

CNR no. DLCT01-013948-2022
Suit No. 122/22 (DJ No. 1043/22)
Vishwanath Gupta
Vs.
Sh. Naresh Bansal

24.01.2023

Present: Sh. Rajender Kumar, Ld. counsel for plaintiff
alongwith plaintiff in person.
Sh. Mandeep Singh, Ld. counsel for defendant
alongwith defendant in person.

Fresh vakalatnama filed on behalf of defendant.
Same is taken on record.

Replication alongwith reply to application u/s 5 of
the Limitation Act read with Order 8 Rule 1 & Section 151 CPC
and rejoinder to the reply of the application under Order 39 Rules
1 & 2 CPC filed on behalf of plaintiff. Copy supplied.

An application u/s 5 of the Limitation Act read with
Order 8 Rule 1 & Section 151 CPC for condonation of delay of
45 days in filing the written statement. It is urged on behalf of
applicant/ defendant that summons of the suit was received by
the defendant on 08.10.2022. However, written statement could
not be filed within stipulated period of 30 days to the service of
summons as defendant was suffering from acute financial crisis
and was left with no job/ source of income to meet his essential
needs and therefore, could not engage a counsel, which resulted
in 45 days delay in filing the written statement.

Reply has been filed on behalf of plaintiff. It is urged
on behalf of plaintiff that application filed by the defendant does
not provide any sufficient explanation entitling the applicant/
defendant for condonation of delay in filing the WS and
defendant is adopting delaying tactics.

Contd...2/-

(2)

Time limit as stipulated under the CPC cannot be construed in a manner to defeat the interest of justice and to deprive the defendant to contest the suit. Accordingly, application filed by defendant u/s 5 of the Limitation Act read with Order 8 Rule 1 & Section 151 CPC is allowed and written statement is taken on record.

Another application under Order 39 Rules 1 & 2 CPC has been filed on behalf of plaintiff for grant of ad-interim injunction thereby restraining the defendant not to create third party interest of his 2/5 share of suit property bearing Mpl. No 11370, 2nd and 3rd Floor, built on plot no. 10, Block No. 10, constructed on piece of land measuring 249 sq. yards, alongwith building constructed thereon (alongwith terrace/ roof rights up to sky) situated in the layout plan of Roshnara Extension Scheme, now presently known as Shakti Nagar, Delhi 110007.

It is admitted fact that defendant has executed a mortgage deed in favour of the plaintiff whereby the suit property also mortgaged with the plaintiff. The perusal of the mortgage deed shows that possession of the suit property was also handed over to the plaintiff. Plaintiff has also placed on record registered lease deed dated 04.10.2017, which shows that plaintiff after coming into the possession of the suit property has leased the same in favour of defendant. Defendant has not specifically denied the execution of the mortgaged deed and lease deed dt. 04.10.2017, however, it has been urged that same is manipulated and the contents of the same were not read over to the defendant at the time of execution. Defendant has also not specifically denied receipt of Rs. 18 Lakhs from the plaintiff. From the

Contd....3/-

(3)

aforesaid fact, the plaintiff is able to prove prima facie case in his favour showing that plaintiff has a valid and subsisting interest in the suit property. Balance of convenience also lies in favour of the plaintiff. Plaintiff will suffer irreparable loss in case the subject matter of the present suit is not protected from being wasted.

During the course of the arguments, ld. counsel for defendant has apprised the court that defendant has only 33% share in the suit property and therefore, the interim order sought by the plaintiff to the extent of 40% share of the suit property cannot be granted. On the other hand, ld. counsel for the plaintiff has argued that the defendant has fraudulently obtained a collusive decree, thereby, reducing his share in the suit property to defraud the plaintiff. I am of the considered opinion that without going into the question of share of the defendant in the suit property, it would serve the purpose, if the defendant is restrained from creating third party interest qua his share in the suit property till the pendency of the present suit. Accordingly, the application filed by the plaintiff under Order 39 Rules 1 & 2 CPC is allowed and the defendant is restrained from creating third party interest in the suit property bearing Mpl. No 11370, 2nd and 3rd Floor, built on plot no. 10, Block No. 10, constructed on piece of land measuring 249 sq. yards, alongwith building constructed thereon (alongwith terrace/ roof rights up to sky) situated in the layout plan of Roshnara Extension Scheme, now presently known as Shakti Nagar, Delhi 110007 to the extent of his share till the pendency of the present suit without prior permission of the court.

Contd...4/-

(4)

At this stage, it is submitted by the ld. counsels for the parties that there is likelihood of compromise between the parties and the matter be referred to the Mediation Centre, Tis Hazari Courts, Delhi. Heard. Request is allowed.

At joint request, present matter is referred for settlement before Mediation Centre, Tis Hazari Courts, Delhi. Parties are directed to appear before Mediation Centre, Tis Hazari Courts, Delhi on 02.02.2023 at 12:00 noon.

Put up for report of compromise, if any on **07.03.2023.**

(Alok Shukla)
ADJ-07, Central, THC
Delhi/24.01.2023