In the Court of Sh. Deepanker Mohan
District Judge-04, Shahdara District,
Karkardooma Courts, Delhi

CS 2125/2016

IN THE MATTER OF :

NARENDER KUMAR VASHISHT
AND ORS. …Plaintiffs

VERSUS

SMT. ANITA SHARMA ...Defendant

ORDER

1. By way of this order, this Court shall dispose of the application under Section 114 r/w Section 151 CPC for review of the orders dated 02.11.2023 vide which application under Order I Rule 10 r/w Section 151 CPC for impleadment of ICICI Bank, Preet Vihar Branch, Delhi, was dismissed.

2. Arguments on the application were heard on 05.07.2024, 09.08.2024 and 29.08.2024.

3. The defendant by way of an application under Order I Rule 10 r/w Section 151 CPC has sought impleadment of the ICICI Bank, Preet Vihar Branch, Delhi and stated that the said bank had issued notice for recovery of an amount of Rs.7,73,055.23 in respect to suit property. It is also stated that defendant is claiming to be owner of the suit property and is in possession of the same.

It is also stated that the amount of sale consideration has been paid by plaintiffs from the account of defendant. It is also stated that under the garb of the said notice, plaintiffs in association with the bankers are seeking recovery of the possession of the suit property from defendant unlawfully. It is also stated that if the banker succeeds to take over the possession of the suit property, during the pendency of the present suit, then it shall suffer an irreperable loss and injury to defendant which cannot be compensated in terms of money. Defendant states that the ICICI Bank is a necessary party to the present suit.

4. Ld. Counsel for plaintiffs had opposed the said application and stated that plaintiffs are the registered owners of the suit property and he has mortgaged the same with the ICICI Bank and defendant has no concerned with the home loan taken by plaintiffs from the bank.

5. After dismissal of the aforesaid application, defendant has preferred the present review application against the order dated 02.11.2023 on the following grounds:-

(i) The reason assigned by the Court while dismissing the application that the matter is listed for final arguments, is not tenable with the object of Order I Rule 10 CPC.

(ii) The application under Order I Rule 10 CPC can be filed at any stage during the pendency of the trial and the Court has wrongly dismissed the application.

(iii) The order dated 02.11.2023 is apparently incorrect within the eyes of law as well as within the facts and circumstances of the case and the ICICI Bank is a necessary party to the present suit. The ICICI Bank, if impleaded as party, will produce the relevant documents which would help this Court to decide all the issues in the present matter effectually and completely.

6. Ld. Counsel for plaintiffs has opposed the aforesaid application and submitted that the present application is meritless and deserved to be dismissed. It is also argued that defendant has failed to show an error apparent on the face of record which is a necessary condition for exercising the power under Section 114 CPC. It is also aruged that the defendant has also not produced any new or important matter or evidence, which was not in her prior knowledge despite due diligence, along with the application. The defendant has also not shown any sufficient reason which insist this Court to exercise its discretionary power of review. It is also argued that ICICI Bank is not a necessary party to the present suit.

7. The plaintiffs had filed the present suit for possession, damages and mesne profit in respect to suit property against defendant. As per the plaint, plaintiffs are the registered owner of the suit property vide registered sale deed dated 13.05.2005 and they have allowed the defendant to occupy the suit property being their licensee. It is also stated in the plaint that prior to

filing of the present suit, plaintiffs have terminated the licence of the defendant qua the suit property and when defendant failed to comply the legal notice dated 11.08.2008, plaintiffs were constrained to file the present suit.

8. Defendant has filed her written statement and has refuted the claim of the plaintiffs. Defendant has also filed a counter claim seeking cancellation of the sale deed dated 13.05.2005 and permanent injunction. The defendant has claimed that plaintiffs have played fraud upon her and the suit property has been purchased by plaintiffs in their names instead in the name of defendant. It is also pleaded that the suit property has been purchased out of the funds of defendant and therefore, defendant is the true owner of the suit property.

