

CS DJ – 318/21

Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans

22.07.2021

Fresh suit received by way of assignment.

It be checked and registered.

The matter has been taken up through video conferencing via Cisco Webex.

Present: Sh. Vijay Kumar Sharma, counsel for the plaintiff.

Arguments heard on the application for urgent hearing. For the reasons mentioned therein, the application is allowed.

The plaintiff has filed the application seeking exemption from filing the certified copies of the orders dated 10.12.2018, 09.08.2019 and 17.10.2019. Heard. In the suit, the plaintiff has not relied upon any such order nor has filed the photocopy of the said orders on the court record. Accordingly, there is no occasion to exempt the plaintiff from filing the certified copies of the said order. Therefore, the application is dismissed.

The plaintiff has filed the present suit for injunction and damages on the ground that he is the owner of the flat no.C-20 G, Vijeta Vihar, Plot no.19/2, Sector-13, Rohini, Delhi-110085. The defendant no.1 is owner of flat no. C-20 F, Vijeta Vihar, Plot no.19/2, Sector-13, Rohini, Delhi-110085 on the first floor of the said society. The defendant no.1 extended the balcony at the back and front side of his flat which is unauthorised in nature. Not only that, the defendant no.1 has installed one additional water tank. Due to the said acts of the defendant no.1, the holes have developed in the balcony due to which water is leaking in the entire flat of the plaintiff. Due to

the said acts of the defendant no.1, the plaintiff is suffering since the year 2016. In the year 2018, the plaintiff had incurred certain expenses in repair of the flat. The plaintiff has complained against the said acts of the defendant no. 1 to the Police Authority, Commissioner of MCD and President of the Society but of no use. Hence, left with no option, the plaintiff filed the suit for injunction and damages before the court of Senior Civil Judge on 02.11.2020. Later on, the plaintiff realized that the said court lacked the pecuniary jurisdiction, hence, he withdrew the said suit on 09.11.2020 with a request to file the same in the property court. Accordingly, that court returned the plaint to the plaintiff to file it in the court of competent jurisdiction.

Perusal of the plaint also reveals that the plaintiff also filed a suit before the court of Id. ADJ and that court issued the summons which were served upon the defendant on 08.11.2020. However, the defendant did not file the written statement within the stipulated period but had filed the application u/o 7 Rule 11 of CPC on 13.01.2021. Plaintiff also filed the application u/o 39 Rule 1&2 CPC on 03.02.2021. That suit was fixed for hearing on 23.02.2021. In the meantime, the plaintiff moved the application for urgent hearing and in pursuance thereto, the defendant through his counsel attended the hearing on 19.06.2021 and 25.06.2021 and also filed the WS and the reply to the application u/o 39 Rule 1&2 CPC. That court listed the matter for arguments on the pending applications. In the meantime, the plaintiff instead to pursue the said suit, moved an application u/o 23 Rule 1(iii) CPC seeking permission to withdraw the said suit. On 07.07.2021, the said application was

allowed by the said court. As mentioned in para 24 & 25 of the plaint, the plaintiff withdrew the said suit because he apprehended that the defendant would raise the objections and the deposit of the original plaint, court fee and certified copies of the documents filed therein would waste his time. Now the plaintiff has filed the present suit.

In the plaint, the plaintiff has prayed for three reliefs of mandatory injunction but assessed the suit for the purpose of court fee and jurisdiction for only one such relief. The plaintiff also prayed for compensation for the mental agony suffered by him and his family since May 2016, but has not quantified the said compensation. Accordingly, the plaintiff is directed to quantify the compensation claimed by him and to properly assess the suit for the purpose of court fee and jurisdiction and pay the deficit court fee within four weeks from today.

The plaintiff has relied upon the photocopy of the sale deed dated 21.07.2010 but has filed only the first page and last page of the said sale-deed as mentioned in the index also. As such, the plaintiff has deliberately not filed the complete sale-deed for the reasons best known to him. Accordingly, the plaintiff is directed to file the complete sale-deed dated 21.07.2010 on or before the next date of hearing.

As mentioned in the plaint, the plaintiff filed two suits against the defendant prior to filing of the present suit. Along with the plaint, the plaintiff has filed the copy of the order dated 09.11.2020 passed by Ld. Civil Judge (North) in suit no. 899/2020 titled as "Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans" perusal of which reveals that that day, the plaintiff made a statement and on that basis, the suit was dismissed as withdrawn.

As mentioned in the plaint, the plaintiff withdrew the said suit as the said court lacked the pecuniary jurisdiction and therefore, the plaint was returned by the court. However, the said order is silent to that effect.

Along with the plaint, the plaintiff also filed the copy of order dated 10.12.2020 passed by Id. ADJ-03 (North) Rohini in CS DJ no.401/2020 titled as “Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans” perusal of which reveals that that day, counsel for the defendant no.1 appeared before the said court and sought time to file the WS. As mentioned in para no.22 of the plaint, the summons of the said suit was served on defendant on 08.11.2020. It implies that the said summon was served upon the defendant before withdrawal of the suit no. 899/2020 filed before Civil Judge (North) on 09.11.2020. The plaintiff has neither filed nor disclosed in the plaint as to when the said suit was filed before the Id. District Judge (North).

It is the own case of the plaintiff that in CS DJ no. 401/2020, the defendant therein appeared and contested the suit. The plaintiff also moved an application u/o 39 Rule 1&2 CPC. That court also fixed the matter for arguments on the pending applications. However, before that could happen, the plaintiff moved the application u/o 23 Rule 1(iii) CPC therein and withdrew the same.

It is the own case of the plaintiff that he has been suffering from the acts of the defendant since the year 2016. As discussed above, the plaintiff has filed two suits prior to filing of the present suit. As revealed from the record, the plaintiff’s cause of action to file the present suit and previous two suits is same. However, the plaintiff has not filed the pleadings of suit

no.899/2020 titled as “Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans” and CS DJ no. 401/2020 titled as “Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans”. Further, the pleadings of the plaintiff relating to the said suits are vague in nature.

In view of the foregoing discussions and on perusal of the record, I am of the opinion that to ascertain the exact grievance of the plaintiff and the dispute between the parties and to proceed further, the pleadings and the documents part of suit no.899/2020 and CS DJ no. 401/2020 are necessary. Accordingly, the plaintiff is directed to file the certified copies of the complete pleadings, documents and the orders passed by the respective courts in suit no.899/2020 titled as “Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans” and CS DJ no. 401/20202 titled as “Rajinder Kaur Bajwa vs. Sanjeev Kumar Hans” on or before the next date of hearing.

Put up for consideration on 18.10.2021.

(Pankaj Gupta)
ADJ-1(North)/Rohini Courts
Delhi/22.07.2021