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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 5/2012, I.A. 12059/2019, I.A. 11907/2019, I.A. 6165/2022,
I.A. 12531/2018, I.A. 10222/2017, I.A. 5686/2018, I.A. 379/2019,
I.A. 12532/2018, I.A. 5819/2020, I.A. 1082/2021

YASHWANT SINGH

..... Plaintiff

Through: Mr. Advocate, Appearance not given

versus

ASHUTOSH VERMA

..... Defendant

Through: Mr. Arun Srivastava, Advocate

13 CS(OS) 508/2012, I.A. 921/2013, I.A. 922/2013, I.A. 1489/2020, I.A.
1437/2020, I.A. 12060/2019, I.A. 3903/2012, I.A. 2384/2023, I.A.,
I.A. 2386/2023

ASHUTOSH VERMA

..... Plaintiff

Through: Mr. Arun Srivastava, Advocate

versus

YASHWANT SINGH AND OTHERS

..... Defendants

Through: Ms. Jayashree Shukla Dayagupta,
Advocate for D-4

14 CS(OS) 641/2012, I.A. 11504/2013, I.A. 11503/2013, I.A. 4799/2012
I.A. 4800/2012, I.A. 11502/2013

ASHUTOSH VERMA

..... Plaintiff

Through: Mr. Arun Srivastava, Advocate

versus



SATEESH KUMAR SINGH AND ORS

..... Defendants

Through: None

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

30.01.2024

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CS(OS) 5/2012

1. On the basis of pleadings, the following issues are framed:
 - a. Whether the defendant is liable to be evicted from the suit property being the first floor of A-24 Kailash Colony, New Delhi? OPP.
 - b. Whether the defendant No. 1 and his associates, legal representatives etc. are liable to be restrained from interfering in any part of the property being A-24 Kailash Colony, New Delhi? OPP.
 - c. Whether the Lease Agreement dated 19.09.2011 executed between the plaintiff and the defendant no.1 is null and void? OPP
 - d. Whether the MOU dated 11.03.2010 between the plaintiff and the Defendant No.1 is null and void? OPP
 - e. Whether the Supplementary MOU dated 20.01.2011 between the plaintiff and the Defendant No.1 is null and void? OPP
 - f. Whether the Lease Deed dated 20.01.2011 executed between the plaintiff and the defendant No.1 is null and void? OPP
 - g. Whether the arrangement of issuance of money receipt of cash in lieu of interest on the borrowed sum is null and void *non-est* in the eyes of law? OPP
 - h. Whether the MOU dated 11.03.2010 between the plaintiff and the defendant No.1 is liable to be cancelled? OPP
 - i. Whether the Supplementary MOU dated 20.01.2011 between the



plaintiff and the defendant No.1 is liable to be cancelled? OPP

- j. Whether the Deed of lease dated 20.01.2011 between the plaintiff and the Defendant No.1 is liable to be cancelled? OPP
- k. Whether the arrangement of issuance of money receipt of cash in lieu of interest needs to be cancelled? OPP
- l. Whether the plaintiff is entitled to damages to the extent of Rs. 50,00,000/-? OPP
- m. Whether the plaintiff has no *locus standi* to file the present suit? OPD
- n. Whether the Suit is barred under Order II Rule 4? OPD
- o. Whether the Suit has not been valued properly for the purpose of court fee? OPD
- p. Whether the plaintiff has no cause of action to file the present Suit? OPD
- q. Relief.

2. No further issue arises or is pressed. List of witnesses be filed within 15 days by the parties.

3. List before the learned Joint Registrar for recording of evidence on 18.03.2024.

I.A. 11902/2019, I.A. 11903/2019, I.A. 11904/2019, I.A. 467/2022, I.A. 6164/2022, I.A. 7332/2023, I.A. 25370/2023 under Order 39 Rule 2-A CPC

4. **Submissions heard.**

5. List for arguments on 16.04.2024.

CS(OS) 508/2012

6. On the basis of pleadings, the following issues are framed:

- a. Whether the plaintiff is entitled to execution of a Sale Deed in respect



of the Property bearing No. A-24, the entire first floor, Kailash Colony-I, Village Zamrudpur, New Delhi in terms of the MOA dated 11.03.2010 and SMOA dated 20.01.2011? OPP

- b. Whether the defendant Nos. 1 and 2 and their agents are liable to be restrained from alienating, selling, transferring or dealing with the Property bearing No. A-24, the entire first floor, Kailash Colony-I, Village Zamrudpur, New Delhi? OPP.
- c. Whether the plaintiff is entitled to the Decree of the Specific Performance of the MOA dated 11.03.2010 and the SMOA dated 20.01.2011. ? OPP.
- d. Whether Power of Attorney dated 17.08.2021 executed in favour of the defendant Nos. 1 and 2 hinders the authority of defendant No. 1 to effect the sale of the suit property? OPP
- e. Relief.

