IN THE COURT OF Ms. NEELOFER ABIDA PERVEEN
DISTRICT JUDGE (COMMERCIAL COURT)-01
CENTRAL DISTRICT, TIS HAZARI COURTS, DELHI.

CS COMM. No.1094/2024

In the matter of:

Sh. Ahsanur Rahim

…………..Plaintiff/Applicant.

vs.

Sh. Surender Kumar Tak (Deceased)

Through LRs & Ors.

…………..Defendant/Non-Applicant.

ORDER
18.3.2026

This is an application of the plaintiff under order VII Rule 14 r/w Sec.151 CPC and/or u/o XI Rule 5, 6, 7 of the Commercial Courts Act filed on 07.11.2025 seeking leave to file documents along-with the Replication.

1. Ld. Counsel for the applicant/plaintiff submitted that the present suit is for declaration, mandatory and permanent injunction and in the alternative for recovery of a sum of Rs.27,40,000/-. That on the last date of hearing, defendants no.1 to 9 have filed the written statement to the plaint and filed certain documents in support of their contention. That the plaintiff has filed the replication as well as the copy of the agreement dated 22.06.2019 and photographs in response to the

written statement which goes to the root of the case and also are very necessary, pivotal and important for the just, proper and fair adjudication of the dispute regarding the affirmations of their inter-se dealings and admission between them.

(i) That the plaintiff could not file the copy of the said agreement dated 22.06.2019 earlier as the same was not in his power and possession rather the same were with the Counsel who was mediating in between the plaintiff and the defendants. That by virtue of the said agreement, the defendant No.2, Kamal Tak, has agreed to pay Rs.20,00,000/- to the plaintiff and it was further agreed that after receiving of said payment which was towards the amounts spent on construction as well as on getting the portions of the premises vacated from the erstwhile occupants/tenants which have been admitted by the defendants which is also the case of the plaintiff in the plaint, as the hard earned money of the plaintiff was at stake, as such, in the said backdrop of the matter, the said agreement was executed and now the defendants are trying to turn dishonest.

(ii) That the copy of the said agreement has been obtained after much effort and requests made to the said Counsel that the said agreement was also witnessed by Arif Khan and Jameel and the copy of same was handed over to plaintiff before filing replication. That the said documents are very essential and pivotal to the just and proper adjudication of the present case and goes to the roots of the present case and will definitely help in effectuating all the real controversy involved in the present suit and will help in the final adjudication of the present case.

That the present matter is at very initial stage, as issues are yet to be framed as such no prejudice will be caused to the respondent if the said documents are taken on record and it will result in irreparable loss and injury to the plaintiff which can not be compensated in any terms if the same are not taken on record. That besides the agreement certain photographs that show the status of the property as on date are sought to be filed along with the replication.

2. Ld. Counsel for the defendants, on the other hand, submitted that the suit of the plaintiff is based on false and frivolous grounds and the present application is only a dilatory tactics of the plaintiff and nothing more. That the plaintiff multiple times amended the plaint to delay the adjudication in order to harass the defendants for extorting money and for this reason also the plaintiff did not file the alleged agreement which was under his custody and possession which he wants to file by way of the present application. That these documents ought to have been filed with the plaint by mentioning the same in the list of documents and not with the replication, as per Order VII Rule 14 CPC and under Order XI Rule 5, 6 and 7 of Commercial Courts Act, so that the defendant is provided opportunity to rebut the same at the time of filing written statement on their behalf.

(i) That the suit of the plaintiff is entirely based on the Collaboration agreement dated 30.1.2015 for construction of the suit property by the plaintiff and not by the defendant as alleged in the agreement dated 22.6.2019 which contents are totally contradictory and different to the agreement dated 30.1.2015. That the alleged agreement is executed between the plaintiff and defendant no.4 only, that the signatures of defendant no.4 on the photocopy of the same is not recognized by the SPA of defendant no.4 and the same is denied. That the agreement pertains to some loan transaction, and it is the plaintiff who is giving no objection for construction by the defendant, which is contrary to the plaintiff's case as the plaintiff was to raise the construction. That the alleged agreement dated 22.6.2019 is beyond pleadings, and sets up a contrary case.

(ii) That the plaintiff/applicant has failed to disclose the name of the Counsel who was in custody, power and possession of this alleged agreement dated 22.6.2019 and who was mediator between the plaintiff and the defendant. Not only the name of the Counsel was required to be disclosed but his affidavit was also required to be filed on record disclosing and affirming the contents of the said alleged concocted story of the alleged agreement. That as per the collaboration agreement dated 30.01.2015 the defendants had handed over the physical possession of the suit property to the plaintiff after getting vacated from their tenants on their own costs for making construction after getting the plan sanctioned from MCD by the plaintiff.

