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

+ **CS(OS) 460/2021**

SUMAN SAWHNEY & ORS.

..... Plaintiffs

Through: Mr. Rajeev Verma, Mr. Dheeraj
Sharma and Mr. Akash Verma,
Advocates.

versus

PANKAJ SAWHNEY

..... Defendant

Through: Mr. M. S. Khan, Mr. Anish Kaushik
and Mr. M. Arshyan, Advocates for
Defendant/ Review Applicant.
Ms. Geeta Luthra, Senior Advocate
with Mr. Manas Agrawal, Ms.
Apoorva Maheshwari and Ms. Simran
Khurana, Advocates for Applicants/
Intervenors in I.A. 14308/2021 (u/
Order I R. 10 of CPC).

CORAM:

HON'BLE MR. JUSTICE SANJEEV NARULA

ORDER

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18.11.2022

I.As. 9098/2022, 9099/2022 (u/Sec. 151 of the Code of Civil Procedure, 1908 ["CPC"] seeking exemption) in REVIEW PET. 152/2022

1. Exemption is granted, subject to all just exceptions.
2. Accordingly, the applications stand disposed.

REVIEW PET. 152/2022 in CS(OS) 460/2021



3. Plaintiffs, *inter alia*, seek a final decree of partition and permanent injunction *qua* two suit properties,¹ as noted in para No. 1 of the impugned order. The Court, by way of impugned order, has not decided title claims and only expressed a *prima facie* view thereon for the purpose of use and occupation of one of the suit property (Ambika Vihar Property), during the pendency of the suit.

4. Keeping that in mind, let's proceed to deal with the contentions urged by Review Applicant, represented by Mr. M. S. Khan, summarized hereinbelow: -

4.1. The Court, afforded no opportunity to the Review Applicant to put forth his stand, before passing the impugned order. The applications decided,² were not listed for hearing on the date of the decision and pleadings therein were incomplete; only contempt petition could have been heard and not the injunction applications. The main arguing counsel for Defendant was held up in another Court and Defendant was represented through a junior counsel, who was not well-versed with the facts of the case and thus, could not render proper assistance to the Court.

4.2. The Court has failed to take note of priorly instituted suits, documents in respect whereof are annexed with the instant review application. Plaintiffs deliberately and willfully suppressed the pendency of: (i) Civil Suit bearing No. 643/2021 titled – '*Pankaj Sawhney v. Suman Sawhney and Ors.*',³

¹ Two properties [hereinafter collectively "*suit properties*"] – (i) House/ Property No. 7726/28, Ward No. XV, Gopal Bhawan, ram Nagar, Paharganj, Delhi-110055 [hereinafter "*Paharganj Property*"] and (ii) Property No. 299, Ambika Vihar, near Paschim Vihar, New Delhi-110087 [hereinafter "*Ambika Vihar Property*"].

² I.A. Nos. 12497/2021, 12498/2021, 13321/2021.

³ CS DJ/643/2021.



pending before the District and Sessions Judge, Tis Hazari Court, and (ii) Civil Suit bearing No. 600/2021 titled – '*Smt. Chander Kanta Sethi and Ors. v. Pankaj Sawhney and Ors.*' also pending before the District and Session Judge, Tis Hazari Court.⁴

Re: Ground 1 – Absence of opportunity of hearing

5. The Court does not find merit in the argument advanced by Mr. Khan. No such objection was raised during the hearing, nonetheless, wherever a suit is listed for hearing, the Court is fully empowered to take up any pending application. The proceedings cannot be confined only to application mentioned in the previous order. *Insofar* as incomplete pleadings is concerned – it must be borne in mind that the opportunities granted to Review Applicant were not availed of, in time. Nevertheless, an application under Order XXXIX Rule 4 of CPC, seeking vacation of stay order had been filed which is nothing but a reply to the application under Order XXXIX Rule 1 and 2 of CPC. Besides that, each and every contention raised by Defendant in that application has been noted by the Court while dealing with the interim applications. Therefore, this objection is without merit and untenable.

Re: Ground 2 – Non-consideration of pending suits filed at a prior time than the above-captioned suit

6. This objection raised by Review Applicant is misconceived and is not an error apparent on the fact of record to warrant Court's interference. The Court, on a *prima facie* basis, in light of the documents presented before it,

⁴ CS (OS) 600/2021.



passed the impugned order. The pending suits referred to in the review application does not establish that the Review Applicant was in possession of first floor of Ambika Vihar Property, to which the injunction order relates. Mr. Khan, vociferously argues that the Plaintiff was not in a possession of the said portion and it is with the Review Applicant. However, when he was called upon to demonstrate even on a *prima facie* basis that the findings given are incorrect, he repeatedly asserted that this is an admitted position of Plaintiff as well. However, the Court is unable to discern such 'admitted position'. In absence of any cogent material to demonstrate that the possession of the afore-noted property, as on the date of injunction, was not with the Plaintiffs, there is no merit in the ground urged.

7. That apart, Mr. Khan has expressed an apprehension that the view taken by this Court has rendered the other pending applications infructuous. The Court does not find this to be a good ground to allow the review application and further, *prima facie* view expressed in the impugned order, is only for the purpose of preservation of the suit properties during the pendency of the suit. The other pending applications, such as applications under Order X Rule 1 and Order I Rule 10 of CPC shall be examined on their own merits, in light of the averments made therein. It is further clarified that the view expressed in the impugned order would not affect maintainability of other pending applications

8. Dismissed.

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9. List before the Roster Bench for consideration of pending applications on the date already fixed, i.e., 05th January, 2023.

SANJEEV NARULA, J

NOVEMBER 18, 2022

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(Corrected and released on 30th November, 2022)