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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CS(OS) 691/2023 & I.A. 21516/2023 I.A. 21517/2023 I.A.
21519/2023 I.A. 31563/2024 I.A. 36034/2024 I.A. 38466/2024 I.A.
38467/2024 I.A. 42416/2024

SHRI DIVAKAR SHARMAPlaintiff
Through: Mr. M. Dutta, Mr. Aditya Guha and
Mr. Anand Kumar Soni, Advocates
with plaintiff in person

versus

SHRI LALIT MOHAN SHARMADefendant
Through: Dr. Bharat Bhushan Parsoon, Sr.
Advocate with Mr. Ananta Prasad
Mishra, Ms. Sonam Priya, Mr. Ayush
Kr. Singh and Ms. Aditi Singh,
Advocates with defendant in person

CORAM:
HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

ORDER
16.10.2024

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1. Learned senior counsel for the defendant states that the plaintiff has defaulted in complying with the directions issued by this Court vide order dated 05.09.2024. He draws this Court's attention to the directions issued at paragraph '6' and paragraph '14' of the order dated 05.09.2024, which are reproduced here under:

“6. The sum total of the aforesaid estimate is Rs. 21.71 lakhs approximately. Accordingly, the plaintiff is directed to deposit 50% of the said amount i.e., 10.85 lakhs with the registry of this Court within ten (10) days.

.....



12. Prayer clause (c) pertains to re-imbursement of Rs. 2,44,948 i.e., costs incurred by the defendant towards the utilities and maintenance of the building since 30.12.2023 till 20.07.2024.

13. Learned counsel for the defendant states that this amount has been incurred towards electricity, water bills and salaries of the security guard.

13.1 He states that the invoices in support of this claim of Rs. 2,44,948/- shall be provided to the plaintiff within one (1) week.

14. The plaintiff is hereby, directed to verify the said amount and pay 50% of these amounts within one (1) week thereafter.”

1.1 He states that since the plaintiff has failed to deposit the amount of Rs. 10.85 lakhs with the Registry of this Court as directed vide paragraph ‘6’ of the order dated 05.09.2024, the defendant herein was unable to initiate the process for renovating the building i.e., the super-structure standing on Plot no. B-3/24, Government Servants Cooperative House Building Society Limited, Vasant Vihar, New Delhi (‘suit property’).

2. Learned counsel for the plaintiff in response states that the submissions made by counsel for the defendant are incorrect.

2.1 He states that the amount of Rs. 10.85 lakhs were deposited with the Registry of this Court on 19.09.2024 as directed by this Court through RTGS from Axis Bank NRE A/C-918010094996455 of Mr. Divkar Sharma vide UTR No. UTIBH24263094602 and Payment Order No. 00005488.

2.2 He states that the amount of Rs. 1,22,474/-, which was to be paid as per paragraph ‘14’ of the order dated 05.09.2024 has been paid earlier today in two (2) tranches of Rs. 1 lakh and Rs. 22,474/- respectively from Axis Bank NRE A/C-918010094996455 of Mr. Divkar Sharma.

2.3 He states that though there has been some delay in making the payments mentioned at paragraph ‘14’ of the order dated 05.09.2024 and the same was on account of the reservation, the plaintiff has with respect to reconciliation of the previous dues.



3. In response, learned senior counsel for the defendant states that the counsel on record Ms. Sonam Priya instructed him to make above-said submissions on the basis of the inspection of the record. He however, fairly states that Ms. Sonam Priya did not contact the counsel for the plaintiff to verify the compliance of the order dated 05.09.2024.

3.1 He states on instructions from the defendant, who is present in Court that only a sum of Rs. 1 lakh has been received and Rs. 22,474/- have not been received by the defendant.

3.2 He states that also in terms of paragraph '14' of the order dated 05.09.2024, a sum of Rs. 2,44,948/- was payable by the plaintiff towards reimbursement as the total amount incurred towards utilities and maintenance of the building from 30.12.2023 till 20.07.2024 was Rs. 4,71,775/- as mentioned in paragraph '18' of the application (I.A. No. 36034/2023).

3.3 He states the payment of Rs. 1,22,474/- as claimed to be done by the plaintiff is not in true compliance of the order dated 05.09.2024. He states that therefore, there is a shortfall of Rs. 1,22,474/- which the plaintiff is still liable to pay.