(iii) That said construction was to be made from ground floor to the fourth floor in two part/portion having stair case in the middle of the same and thereafter the said construction was to be divided in two parts from 1st floor to 4th floor leaving the entire ground floor with the defendants separate share. That the question of payment of any amount to the plaintiff by the defendant no.4 or by any other defendants does not arise. That the plaintiff made the unauthorized construction without first getting the plan sanctioned from MCD against the terms and conditions of the said Collaboration agreement which unauthorized construction had been demolished by MCD, status report to this effect is on record. That the defendants suffered a lot of loss to the tune of Rs.50,00,000/- which the plaintiff is liable to pay to the defendants no.1 to 9. That it is strictly laid down in the provisions of Order VII Rule 14 CPC and Order VI Rule 5, 6 and 7 Commercial Courts Act that all the documents relied upon must be filed with the plaint and can not be filed with the replication.

3. Heard. Perused.

4. The plaintiff's suit is for declaration, mandatory and permanent injunction and, in the alternative, is, for recovery of a sum of Rs.27,40,000/- by way of compensation/damages against nine defendants. The plaintiff seeks a decree of declaration against the sale deed dated 20.4.2023 executed in favour of defendant no.9 by defendants no.1 to 5 in respect of property bearing no.4754, Ahata Akhara, Pahari Dheeraj, Sadar Bazar, Delhi besides permanent injunction restraining the defendants from creating any third party interest and for restraining the MCD from allowing construction over portions of the suit property on a set of facts that the predecessor of defendants no.1 and 4 and defendants no.2, 3, and 5 to 8 had entered into a collaboration agreement with the plaintiff dated 30.1.2015 and in pursuance had handed over symbolic possession of the built up portion to the plaintiff.

5. That the plaintiff got vacated the occupants of the ground floor by making payment, and it was agreed that the defendants shall deal with the remaining occupants of the property and also get the site plan sanctioned. The plaintiff started the construction, and demanded the sanctioned site plan, but the defendants continued to delay. The plaintiff constructed part ground floor and first floor which is in his occupation measuring about 55 sq. yards but the defendants did not hand over the sanctioned plan. That the plaintiff had invested Rs.20 Lakhs in the repair/construction of the ground and first floor and had paid Rs.7,50,000/- to the occupants of the ground floor. This amount, it was agreed, would be adjusted when the collaboration agreement is fully complied.

6. That no sanction plan was ever supplied, therefore, plaintiff stopped the construction and has been requesting the defendants to hand over the sanctioned site plan to complete the construction as per the agreement but the defendants and the predecessor of defendants no.1 and 4, kept on postponing on the pretext of some internal differences which were to be resolved but on 15.03.2023 completely refused to accede to his request after dilly dallying for some time and have told the plaintiff that they are going to sell the property on 'as is where is basis'. That the plaintiff lodged complaint with the Sub-Registrar not to register any sale deed in respect of the suit property and had received letter dated 22.03.2023 informing him that a sale deed for registration has been received for the suit property. That the suit property has also been booked by the MCD on 29.03.2023.

7. That the plaintiff filed a Suit for Permanent and Mandatory Injunction before the Court of Ld. ASCJ-cum-JSCC (Central), Tis Hazari, and during the pendency of the said suit it transpired that the suit property has illegally been sold on 20.03.2023 to defendant no.9. That the plaintiff has spent considerable amount in raising construction over the suit property, and towards eviction of occupants/tenants, the plaintiff therefore has prior right by virtue of the collaboration agreement and the defendants are threatening to dispossess the plaintiff from the portion in his occupation. That the plaintiff immediately thereafter filed an application before the concerned Court, upon acquiring the knowledge of the execution of the illegal Sale Deed, for withdrawal of the simplicitor suit for injunction, with liberty/permission to file a comprehensive suit ie. present suit and the liberty was granted vide order dated 04.03.2024.

8. The defendants no.1 to 9 filed their joint Written Statement, taking the preliminary objection that the plaintiff's suit is not maintainable. The plaintiff has not come with clean hands and has concealed material facts just to extort money and harass the defendants. That at the time of entering into the collaboration agreement, the plaintiff had assured the predecessor of defendants no.1 to 4 and defendants no.2, 3 and

5 that he himself will deal with police/MCD for getting the building plan sanctioned and had further assured that he will complete the construction within six months from the date of agreement ie. 30.01.2015. That the defendants, again and again reminded the plaintiff about the terms and conditions of said collaboration agreement and warned the plaintiff not to start construction before getting the plan sanctioned from the MCD.

