



* IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 7th March, 2024
Pronounced on: 28th June, 2024*

+ CS(COMM) 220/2019, CCP(O) 83/2023, I.A. 6180/2019, I.A. 3165/2022

M/S. SOLOMAN ENGINEERS PVT. LTD.,

A company incorporated under
The Companies Act, 1956,
Having its office at B-65/2,
Wazirpur Industrial Area,
New Delhi-110052.

Through its Director
Sh. Raj Kumar

... Plaintiff

Through: Mr. Rohit Kumar Yadav, Mr. Ankit
Rao and Mr. Aman Kant Mishra,
Advocates.

versus

1. **DELHI DEVELOPMENT AURHORITY**

Vikas Sadan, INA,
New Delhi-110023.

Through its Vice-Chairman

....Defendant No. 1

2. **Ms. Yogita Baxla,**

W/O. Late Sh. Francis Baxla,
R/O B-165, II Floor, Mansha Ram Park,
Navada, New Delhi-110059.

....Defendant No. 2

3. **Sh. Mahesh Pal Singh,**

S/O Late Sh. Bhagwant Singh,
R/O WZ-43, II Floor, Street No.3,
Shiv Nagar, Jail Road, New Delhi-110058.....Defendant No. 3

4. **Sh. Harish Chawla,**

S/O Late Sh. Mathura Dass Chawla,



R/O O-47, West Patel Nagar,
New Delhi-110008.

....Defendant No. 4

5. **Sh. Peeyush Aggarwal,**
S/O Om Prakash Aggarwal,
R/O 390, UGF & FF, Kohat Enclave,
Pitampura, Delhi-110034.

....Defendant No. 5

6. **Sh. Rajesh Luthra,**
S/O Sh. Ashok Luthra,
R/O A-85, Rama Park,
Uttam Nagar, Mohan Garden,
Delhi-110055.

.....Defendant No. 6

7. **Sh. Ajay Singh,**
S/O Sh. Ran Singh,
R/O A-146, Gulab Bagh,
Uttam Nagar, New Delhi-110059.

.....Defendant No. 7

Through: Mr. Rahul Kr. Singh and Mr.
Shailendra K. Singh, Advocates for
D2.
Dr. Surat Singh and Mr. Shivam
Sachdeva, Advocates for D4.
Ms. Manika Tripathy Standing
Counsel with Mr. Ashutosh Kaushik
and Mr. Rony John, Advocates for
DDA.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

**I.A. 13600/2023: under Order 7 Rule 11 CPC filed on behalf of the
defendant No. 1/DDA for rejection of the plaint) & I.A. 9591/2023: under
Order 7 Rule 11 CPC filed on behalf of the defendant No. 4 Mr. Harish**



Chawla for rejection of the plaint on the grounds of under valuation and deficiency in payment of court fees and other grounds).

1. The aforementioned two Applications **under Order 7 Rule 11 of the Code of Civil Procedure, 1908** (hereinafter referred to as 'CPC') has been filed on behalf of the *defendant No. 1/DDA*, and *defendant No. 4, Mr. Harish Chawla* respectively, for rejection of the Suit.
2. Both the applications mentioned-above, are being taken together as similar grounds have been taken in both the applications for rejection of the Suit.
3. It is submitted in the applications that the present Suit is liable to be rejected on the following grounds.
4. The **first ground** taken for rejection is *gross undervaluation of the suit property in question and gross deficiency in the amount of court fee paid in the instant matter/Suit*.
5. It is submitted in the applications that the plaintiff has valued the Suit Property at Rs.18,50,00,00/- Crores and has paid the court fees accordingly. However, as per the report of the Revenue Officer, the valuation of the Suit Property is Rs. 29,51,62,029/- i.e. approximately Rs. 11,00,00,000/- more than the value fixed by the plaintiff. It is claimed that it is a case of undervaluation and the plaintiff must be directed to pay the *ad valorem* court fees on the valuation of the Suit Property which is approximately Rs.29,00,00,000/-.
6. The **second ground** taken in both the applications, is that *no cause of action is disclosed in the present Suit as the conversion of the Suit Property from leasehold to freehold in favour of the plaintiff, was done on the basis of*



7. It is asserted that the conversion from leasehold to freehold of the Suit Property, was allowed in favour of the plaintiff and the Conveyance Deed was accordingly executed by the DDA. A complaint was received by the DDA that a false Resolution was passed and forged Special Power of Attorney was prepared by the plaintiff, for the execution of the Conveyance Deed, in its favour. The Special Power of Attorney holder had filed the affidavit stating that Smt. Raj Rani was alive on 27.06.2007. The conversion was subsequently cancelled/rejected by the DDA *vide* Order dated 05.07.2017, on the ground of the documents being found forged and fabricated. An FIR was also registered, in which the charge-sheet has already been filed against the plaintiff and its Director, Mr. Raj Kumar Harjai. Since the plaintiff had placed reliance on forged and fabricated documents, he is not entitled to any relief in the present Suit.

