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

+ **CS(OS) 509/2022, I.As. 13924/2022, 13925/2022, 13928/2022, 18487/2022, 18776/2022 & 16550/2023**

SAHIL MARWAH & ANR.

..... Plaintiffs

Through: Mr Y.P. Narula Sr Adv with Mr
Abhey Narula Adv. (M.
9999821737)

versus

ONKAR SINGH MARWAH & ORS.

..... Defendants

Through: Mr Karan Nagrath, Ms Nupur
Kumar, Mr Ambuj Tiwari, & Mr
Arjun Nagrath, Advs. for D-2 (M.
9810552424)
Mr. Ujas Kumar, Adv. for D-4 (M.
9818685115)

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AND

+ **CS(OS) 574/2022, I.As. 15123/2022, 15124/2022 & 19070/2023**

SIMRAN KANWAR

..... Plaintiff

Through: Mr Karan Nagrath, Ms Nupur
Kumar, Mr Ambuj Tiwari, & Mr
Arjun Nagrath, Advs.

versus

ONKAR SINGH MARWAH & ORS.

..... Defendants

Through: Ms. Damini Chawla, Adv. for D-2
and 3 (M. 9953986249)
Mr Y.P. Narula Sr Adv with Mr
Abhey Narula Adv. for D-4 and 5
(M. 9999821737)
Mr. Ujas Kumar, Adv. for D-7 (M.
9818685115)



CORAM:
JUSTICE PRATHIBA M. SINGH

ORDER
% 31.01.2024

1. This hearing has been done through hybrid mode.
2. This litigation relates to the Marwah family tracing back to Sh. B.S. Marwah who was the original owner of property no. 31, Hanuman Road, New Delhi (hereinafter referred as the '*suit property*'). He had five children whose details are as under:

- (i) Mrs. Trilochan Kaur Marwah (Wife) (died on 8.3.1999)
- (ii) Mr. Iqbal Marwah (Son) (died on 24.12.2009 and is survived by his daughter Simran Kanwar, Defendant No.2)
- (iii) Mr. Onkar Singh Marwah (Son) (Defendant No.1)
- (iii) Mr. Mukhtar Singh Marwah (Son) ,who died on 4.6.1993 (Father of the Plaintiff No.1 and husband of Plaintiff No.2)
- (iv) Mr. Himmat Singh Marwah (Son) (Died on 18.5.2012 and was survived by his wife, Mrs. Rachna Marwah (Died on 12.9.2020), and his two children, Ricky Marwah Defendant No.3 and Roma Marwah Defendant No.4)
- (vi) Ms. Mala Marwah (Daughter) who has now died on 4.1.2022.

3. An earlier litigation had ensued in respect of the estate of Sh. B.S. Marwah in which a settlement was entered into in suit bearing no. **CS(OS) No.203/2003**. The said settlement was recorded in an application under Order XXIII Rule 3 CPC being **I.A. No.2526/2011** in which the following agreement was recorded:

“5. The parties herein submit that in order to completely resolve I settle all their disputes amicably, the Plaintiffs and the Defendants 1 to 4 have arrived at



a settlement, the copy of which is annexed hereto as Annexure 'A'. The said settlement had been arrived at voluntarily and without any pressure of any kind whatsoever on either parties. For the purposes of recording the compromise the terms of settlement are reproduced herein below:

- 1. All parties agree to withdraw, without qualification, any and all claims to ownership of property No. 31, Hanuman Road, New Delhi-11 0001, and release/relinquish the same in favour of Ms. Mala Marwah and all agree to cooperate fully and without qualification with her in providing/acquiring all necessary clearances from the requisite authorities for its mutation/conveyance in her sole name.*
- 2. Ms. Mala Marwah agrees to withdraw her claim to exclusive ownership of 1/6th portion of property in Mrs. T.K. Marwah's name in respect of property No. 14 Jorbagh, New Delhi- 110003. All parties accept equal 115th share inclusive of all previous/current monetary accruals of the earlier disputed 1/6th portion of 14 Jorbagh. The said 1/6th earlier-disputed portion would now be mutated I owned by all five current co-owners of the said property.*
- 3. Ms. Mala Marwah agrees that she will not alienate, in whole or in part, ownership of 31, Hanuman Road to any person(s) or organization other than to direct lineal descendants of Late B.S. Marwah and Late T.K Marwah.*
- 4. Onkar Marwah and Himmat Marwah, brothers of Ms. Mala Marwah, will continue to live in 31, Hanurnan Road without disturbance, and the status quo will be maintained in that respect for the rest of their mortal lives.*
- 5. All parties shall unconditionally withdraw all their contending claims and counter-claims vide*



legal cases instituted or pending in various Courts in the preceding matter, and all parties also agree not to seek future recourse to legal modifications or redressal through Courts in the same matters in any way whatsoever (inclusive of their respective progeny/spouses).”