7. No further issue arises or is pressed. List of witnesses be filed within 15 days by the parties.

8. List before the learned Joint Registrar for recording of evidence on 18.03.2024.

I.A. 2385/2023 (under Order 1 Rule 10(2) CPC, 1908 read with Section 151 CPC for impleadment/addition of defendant No. 4 as necessary/proper party to grant justice to the aggrieved applicant/plaintiff herein)

9. The application under Order 1 Rule 10(2) read with Section 151 CPC, 1908, has been filed on behalf of the plaintiff for impleadment of M/s Encore ARC Pvt. Ltd., as defendant No. 4.

10. **It is submitted in the application** that the present suit being CS (OS)



508/2012, has been filed by the plaintiff for Specific Performance and Permanent Injunction against the defendant Nos. 1, 2 and 3.

11. The plaintiff had entered into three agreements with defendant No. 1, the specific performance of which had been sought through the present suit. It is submitted that he was inducted as a tenant at First Floor, House No. A24, Kailash Colony, New Delhi, which belonged to defendant No. 2/ Mr. Sateesh Singh, who issued a power of attorney in favour of defendant No. 1/ Dr. Yashwant Singh.

12. It is explained that earlier plaintiff had entered into an Agreement on 05.11.2009 and had given a sum of Rs.50,00,000/- with an understanding that if defendant No. 1 defaulted in payment, then interest @1.5% per month would be payable to the plaintiff for six months. It was further agreed that if defendant No. 1 failed to return the amount by May, 2010 along with the interest, then plaintiff shall pay another Rs.20,00,000/- and the total sum of Rs.76,00,000/-, shall be treated as the sale consideration for the suit premises.

13. It is submitted that subsequently, on further representation of facts and taking advantage of family relations with the plaintiff, Ms. Vijeta Singh was produced as a guarantor by the defendant No. 1 and an M.O.A. dated 11.03.2010 and supplementary M.O.A. dated 20.01.2011 and a Lease Deed dated 20.01.2011, were executed. Huge amount of money was transferred by the plaintiff through RTGS and also given in cash as rent, friendly loan and advance for sale of the suit property. The possession of the first floor was given to the plaintiff as security for his investment in the property of defendant No. 1. Though the amount was to be repaid in a short span of time, but it remained unpaid till it reached the figure of Rs.5.5 Crores plus



interest due for the last 13 years.

14. However, the plaintiff continued to be in the peaceful possession of the suit premises, on the basis of the Injunction dated 24.08.2012 whereby the plaintiff was directed to continue to be in possession so long as he kept paying rent of Rs.1,00,000/- per month. The DRT also confirmed that the injunction in favour of the plaintiff is binding on DRT and the Financial Institution or their assignee i.e. proposed defendant No. 4.

15. The plaintiff herein arrayed Indian Bank, South Extension Branch as defendant No. 3, which, however, was proceeded ex-parte and the Indian Bank was impleaded once again as defendant No. 3 after the setting aside of the ex-parte order *vide* order dated 30.05.2012.

16. It is submitted that the plaintiff/applicant has recently come to know through the notice under Section 14 of the SARFAESI Act, 2002, along with the Order of the CMM, South East dated 02.06.2022, that defendant No. 3 has now been replaced by their assignees M/s ENCORE ARC PVT. LTD., which has stepped into the shoes of defendant No. 3.

17. It is further submitted that defendant No. 3/ Indian Bank had knowingly concealed that they have created third party interest in the secured assets and their assignees are vested with the same capacity/power as defendant No. 3.

18. M/s ENCORE ARC PVT. LTD., has taken over the possession of the three floors of the property of defendant No. 1, Dr. Yashwant Singh and the first floor is the suit property, which belongs to the plaintiff but is under the threat of dispossession at the hands of proposed Assignee M/s ENCORE ARC PVT. LTD. The Assignee has also conducted the auction of the secured assets on 28.09.2022. There is an eminent threat of dispossession as



the Hon'ble P.O. DRT-I, has instructed the respondent /F.I. (defendant No. 3 herein), to first recover its dues from the remaining portion of the property by way of auction sale before putting the first floor on auction as suit for specific performance is still pending in this Court. It is, therefore, submitted that M/s ENCORE ARC PVT. LTD. be impleaded as defendant No. 4, in the present suit.

19. In view of the submissions made by the plaintiff that M/s ENCORE ARC PVT. LTD. has been assigned the rights of the defendant No. 3/ Indian Bank and it has stepped into its shoes, the application is allowed and M/s ENCORE ARC PVT. LTD., be impleaded as defendant No. 4.

20. The application is disposed of accordingly.

I.A. 12989/2022 (under Order 8 Rule 10 CPC filed on behalf of the plaintiff for judgment/order against the defendant No. 3)

21. The present application under Order 8 Rule 10 read with Section 151 CPC, 1908, has been filed on behalf of the plaintiff for judgment/order against defendant No. 3.

22. It is submitted in the application that the plaintiff has filed a suit for Specific Performance and Permanent Injunction against the defendant Nos. 1 and 2 and the Indian Bank has been impleaded as defendant No. 3. It had also filed an application under Order 39 Rules 1 and 2 read with Section 151 CPC, 1908, for restraining the defendants from selling, alienating, transferring or parting with the possession of the suit property.