8. The **third ground** taken for rejection of the Suit, is that it was specifically mentioned in the Conveyance Deed dated 29.01.1992 entered between the M/s Nice Metal Works and the plaintiff that the *Deeds shall stand automatically terminated if there was any change in the name of the promoter/subscriber/directors of the said Private Limited Company* as mentioned in Memorandum of Association (MOA) and Articles of Association (AOA), without prior approval of the DDA.

9. It is claimed that in case shares are issued to any other person out of blood relations of the original promoter/director, then the unearned increase is liable to be charged at the market value of the subject Property, as applicable under the policy from time to time. It was stated that the plaintiff



had not approached the DDA with clean hands and had a criminal intention of causing a wrongful loss of public funds payable to the State Exchequer and had failed to disclose “*unearned increase*” charges. The Suit is, therefore, liable to be rejected.

10. The ***last objection*** taken is that Section 12A of the Commercial Courts Act, 2015 mandates the pre-institution mediation, without which the Suit under the Commercial Courts Act, 2015, is not maintainable as has also been held in the case of Patil Automation Private Limited and Others vs. Rakheja Engineers Private Limited, 2022 SCC OnLine 1028. The plaintiff had not resorted to pre-institution mediation and therefore, the Suit is liable to be rejected.

11. The ***plaintiff had filed its detailed Reply*** to both the Applications. At the outset, reliance is placed on P.V. Guru Raj Reddy vs. P. Neeradha Reddy, (2015) 8 SCC 331 to assert that it is only the averments made in the Complaint which are to be referred while considering the Application under Order 7 Rule 11 CPC. The defendants have already filed their Written Statement and having done so, they are estopped from raising any objection regarding the Valuation of the Suit, Deficit Court Fee or the Cause of Action under the garb of present Application. It is further stated that the defendant No. 1 is trying to fill-up the lacuna left in the Written Statement and the Applications are liable to be rejected.

12. The plaintiff has asserted that the issue of Undervaluation and whether the Valuation of the property of the date of institution of the Suit was the same as given by the Revenue Officer subsequent to the filing of the Suit, are all matters of evidence, which cannot be considered in an Application under Order 7 Rule 11 CPC.



13. Insofar as, the conversion being carried out on the basis of forged and fabricated documents is concerned, this again is a matter of evidence and cannot be considered at the stage of the Application under Order 7 Rule 11 CPC.

14. In the end, it is submitted that the plaintiff could not have resorted to Pre-institution Mediation as there were immediate interim reliefs which were sought by the plaintiff and this Court after considering the Application under Order 39 Rules 1 and 2 CPC, had granted *ad interim* relief vide Order dated 25.05.2019. It is, therefore, submitted that the Applications are without merits and are liable to be rejected.

15. Submissions heard.

16. At the outset, learned counsel on behalf of the plaintiff, has rightly referred to the case of P.V.Guru Raj Reddy (supra) to assert that while considering the Application under Order 7 Rule 11 CPC, it is only the averments that are made in the Plaint which are required to be considered. Hence, the defences taken by the defendants cannot be considered under Order 7 Rule 11 CPC.

17. Guided by these principles for consideration of the Application under Order 7 Rule 11 CPC, it may be observed that the scope of enquiry is limited to considering whether the averments made in the Plaint do not disclose any *Cause of Action*.

18. The **first objection** taken is *Undervaluation of the Suit Property and consequent payment of deficit Court Fee*.

19. The basis on which the defendants have raised this objection, is that the Revenue Officer on 05.04.2021 had assessed the value at about



Rs.29,51,62,029/- while the plaintiff has assessed the value at about Rs.18,50,00,000/- in the plaint.

20. It has been rightly submitted on behalf of the plaintiff that the Suit Property had been valued at the rate that was prevailing in the year 2019 at the time of institution of the Suit. The Revenue Officer may have given a different valuation in his Report in the year 2021 but it is only after recording of evidence that the correct valuation of the Suit Property, can be assessed. At the outset, the report of the Revenue Officer cannot be accepted at this initial stage as it warrants recording of evidence to determine the correct valuation. Moreover as has been already observed, the defence of the defendant cannot be considered at this stage especially when they are required to be proved in evidence.