4. This compromise was taken on record and the suit no.**203/2003** was decreed on 18th February, 2011 in terms of the compromise.

5. Subsequently, Ms. Mala Marwah, the daughter, passed away on 4th January, 2022. She also had substantial movable assets. The property no. 31 Hanuman Road, New Delhi and the estate of Ms. Mala Marwah are the subject matter of these two suits. The first suit was **CS(OS) 509/2022** in which vide order dated 31st August, 2022, *status quo* was directed towards the suit property in the following terms. In addition, details of fixed deposits were also called:

*“11. The parties are directed to maintain status quo in respect of the property bearing no.31, Hanuman Road, New Delhi ('suit property') till the next date of hearing.
12. As regards the various Fixed Deposits of the deceased, Ms. Mala Marwah, the details of which are given in paragraph 35 of the plaint, all the defendants shall give details of the FDs encashed by them after the death of Ms. Mala Marwah in their replies.”*

6. Subsequently, a second suit has been filed being **CS(OS) 574/2022** in which vide order dated 4th November, 2022, the following order has been passed:

*“I.A. 17940/2022(of the defendant no.4 u/O-XXXIX R-1 & 2 of CPC)
1. Senior counsel appearing on behalf of the plaintiff has placed reliance on the affidavit filed on behalf of*



the defendant no.4 in terms of Order XI Rule 14 of the Code of Civil Procedure, 1908 (CPC) in CS(OS) 509/2022, wherein details of various bank accounts, FDRs and lockers in the name of late Ms. Mala Marwah and her respective nominees have been provided.

2. Details of the various FDRs in the name of late Ms. Mala Marwah are given at page 22 of the present application.

3. Issue notice.

4. Notice is accepted by the counsels appearing on behalf of the defendants. 5. Till the next date of hearing, status quo shall be maintained by the parties in respect of the FDRs in the name of late Ms. Mala Marwah, details of which are given at page 22 of the application.

6. List on 12th January, 2023, the date already fixed.”

7. There is a grievance that Ms. Simran Tanwar has not disclosed the contents of the locker which was opened by her, belonging to Ms. Mala Marwah. Accordingly, in the two injunction applications in both these suits being **I.A. 13924/2022 and I.A. 15124/2022**, filed by the Plaintiff against the Defendant No.1, seeking directions to restraint him from withdrawing any amounts received from the FDs of late Ms. Mala Marwah and deposit the same if any withdrawn and also restraint him from dealing in any way with the said suit property. In this background, in the two applications, the following directions are issued:

- i) the *status quo* in respect of property bearing no. 31, Hanuman Road, New Delhi as directed on 31st August, 2022 shall continue during the pendency of both suits;
- ii) the *status quo* in respect of FDRs as per order dated 4th November, 2022 in **CS(OS) 574/2022** shall continue during



pendency of both suits;

8. Insofar as the FDRs are concerned, there are subsequent orders which have been passed, namely on 25th September, 2023 in **I.A. 10517/2023** and **I.A.17940/2022** in which certain directions were issued. These are applications, filed by the Plaintiff and the Defendant No. 4, who is one of the Plaintiffs in **CS(OS) 509/2022**, seeking a direction restraining the Defendant Nos. 1 to 3 from operating the bank account of Ms. Mala Marwah being A/c no. Account no. 1098101003681, Canara Bank, Parliament Street, New Delhi. As per the said order the Court directed Defendant Nos. 1 to 3 to deposit a sum of Rs. 4.40 crores in the above bank account. This order is stated to be the subject matter of the appeal. The relevant portion of the said order is set out below:

“11.Having considered the submissions of learned senior counsel for the parties, even though I am inclined to agree with the applicants that the defendant nos. 1 to 3 should not have, without the leave of the Court, diverted any amount to any Mutual Funds or for any other purpose, taking into account that the defendant nos. 1 to 3 are willing to forthwith deposit the said amounts in the aforesaid account of Ms. Mala Marwah and the admitted position that the plaintiff has also withdrawn a sum of about Rs.1.25 crore, I am of the view that instead of directing any of the parties to deposit the amounts which were withdrawn by them at different points of time, the interest of all the parties can be safeguarded by directing the defendant no. 1 to 3 to deposit the sum of Rs. 4.40 crores.

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14.The defendant nos. 1 to 3 are therefore directed to deposit, within four weeks, the sum of Rs.4.40 crores in the above noted bank account of Ms Mala Marwah, with a further direction to them not to withdraw any



amount, whatsoever, from the said bank account without the leave of this Court.”

