

CS 2125/16

**NARENDER KUMAR VASHISHT AND ORS Vs. SMT ANITA
SHARMA**

05.07.2024
AT 02:25 PM

Present: Sh. Varun Ahuja, Ld. Counsel for plaintiff through
VC
Son of the plaintiff in person
None for the defendant.

Matter is listed for arguments on the application under Section 114 r/w Section 151 CPC.

Ld. Counsel for plaintiff submits that he has received a set of documents on his whatsapp number from the Ld. Counsel for defendant.

It is submitted by the Ld. Counsel for plaintiff that the said documents are not accompanied by any application.

None has appeared on behalf of defendant to apprise this Court whether any documents have been filed on behalf of defendant in the present matter.

Ld. Counsel for plaintiff submits that the application for review has been filed to linger on the proceedings of the present case. He further submits that vide order dated 02.11.2023 the Court of Ld. DJ-03 has dismissed the application of the plaintiff filed under Order XI Rule 14 r/w Section 151 CPC. It is further submitted that by way of the application, defendant seeks

the directions of the Court to direct plaintiff to file following documents:

1. ITR of the plaintiff for the year 2003 to 2009.
2. ITR of Smt. Deepa Vashisht, wife of plaintiff.
3. Copy of agreement to sell/bayana in respect to suit property.
4. Sale deed of the suit property.
5. Details of CIBIL account of the plaintiff for the year 2004 to 2014.

It is submitted that the plaintiff has already filed his ITRs for the period from 2004-05 to 2009-10 which has also been reflected in the order dated 02.02.2024. It is further submitted that the original sale deed is in possession of the ICICI Bank, however, the entire loan amount has been paid and the account has been settled. It is further submitted that in the year 2019 the plaintiff was under financial crises, therefore, he was unable to pay the installments of the loan amount to ICICI Bank and due to default, bank has also initiated proceedings qua the suit property under the provisions of SARFAESI Act. It is further submitted that defendant without the knowledge and consent of the plaintiff has deposited Rs.7,73,055.23 with the bank and upon deposit of the said amount, the entire loan amount was cleared/settled. It is further submitted that prior to default, plaintiff had been paying the installment amount to the ICICI Bank from his own pocket.

It is further submitted on instructions that plaintiff is not in possession of the agreement to sell/bayana agreement qua the suit property executed prior to purchase of the property vide sale deed dated 13.05.2005 and the same has been destroyed after execution of the sale deed. It is further submitted that defendant had never asked the plaintiff to produce bayana agreement at any point of time.

It is further submitted that no Court has ever directed the plaintiff to furnish/produce ITR of Smt. Deepa Vashisht at any point of time. It is further argued that even the plaintiff during the cross examination of plaintiff witness have never asked plaintiff to produce ITR of Smt. Deepa Vashisht.

It is further submitted that it is already 2.59 PM and the present matter was listed today for 2.15 PM. None has appeared on behalf of defendant today to apprise this Court whether any document has been filed by them through e-filing.

Ld. Counsel for plaintiff further submits that the application for review is meritless. He further submits that he has already filed written arguments. He further submits that defendant wants to linger on the proceedings of the present suit and therefore, on one or the other ground they are taking adjournments in the present matter or sometime they are not appearing at the relevant time before this Court.

Ld. Counsel for plaintiff further submits that the application under Section 114 r/w Section 151 CPC be decided as the pendency of the said application is hampering the progress of proceedings of the present suit.

It is further submitted that at this stage, this Court cannot go into the merits of the case and has to see only the abnormality/error apparent on the face of record in the order dated 02.11.2023.

It is further submitted that vide order dated 02.11.2023 that the Court of Ld. DJ-03, Shahdara District, KKD Courts, Delhi has also dismissed the application under Order I Rule 10 CPC and to which, the defendant has also filed another review application under Section 114 r/w Section 151 CPC.

It is further submitted that by way of the application under Order 1 Rule 10 CPC the defendant wants to implead ICICI Bank, Preet Vihar, Delhi as a party to the present suit at the fag end of the proceedings when evidence of both the parties have already been concluded. It is further submitted that ICICI Bank is not a necessary party to the present suit and effective decree can be passed even in the absence of ICICI Bank in the present matter. It is further submitted that no relief has been sought by the plaintiff against ICICI Bank in the present suit as well as in the counter claim.

Heard.

In the interest of justice, last and final opportunity is granted to the defendant to address arguments on both the applications under Section 114 r/w Section 151 CPC on the next date of hearing positively, failing which the applications shall be decided on the merits. However, defendant is at liberty to file written arguments (not more than five pages) within ten days from today with an advance copy to the plaintiff.

Put up for arguments on the application under
Section 114 r/w Section 151 CPC on 25.07.2024 at 12.00 Noon.

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
05.07.2024