9. That it is the plaintiff who started the construction without first getting the plan sanctioned by the officials of MCD and the unauthorized construction made by the plaintiff was booked by the MCD. That this fact was never disclosed by the plaintiff to the defendants at any point of time and he always stated that the construction was stopped due to lack of funds and will restart as soon as he will arrange the funds. That the plaintiff is in physical possession of the suit property since the date of collaboration agreement and he himself was aware when the unauthorized construction was raised and same was booked by MCD, the defendants were residing at their different places as mentioned by plaintiff himself in the memo of parties. That this fact came to their knowledge at the time of delivery of sale deed by the Sub-Registrar, Sub District-I, Kashmere Gate, Delhi.

10. That the plaintiff has unauthorizedly constructed two godowns measuring about 35 sq. yards each on the ground floor and a flat consisting of two rooms with toilet, kitchen, open space measuring about 35 sq. yards on the first floor and a toilet, kitchen on the 2nd floor also which are in the occupation of the plaintiff who has let out the same to different tenants and is recovering rent from the tenants to the tune of Rs.30,000/- per month since 2015. That the defendants complied with their part of collaboration agreement and have handed over vacant possession of the suit property to the plaintiff for construction as per para 9 of the Collaboration agreement after getting the same vacated from occupants/ tenants in time before construction started.

11. That the defendants are the owners of the suit property. That the construction was to be raised as per the collaboration agreement at the cost and expense of the plaintiff, with a staircase in between the two portions from ground floor to fourth floor and after construction, the predecessors of defendants no.1 and 4 and defendants no.2, 3 & 5 were to remain owners of the entire ground floor and the rest of the floors from first floor to fourth floor were to be divided in equal shares between the plaintiff and the defendants.

12. That the plaintiff in breach of the terms and conditions of the agreement, constructed the building without getting the plan sanctioned from the MCD. That the defendants were left with no option but to sell the same vide sale deed duly registered on 23.4.2023 in favour of defendant no.9. That the plaintiff and defendant MCD are hand in glove as MCD even after having booked the unauthorized construction was not taking the action to demolish the same and the plaintiff continued to make wrongful gains out of the unauthorized construction having let out the same to different tenants. But now MCD has taken action and demolished the structure.

13. The plaintiff filed replication alleging that the predecessors in interest of defendants no.1 to 4 and defendants no.2, 3, 5 to 8 have colluded with the defendant no.9 and her husband who lodged frivolous complaints against the unauthorized construction in order to cause wrongful loss to the plaintiff and thereafter filed a suit against construction in order to achieve their illegal designs and eventually succeeded in their evil designs. That it is the plaintiff and his family members who are in possession of the suit property which were vacated by the plaintiff from tenants/occupants at his cost which has been admitted by the defendants in the earlier proceedings which as per agreement was the responsibility of the defendants and their predecessors, but plaintiff invested his hard earned money and himself got vacated the same in order to save the deal.

14. That the alleged story of rent to the tune of Rs.30,000/- pm or Rs.3,60,000/- per annum is totally false, baseless, misleading in order to gain undue advantage. That the said property is in possession of plaintiff and the construction was demolished as the defendants failed to obtain the sanction plan as per the Colloboration Agreement. That the alleged Sale Deed in respect of unauthorized construction is liable to be declared as null and void as plaintiff is having prior rights in property as such he is the owner and in possession of ground floor to sky of right side of property due to money invested in said property.

15. It is in answer to para 10 of the preliminary objections, at internal page 14 of the replication that the plaintiff has referred to one agreement signed by defendant no.4 to compensate him in lieu of surrender of possession. The precise averments are required to be extracted here:

> *"……….It is submitted that the defendants are liable to make good the losses so suffered by plaintiff and they have even executed and admitted to give a sum of Rs.20,00,000/- (Rupees Twenty Lacs Only) to plaintiff in lieu of surrender of possession and ownership rights by plaintiff qua suit property and agreement was also entered into duly signed by Kamal Tak and plaintiff and original of the same has been retained by defendant only to hide and avoid their liability."*

16. The application in hand that the plaintiff has filed is for placing on record the document which, according to the plaintiff, has been signed by defendant no.4 acknowledging the plaintiff's entitlement to a sum of R6s.20 Lacs. This document is styled as an Agreement cum Settlement deed and is dated 22.6.2019, in the paragraph above while referring to the execution, the date of such execution has not been disclosed. The plaintiff has set forth that the original settlement was retained by the defendant, and in the application for leave to rely upon this agreement the plaintiff explained that the settlement was mediated by an Advocate, and he has obtained a copy of the Agreement from the said Advocate. Ld. Counsel for the defendant vehemently contended that there is reference only to the colloboration agreement dated 30.1.2015 in the plaint and the cause of action is premised on this collaboration agreement dated 30.1.2015 alone and that any such agreement dated 22.6.2019 is irrelevant besides being beyond pleadings.

