage, the principles of *res judicata* apply and the parties



should not be allowed to re-agitate the matter again at a subsequent stage.<sup>3</sup> Thus, at present this Court does not deem it fit to grant the relief of complete *status quo* against the plaintiffs on the sale of assets of the Company by them.

67. Further, having regard to the fact that arrangement as recorded in the order dated 22.01.2024 was voluntarily arrived at between the parties and the same is also in consonance with the view taken by this Court as well as by the Division Benches, this Court is of the view that an endeavour should be made to maintain the sanctity of such arrangement, in letter and spirit.

68. It is submitted by Mr. Ganju that this Court had suggested appointment of a Local Commissioner/Observer which was acceptable to the plaintiffs, however, the defendants did not agree to such a proposal.

69. Be that as it may, this Court under Order IX Rule 26 has power to appoint Local Commissioner on its own, to *inter alia* ascertain the market value of any property, or the amount of any *mesne* profits or damages or annual net profits, directing him to make investigation in that behalf and to report thereon to the Court. It is equally settled that the Court may appoint a Local Commissioner, even when one of the parties is not amenable to suggestion of such an appointment, to ascertain the actual state of affairs.<sup>4</sup>

70. In view of the discussion above and to allay the apprehension of defendants, as well as, to protect the rights of both the parties, this Court

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<sup>3</sup> Satyadhyan Ghosal v. Deorajin Debi, [1960] 3 SCR 590  
Arjun Singh v. Mohindra Kumar AIR 1964 SC 993  
C.V. Rajendran v. N.M. Muhammed Kunhi (2002) 7 SCC 447  
Ishwar Dutt v. Land Acquisition Collector (2005) 7 SCC 190  
Bhanu Kumar Jain v. Archana Kumar (2005) 1 SCC 787  
Ajay Mohan and Ors. v. H.N. Rai and Ors. (2008) 2 SCC 507

<sup>4</sup> M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit, Pachama, District Sehore and Others v. Modi Transport Service, (2022) 14 SCC 345



deems it expedient to modify the order dated 22.01.2024 and substitute clause (ii) of Para 1 with the following directions, which will operate during the pendency of suit:

- (iia) The plaintiffs (Sachdeva & Kishor Lal faction) shall ensure that any sale of the landed assets held in the name of the Company [Capital Land Builders Pvt. Ltd.] is made at the prevailing market rate. The Company shall furnish details of each sale transaction before this Court.
- (iib) The entire consideration towards sale of any land/property/asset of the Company will be received through ordinary banking channels in accordance with law i.e. Cheque or RTGS.
- (iic) At the time of any sale, the plaintiffs will approach this Court for appointment of a Local Commissioner-cum-Observers to determine an approximate market value of the land/properties/assets sought to be sold, who will be appointed by the Court with the consent of parties, if there is consensus, and in case parties are not *ad idem* on the name, Court in its wisdom will appoint any independent person for the said purpose.
- (iid) The Local Commissioner-cum-Observers will furnish his report bringing on record estimated market value at the time of sale and detailing the manner in which such value has been arrived at.

71. With the aforesaid modifications, the present application stands disposed of.

**VIKAS MAHAJAN, J**

**JULY 21, 2025**

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