21. The plaintiff has rightly contended that the valuation of the property, is a subject matter of evidence, therefore, the Suit is not liable to be rejected on this ground as the correct valuation shall be determined by way of evidence and if it is found that the valuation of the property is more than what has been assessed by the plaintiff, then the plaintiff shall be liable to make the deficit court fee. At this stage of considering the Application under Order 7 Rule 11 CPC, the Suit of the plaintiff, cannot be held to be undervalued or liable to be rejected on this ground.

22. The **second ground** of challenge is that the *Conveyance Deed in favour of the plaintiff, had been affected in the year 1992 on the basis of forged documents submitted* by Mr. Raj Kumar Harjai, the Special Power of Attorney Holder. Therefore, once the Conveyance Deed already stands cancelled and an FIR has also been registered against Mr. Raj Kumar Harjai for having forged the Special Power of Attorney which became the basis of



23. The conversion in favour of the plaintiff Company, had been affected way back in the year 1992, while the cancellation had been affected in the year 2017. The Special Power of Attorney in favour of Mr. Raj Kumar Harjai, may have been found to be forged during the criminal investigation and a Charge-Sheet may have been filed, but the parameters of adjudicating the validity of a document for the purpose of Civil Suit is different from the considerations that prevailed in the Criminal trial. Essentially, the core issues in the present Civil Suit are whether the Conveyance Deed had been rightly executed in favour of the plaintiff and whether the Defendant No. 1/DDA was correct in cancellation of the Conveyance Deed, after about 25 years.

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25. Perusal of the Conveyance Deed shows that it had been executed by *M/s Nice Metal Works* through its partners *Smt. Raj Rani Chawla* and *Mr. K.L. Chawla* in favour of the plaintiff, *M/s Soloman Engineers Pvt. Ltd.* in which again the two Directors were *Smt. Raj Rani Chawla* and *Mr. K.L. Chawla*. It is quite evident that the partners of *Nice Metal Works* and the two Directors of the plaintiff in whose favour, the Conveyance Deed was affected essentially were the same persons, but as part of different entities i.e a Partnership firm and a Private Limited Company, respectively.

26. Connected to this aspect, it has also been stated by the DDA that there was a violation of Clause 4 of the Conveyance Deed, which reads as under:-

“4. That the parties of this "CONVEYANCE DEED" have Jointly and Severally given an undertaking to the "LESSOR" (DDA), that the "LEASE HOLD RIGHTS" granted to M/S. SOLOMAN ENGINEERS (PVT.) LTD. through its Promoters/Directors, (reference mentioned above), by virtue of Registered Perpetual Lease Deed as per Documents No.3340, In Addl. Book No.1, Vol. No.3134, on pages 150 to 155, and Regd. On 17th August, 1974, at the Office of the Sub-Registrar, along with MUTATION LETTER NO.F.6A(489)/67-LSB(i)-3300 dated 1/8/91, in which interest Is now being transferred by this Deed, shall stand automatically terminated if there is any change in the name of Promoter/Subscribers/Directors, of the said Pvt. Ltd. Co., mentioned in the Memorandum and Articles of Association as on the date of execution of this "CONVEYANCE DEED" without prior approval of the "LESSOR" (DDA) and the "LESSEE" and as one of the condition mentioned in the said "Original Perpetual Lease Deed" Registered on dated 17th August, 1974.”

27. Whether in fact there was a breach of this Clause or not and whether DDA was justified in Cancellation, are again all aspects of trial and cannot be considered under this Application.



28. In the end, a legal objection has been taken that *pre-institution mediation* is mandatory under Section 12A of the Commercial Courts Act and the Suit having been instituted without compliance of Section 12A, is liable to be rejected.

29. The plaintiff *herein* has explained that he had sought urgent *ad interim* relief, which had also even been granted to the plaintiff *vide* Order dated 15.05.2019 *vide* which Mr. Raj Kumar and his brother, namely, Mr. Surender Kumar, were restrained from alienating, encumbering or parting with the possession of the Suit Property or the shareholding of the plaintiff Company or inducting any other person as Director of the plaintiff Company, while issuing the summons of the Suit to the defendants.

30. The plaintiff has rightly contended that because *ex-parte ad-interim* relief was sought, which was of urgent nature, the plaintiff was exempted from seeking pre-institution mediation as provided in Section 12A of the Commercial Courts Act itself.

It is, therefore, held that there is no merit in the two Applications filed under Order 7 Rule 11 CPC by the defendant No. 1/DDA and defendant No. 4 Mr. Harish Kumar Chawla and are hereby rejected.

CS(COMM) 220/2019, I.A. 6180/2019 and I.A. 9433/2024

31. List before the Ld. Joint Registrar for completion of pleadings on date already fixed i.e. 13.09.2024.

**(NEENA BANSAL KRISHNA)
JUDGE**

June 28, 2024/RS