9. It has come on record that during the pendency of the present suit, defendant had deposited an amount of Rs.7,73,055.23 with the ICICI Bank when the bank has initiated proceedings under SARFAESI Act against the suit property. It is not in dispute that the entire loan amount qua the suit property has been cleared/settled and no outstanding amount is left to be paid to ICICI Bank qua the suit property an on date. However, the title deeds of the suit property is still lying with the bank.

10. It is settled law that the plaintiffs, being dominus litis, may choose the person whom he wish to litigate and cannot be

compelled to sue a person against whom he does not seek any relief or that the plaintiff cannot be compelled to jointly litigate with any person. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. However, this general rule is a subject the provisions of order I Rule 10 (2) of CPC which provides for impleadment of necessary parties.

11. ***The Hon'ble Apex Court in Kasturi Vs. Iyyampeumal and others, 2005 (1) Apex Court Judgment 640 (SC): 2005 (2) Civil Court Cases 379 (SC)*** laid down two tests to determine as to who is a necessary party in a suit are (a) there must be right to some relief against such party in respect of the controversies involved in the proceedings (b) no effective decree can be passed in the absence of such party.

12. It is settled law that Court can add any person who ought to have been joined as party at any stage of the proceedings either upon or without the application of either party. However, court should satisfied that presence of such party before the Court would effectually and completely adjudicate and settle all the questions involved in the suit to avoid multiplicity of litigation.

13. A necessary party is one who ought to have been joined i.e. a person in whose absence no effective decree at all can be passed. A proper party is one whose presence is necessary to enable the Court to effectively and completely adjudicate upon and decide all questions involved in the Court, though he need not be a person in favour or against whom a decree is to be made.

14. The contentions of the defendant in the application that ICICI Bank is a necessary party to the present suit which would assist this Court to decide all the issues involved in the present matter effectually and completely on the reason that the Bank would produce all their records pertaining to the loan account, is not sustainable because this cannot be a sole ground to implead ICICI Bank as party to the present suit. However, defendant was having a right to summon the entire record pertaining to the said loan from ICICI Bank but the defendant has not availed the same. Perusal of the record shows that on 14.11.2019 and 18.01.2020 during cross examination of PW-3, witness from ICICI Bank appeared in the present matter along with relevant records but his cross examination was not conducted on the said dates and on 23.11.2021, right of the defendant to further cross examine PW-3 was closed. No plausible reason has been assigned by the defendant in the applications which prevented her from summoning the entire records from ICICI Bank

pertaining to the loan taken in respect to the suit property, during recording of evidence.

15. It has come on record that the entire loan amount has been re-paid, therefore, as on date, ICICI Bank has left with no right over the suit property.

16. The plaintiffs have filed the present suit against defendant claiming the possession of the suit property thereby stating her as their licensee. This Court is unable to understand as to how the ICICI Bank is a necessary or a proper party to the present case under the facts pleaded by the parties and no effective decree can be passed in its absence. The defendant has failed to show any error apparent on the face of record which impress this Court to exercise its discretionary power of review.

17. In view of the observations, this Court concludes that ICICI Bank is neither the necessary party nor the proper party to the present suit and the review application is meritless, therefore, the application under Section 114 r/w Section 151 CPC for review of the orders dated 02.11.2023 stands dismissed.

18. Application under Section 114 r/w Section 151 CPC for review of the orders dated 02.11.2023 is accordingly disposed of.

19. Put up for arguments on the issue/point raised by this Court on 20.09.2024 on **08.11.2024.**

DEEPANKER MOHAN

Digitally signed by DEEPANKER MOHAN
Date: 2024.10.23 18:28:28 +0530

Announced in the open Court
on 23rd day of Oct, 2024

(Deepanker Mohan)
District Judge-04
Shahdara District/KKD Courts/Delhi
23.10.2024