23. After the service of summons, none had appeared on behalf of the defendant No. 3 and the suit was proceeded ex-parte on 09.04.2012 against the said defendant. A common Written Statement, however, was filed on behalf of the defendant Nos. 1 and 2. The defendant No. 1 had also made a



statement on 01.04.2012 that it had no intention to sell, alienate or transfer the suit property i.e. the first floor and accordingly, the interim application with consent was disposed of *vide* order dated 24.08.2012.

24. Thereafter on the application bearing **I.A. No. 10305/2012**, the ex-parte order dated 09.04.2012 against the defendant No. 3 was set-aside *vide* order dated 30.05.2012. However, defendant No. 3 has neither filed any Written Statement in his defence nor filed any reply to the application under Order 39 Rules 1 and 2 read with Section 151 CPC, 1908.

25. Defendant No. 1 has claimed itself to the Registered Power of Attorney holder of defendant No. 2 and is stated to be absolute owner of the suit property and he filed suit for eviction, declaration, cancellation and mandatory injunction *vide* **CS(OS) 5/2012**, which is pending adjudication.

26. The plaintiff has also filed another suit bearing **CS(OS) 641/2012** under **Section 6 of the Specific Relief Act** for restoration of possession, declaration, permanent injunction and damages.

27. It is submitted that all the three aforesaid suits have been clubbed together and are being tried together *vide* Order dated 01.05.2012. I.A. 42/2012 in CS(OS) 5 of 2012 and I.A. 4798/2012 in the present suit under Order 39 Rules 1 and 2 read with Section 151 CPC, 1908, had been disposed of by directing the defendant No. 1 to deposit a sum of Rs.3.18 crores and further a sum of Rs.34,10,000/- with the Registrar General, within a period of six weeks, be kept in an FDR. The defendant No. 1 had failed to deposit the amount.

28. It is asserted in the application that the plaintiff has come to know that the defendant Nos. 1 and 2 have failed to repay their loan amount to defendant No. 3. Consequently, their loan account has been classified as



NPA w.e.f. 31.12.2014.

29. M/s ENCORE ARC PVT. LTD., have thereafter moved an application under Section 14(2) of the SARFAESI Act, 2002, seeking assistance of the Court, to take physical possession of the suit property. A receiver has also been appointed for taking the possession, who has taken possession of the entire property bearing A24, Kailash Colony, New Delhi-110048, except the first floor because of the stay of this Court.

30. A prayer is, therefore, made that a Judgment under Order 8 Rule 10 read with Section 151 CPC, be passed against the defendant No. 3 and specific directions be issued to the defendant No. 3, its servants, assignees and representatives to execute the Sale Deed of the suit property, in favour of the plaintiff and to refrain the defendant No. 3, its servants and assignees from selling, alienating or creating third party rights in the suit property.

31. **Submissions heard.**

32. In the present case, the plaintiff has sought relief of Specific Performance of the MOUs and the Agreement only against the defendant Nos. 1 and 2. Evidently, the defendant No. 3 is only a proforma defendant against whom no relief has been claimed.

33. Moreover, defendant No. 3 Indian Bank, which according to the plaintiff itself, has been substituted by M/s ENCORE ARC PVT. LTD, which is stepped into the shoes of Indian Bank, defendant No. 3. There being no relief claimed against the defendant No. 3, non-filing of a written statement by defendant No. 3, would not entitle a decree, as prayed for by the plaintiff.

34. The application is without merits and is hereby dismissed.

I.A. 16166/2022 (under Section 151 CPC filed on behalf of the plaintiff



for bringing on record subsequent facts and development)

35. The plaintiff has also filed an application being I.A. No. 16166/2022 under Section 151 CPC, 1908, for bringing on record the subsequent events of the assets of defendant Nos. 1 and 2 being declared NPA and physical possession of the suit property except first floor being taken over by the M/s ENCORE ARC PVT. LTD. The subsequent events are taken on record.

CS(OS) 641/2012

36. On the basis of pleadings, the following issues are framed:

- a. Whether the plaintiff is entitled to restoration of possession in respect of the payment for suit property bearing no. A-24 Kailash Colony, New Delhi from the defendant Nos. 1-3? OPP.
- b. Whether the defendant Nos.1 to 3 are liable to be restrained from creating hindrance to the free access of the plaintiff to the basement, ground floor, first floor and second floor of the suit property? OPP.
- c. Whether the defendant Nos. 1 to 3 are liable to be restrained from creating third party rights in the basement, ground floor and second floor of the suit property?OPP
- d. Whether the defendant Nos. 1 and 2 are liable to be directed to get the lease deed restrained in favour of the plaintiff? OPP.
- e. Whether the plaintiff is entitled to the declaration of Lease dated 20.12.2011 executed between the plaintiff and the defendant Nos. 1 and 3?
- f. Whether the plaintiff is entitled to symbolic damages of Rs. 10,00,000/-. OPP.
- g. Relief.



37. No further issue arises or is pressed. List of witnesses be filed within 15 days.
38. List before the learned Joint Registrar for recording of evidence on 18.03.2024.

NEENA BANSAL KRISHNA, J

JANUARY 30, 2024/PT/RS