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

+ **CS(OS) 402/2021**

MRS SAKSHI BANGA Plaintiff

Through: Mr.Natwar Rai and Ms.Aliya
Parveen, Advts.

versus

MR SHIVANG KATHPALIA & ANR. Defendants

Through: Mr.Udaibir Singh Kochar, ms.Tulna
Rampal and Mr.Utsav Garg, Advts.

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

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23.01.2024

I.A. 10829/2021 (ORDER 39 R 1 AND 2 CPC) &
I.A. 19317/2022 (ORDER 39 R 2A CPC)
I.A. 6297/2023 (for modification)

The application bearing I.A. No. 10829/2021 has been filed under Order XXXIX Rules 1 and 2 CPC with the following prayer:

“It is, therefore, prayed that this Hon 'ble Court may be pleased to grant injunction restraining the defendants, their agents, servants, etc. from:

- i) creating third party interest in the suit properties;*
- ii) dealing with the lockers, saving and other accounts of Sh. Umesh Kathpalia and Ms. Samlesh Kathpalia.*
- iii) restraining the defendants their servants and agents dealing with the assets of firms and companies in which Sh. Umesh Kathpalia and Ms. Samlesh Kathpalia are the partner or director.”*



This court vide order dated 27.08.2021 has passed the following order:

“8. Till the next date of hearing, the parties shall maintain status quo in respect of the possession and title of the immovable properties, i.e., (a) KD- 14/A, Ashok Vihar, Opp. Sandoz Restaurant, Phase-1, Delhi-110052. (Approximate cost of Rs.1.60 Crores). Site Map is attached as Document P-1; (b) KD-18/C, Ashok Vihar, Opp, Sandoz Restaurant, Phase-1, Delhi -110052 (Approximate cost of Rs. 1.50 Crores). Site Map is attached as Document P-2; and (c) Flat No.901 and Flat No.902, ARC Angels Complex, Raj Nagar Extension, Ghaziabad, U.P.”

The application bearing I.A. 19317/2022 has been filed under order XXXIX Rule 2A CPC by the defendants with the following prayers:

*(a) issue notice to the Plaintiff in the present contempt petition;
(b) initiate contempt proceedings and punish the Plaintiff under Order XXXIX Rule 2A read with Section 151 CPC read with Section 11 & 12 of the Contempt of Courts Act, 1971;*

Learned counsel for the plaintiff at the outset has submitted that inadvertently in prayer clause in I.A. No. 10829/2021 he has made prayer regarding Flat No.901 and Flat No.902, ARC Angels Complex, Raj Nagar Extension, Ghaziabad, U.P. Learned counsel for the plaintiff submits that in fact these properties exclusively belong to the plaintiff and there is no question of partition. Learned counsel submits that he is only seeking injunction regarding creating third party by the defendants in respect of property nos. (a) KD- 14/A, Ashok Vihar, Opp. Sandoz Restaurant, Phase-1, Delhi-110052 and (b) KD-18/C, Ashok Vihar, Opp, Sandoz Restaurant, Phase-1, Delhi -110052.

Learned counsel for the defendants submits that in his written statement, the defendants have stated that Flat No.901 and Flat No.902,



ARC Angels Complex, Raj Nagar Extension, Ghaziabad, U.P. are also required to be partitioned.

Learned counsel for the plaintiff submits that regarding the Ghaziabad property, they have already filed a partition suit in the Ghaziabad Court. However learned counsel for the defendants submits that that is not a partition suit and merely an injunction suit and in view of the present suit, the defendants shall withdraw this. Both the learned counsels submit that they will not create any third party interest till the disposal of this suit in respect of the properties mentioned herein below:

- (a) KD- 14/A, Ashok Vihar, Opp. Sandoz Restaurant, Phase-1, Delhi-110052 and
- (b) KD-18/C, Ashok Vihar, Opp, Sandoz Restaurant, Phase-1, Delhi -110052
- (c) Flat No.901 and Flat No.902, ARC Angels Complex, Raj Nagar Extension, Ghaziabad, U.P.

It has further been submitted that the parties shall maintain the status quo regarding locker, savings and other accounts of late Sh. Umesh Kathpalia and Ms. Samlesh Kathpalia. It has further been submitted that partnership firms i.e. (i) M/s. Super Water Seal ii) M/s. Shivang Construction Company (iii) M/s. Shivang Buildcon Pvt. Ltd. & (iv) M/s. S.K. Construction have already come to an end by virtue of death of late Sh. Umesh Kathpalia and Ms. Samlesh Kathpalia.

However, learned counsel for both the parties submits that they shall maintain the status quo in respect of the assets of the partnership firms properties till the disposal of the present suit.

In view of the submissions of the parties, the parties are directed to maintain the status quo in respect of the title of the aforementioned



properties and shall also maintain status quo in respect of lockers, savings and other accounts of late Sh. Umesh Kathpalia and Ms. Samlesh Kathpalia. The parties shall also maintain status quo respect of the assets of the aforementioned partnership firms.

I.A. 6297/2023 has been filed for clarification/modification of order dated 27.08.2021.

With the above observations all the three applications i.e. I.A. No. 10829/2021, I.A. 19317/2022 & I.A. 6297/2023 stand disposed of.

I.A. 1295/2022 (under Order VIII R 10 CPC)

The present application has been filed for closing the right of the defendants of filing written statement even after expiry of statutory period and receipt of summons. However, learned counsel for the defendants submits that the written statement was filed within the stipulated period of limitation.

Learned counsel for the plaintiff submits that he does not want to press this application at this stage.

Hence, the application is dismissed as not pressed.

I.A. 2543/2022 (delay in filing of the written statement)

Present application has been filed for condonation of delay of 66 days in filing the written statement.

Learned counsel for the plaintiff submits that delay was caused on account of COVID-19 Pandemic and is liable to be condoned in view of order passed by the Supreme Court in Suo Motu Petition no.3/2020 vide order dated 10.01.2022.

In view of the above, the delay of 66 days in filing the written statement is condoned.



The application stands disposed of.

I.A. 11292/2022 (ORDER XII R 6 CPC)

Learned counsel for the plaintiff submits that he does not want to press this application at this stage.

Hence, the application is dismissed as not pressed.

I.A. 6091/2023 (ORDER VI R 17 CPC)

Present application has been filed for rectification in the para numbers and prayer clause.

Learned counsel submits these are typographical error. Learned counsel for the plaintiff has further submitted that in para 3 of the plaint he has inadvertently mentioned property no. property No. 901-902, ARC Angles Complex, Rajnagar Extension, Ghaziabad, Uttar Pradesh at point 3 (i) (c). Learned counsel submits that however in para 9 he has specifically averred that this property exclusive belongs to the plaintiff. Learned counsel submits that therefore the prayer clause is required to be modified by including the word "*except the property at para 3(i) (c)*"

The amended suit has been filed.

Learned counsel for the defendants has submitted that the Ghaziabad Property is also required to be partitioned and he has taken a specific plea in the written statement if partition is to happen. However, learned counsel for the defendants submits that the amendment may be allowed subject to the heavy cost without prejudice his contentions to be taken during the trial.

The amendment is allowed to the extent that para numbers be corrected and prayer clause be amended.

The application is allowed subject to payment of cost of Rs.5000/-.



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Let the matter be placed before the Joint Registrar (Judicial) for admission/denial of the documents on 20.02.2024.

DINESH KUMAR SHARMA, J

JANUARY 23, 2024

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