17. While the plaintiffs claim is founded around the colloboration agreement dated 30.1.2015 no doubt, however, the plaintiff in the alternative has sought recovery of Rs.27,40,000/- from the defendants which amount, according to the plaintiff, the plaintiff had spent on raising the construction over the defendant's property in pursuance to the colloboration agreement and was expended by him in securing its possession from sitting tenants. This agreement/settlement dated 22.6.2019, the plaintiff seeks to rely upon in furtherance of his such cause for the alternative relief that is claimed, and in respect of his such alternative relief cannot be dismissed as completely irrelevant for an effective adjudication of the entire dispute.

18. Veracity of this agreement has been questioned and it is the agent of the defendant no.4, not the defendant no.4 himself, who has denied the signatures appearing therein. The veracity can alone be addressed on an appreciation of the evidence lead on both sides, once the parties have cross-examined each other regarding the same. Making any manner of observations on the genuineness of the document commenting on the authenticity of the signatures without trial would be premature and unwarranted.

19. Certain imponderables are underscored by the Ld. Counsel for the defendant in the contents thereof. The document certainly makes an interesting read and the portion to which a strong exception is taken is extracted below:

Whereas Second Party is the owner of Part of property no. 4754, Ahata Kidara, Bara Hindu Rao, Delhi-6 and First Party namely Sh. Ahsan Ur Raheem has paid a loan amount against property no. 4754, Ahata Kidara, Bara Hindu Rao, Delhi-6 and a dispute had occurred between the parties, however due to timely intervention of respectable members of society the same has been resolved amicably with the following terms and conditions:-

20. The agreement does refer to some loan transaction, not the subject matter of the present suit, however, it manifests in the subsequent paragraphs that the settlement pertains to the suit property and the amount agreed to be paid is for relinquishing the possession of the suit property with the undertaking not to raise objection in future to construction therein by the defendant. The terms and conditions recorded are as follows:

Terms and Conditions:-

1. That Second party namely Kamal shall pay a sum of Rs. 20,00,000/- (Rs. twenty Lacs only) to the First Party namely Ahsan Ur Raheem in FULL and FINAL SETTLEMENT and nothing remains due.

2. That in Iieu of aforesaid payment of Rs. 20 Lacs First Party namely Ahsan Ur raheem will handover the peaceful vacant possession of Two Godowns on Ground Floor (Without roof rights) dimensions about 13 feet by 26 fee each in property no. 4754 and Portion of First Floor about 13 feet by 28 feet in property no. 4754 (With roof rights) to the Second Party which I already under the ownership of Second Party namely Kamal."

21. While Sh. Kamal s/o Mr. Mahant Ram is declared in the preface to the terms and conditions to be the owner of part of property no.4754, Ahata Kidara, Bara Hindu Rao and a loan transaction is referred to against which dispute had occurred between the parties which was resolved amicably due to intervention of some respectable members of the society on such terms and conditions as formulated therein, the reference in the terms and conditions to the property in question is also unmistakable. The defendant would be at liberty to raise all such objections when the document is relied in evidence and to cross-examine the plaintiff concerning such circumstances recorded therein, the mere reference to a loan transaction would not warrant a straightaway rejection of the document as unrelated and irrelevant, certainly the admissibility, evidentiary value the genuineness and authenticity thereof shall be determined on appreciation of the entire evidence led.

22. While there is no specific reference of agreement /settlement dated 22.6.2019 in the replication, however an agreement to pay Rs.20 Lacs to the plaintiff has indeed been alluded at, the plaintiff has articulated the circumstances under which copy alone is placed on record, alleging that original was retained by the defendant, and in the application has also set forth the circumstances under which the same could not be produced earlier, in such facts and circumstances, therefore, the alleged settlement / agreement dated 22.6.2019 being available for the plaintiff in demonstration of the alternative claimed, the plaintiff ought to be accorded the opportunity to present all available material in support in the interest of justice. So far as the defendant is concerned, for the delay occasioned, the

defendant can be compensated with costs, all objections surrounding its existence, custody and execution including admissibility, relevancy, authenticity thereof, can always be raised by the defendant during trial and the defendant would always have the opportunity to cross question the plaintiff on all such aspects. However, as the document is introduced in the replication, the defendant ought to be afforded an opportunity to file rejoinder.

In view thereof, the application of the plaintiff under order VII Rule 14 r/w Sec.151 CPC and/or u/o XI Rule 5, 6, 7 of the Commercial Courts Act is allowed subject to costs of Rs.5000/- to be paid to the defendant. The defendant is at liberty to file Rejoinder to the Replication as a fresh document has been introduced with the Replication.

For completion of pleadings, framing of issues, completion of admission/ denial, First Case Management Hearing and further proceedings, put up on **15.4.2026.**

Application stands disposed of.

NEELOFER ABIDA PERVEEN

Digitally signed by NEELOFER ABIDA PERVEEN
Date: 2026.03.18 16:49:19 +05'30'

(Neelofer Abida Perveen)
District Judge (Commercial Court)-01
Central District/THC/Delhi/18.03.2026