9. However, it is directed that in order to ensure that further complexities do not arise, there shall be *status quo* on all the movable assets of Ms. Mala Marwah except the FDRs which are the subject matter of the appeal being ***FAO(OS)118/2023 & FAO(OS)119/2023***.

10. Accordingly, ***I.A. 13924/2022 and I.A. 15124/2022*** are disposed of in these terms.

I.A.13925/2022 (for appointment of receiver) in CS(OS) 509/2022

11. This is an application filed by the Plaintiffs seeking appointment of a receiver to protect the suit property, take possession of locker as also realize any proceeds of any Savings account and or Fixed Deposits in the name of Ms. Mala Marwah with Canara Bank, Parliament Street Branch and deposit the same.

12. The locker of Ms. Mala Marwah is stated to have been opened by Ms. Simran Kanwar, who is also claimed to have been a joint owner and beneficiary of the locker. In the opinion of this Court, Ms. Simran Kanwar ought to file an affidavit disclosing the contents of the locker. The contents are, accordingly, directed to be disclosed by Ms. Simran Kanwar by filing an affidavit within four weeks as to what are the contents of the locker and the monetary value, if available. This affidavit shall be filed by her in personal capacity and not through power of attorney holder.

13. Hence, this application for appointment of receiver is infructuous and the same is disposed of.



I.A.13928/2022 (u/O II Rule 2 CPC) in CS(OS) 509/2022

14. This is an application filed by the Plaintiff under Order II Rule 2 CPC seeking leave to amend/add to the list of assets of the deceased Ms. Mala Marwah, if they are disclosed. Accordingly, if any further assets are disclosed during the pendency of these two suits, leave is granted under Order II Rule 2 CPC to add the same.

15. Application is disposed of.

I.A.18487/2022 (for exemption) in CS(OS) 509/2022

16. This is an application filed by the Defendant No.1 seeking exemption from filing the certified/translated copies. Exemption is allowed. At the stage of admission/denial or if directed, the certified copies shall be placed on record. Certified copies of the judicial record of the earlier suit shall be taken on record and shall be exhibited together collectively. If any parties wish to file rebuttal documents, they may do so.

17. Application is disposed of.

I.A.16550/2023 (u/O VII Rule 11 CPC) in CS(OS) 509/2022

18. This is an application filed by the Defendant No.1 under Order VII Rule 11 CPC for rejection of plaint.

19. Considering the fact that the suit prays for partition of movable and immovable assets, the plaint is not liable to be rejected at this stage leaving open the issues raised on merits. It is also noted that vide earlier order dated 12th January, 2023, two similar applications bearing no. ***I.A.18484/2022 & I.A. 18486/2022*** under Order VII Rule 11 CPC was also withdrawn. The objections raised in this application may be raised at the time of framing of issues.

20. The application is disposed of.



I.A.19070/2023 (for service of interrogatories) in CS(OS) 574/2022

21. This is an application filed by the Defendant No.1 seeking answer to interrogatories with respect to the jewellery items and other movable assets recovered by the Plaintiff from the locker belonging to Late Ms. Mala Marwah.

22. Considering the directions issued today for an affidavit to be filed by Ms. Simran Kanwar, this application is no longer pressed. If after the affidavit is filed, any further details are required to be sought, an application may be moved at that stage.

23. Application is dismissed.

I.A.15123/2022 (for delivery of interrogatories) in CS(OS) 574/2022

24. This is an application for delivery of interrogatories filed by Ms. Simran Kanwar against other Defendants seeking disclosure of amounts realised by them with respect to movable assets recovered by them of Late Ms. Mala Marwah.

25. The submission of the Defendants is that the Bank has already disclosed the relevant particulars. The interrogatories have been perused by the Court. Let all the Defendants answer these interrogatories and if any part of the information has been disclosed by the Bank, the same may be referred to and relied upon.

26. Application is disposed of.

I.A.15124/2022 (for stay) in CS(OS) 574/2022

27. This application is disposed of.

CS(OS) 509/2022 & I.A.18776/2022 (for direction)

CS(OS) 574/2022

28. Considering that these are partition suits, in respect of the documents,



the affidavit of admission/denial shall be filed by all the parties within four weeks and on the basis of the same, the joint schedule shall be filed within four weeks and the admission/denial shall be conducted before the Joint Registrar.

29. List before the Joint Registrar on 9th April, 2024 for admission/denial and joint schedule filing.

30. List these matters on 23rd July, 2024 for hearing in ***I.A.18776/2022*** and for framing of issues.

PRATHIBA M. SINGH, J.

JANUARY 31, 2024

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