4. Learned counsel for the plaintiff after perusing the application I.A. No. 36034/2024 and more specifically, paragraph '18' and prayer clause 'c' states that there has been a bona fide error and the plaintiff shall make good the deficiency of Rs. 1,22,474/- within one (1) week.

5. In view of the aforesaid facts, defendant as well states that defendant will now commence the renovation of the Vasant Vihar Property in terms of the order dated 05.09.2024.

6. The statements of plaintiff and defendant noted above are taken on



record and they are bound down to the same. The parties are directed to comply with the orders qua Vasant Vihar property without any further delay.

I.A. No. 42416/2024 (Application filed by the Plaintiff under Section 151 of CPC in compliance and pursuance of the order dated 05.09.2024)

7. This is an application filed on behalf of the plaintiff seeking a direction to the defendant to render and pay the sum due and payable by the defendant towards 50% share of the plaintiff in the monthly rent of July, August, September and October, 2023 received by the defendant from the tenant of B-3/24, Vasant Vihar, New Delhi after the adjustment of a sum of Rs. 1,22,474/-.

8. Learned counsel for the plaintiff states that 50% of the rental amount up to June, 2023 was duly paid over to the plaintiff by the defendant herein.

9. He states that the plaintiff has estimated the amount of 50% due and payable to him towards the rental received by the defendant for the months of July, August, September, October, 2023 as Rs. 7,70,627/-.

10. Issue notice. Learned counsel for the non-applicant/defendant accepts notice.

11. Learned senior counsel for defendant states on instructions from the defendant and confirms that the rental for the month of July, August, September and October, 2023 have been withheld by the defendant, as the defendant has claims for recovery against the plaintiff.

12. In the considered opinion of this Court, the defendant has no legal right to unilaterally withhold the monies due and payable to the plaintiff. The claims of the defendant against the plaintiff have not been adjudicated or determined so far and therefore cannot be the basis for withholding the



admitted dues.

13. The defendant is hereby accordingly directed to deposit 50% of the rental amount collected by him for July, August, September, October, 2023 with registry of this Court within a period of one (1) week from today. The amount deposited shall be communicated to the plaintiff simultaneously.

14. It is further clarified that in case, the defendant fails to deposit the said amount within a period of one (1) week from today, he will become liable to pay interest at 12% per annum on the amount withheld.

15. It is a matter of record that defendant as well has claimed interest at 12% per annum in I.A No. 36034/2024, which was allowed by this Court and thus defendant as well will be liable at the same rate.

16. With the aforesaid directions, the application stands disposed of.

I.A. No. 38466/2024 (Application under Order XII Rule 6 CPC on behalf of plaintiff)

17. This is an application filed by the plaintiff under Order XII Rule 6 of the Code of Civil Procedure, 1908 (CPC), seeking judgment on admissions.

18. The suit has been filed by the plaintiff seeking partition, possession, declaration, injunction and rendition of accounts qua the estate of late Sh. Pran Nath Sharma and late Smt. Radha Rani Sharma.

19. It is stated in the suit that the parties to the suit are siblings being children of late Sh. Pran Nath Sharma and late Smt. Radha Rani Sharm, who expired on 02.10.2017 and 08.06.2018 respectively. It is stated that Sh. Pran Nath Sharma executed an unregistered Will dated 08.07.2012 and Smt. Radha Rani Sharma died intestate. It is stated in the plaint that the plaintiff is entitled to $\frac{1}{2}$ undivided share in the estate of deceased parents and defendant is entitled to the other $\frac{1}{2}$ undivided share.



20. The present application has been filed stating that written statement filed by the defendant reveals that various unambiguous, unequivocal and categorical admissions have been made by the defendant in the said written statement at paragraph 12 of the preliminary objections, paragraphs 5, 6, 10, 11, 14, 19, 29 and 30 of para-wise reply.

21. Learned counsel for the plaintiff states that there is no dispute between the parties that each of them is entitled to an equal undivided share of 50% each in the entire estate of late Sh. Pran Nath Sharma and late Smt. Radha Rani Sharma.

21.1 He states, therefore, a preliminary decree declaring the undivided 50% share of the parties in the estate of late Sh. Pran Nath Sharma and late Smt. Radha Rani Sharma be passed forthwith.

22. Learned senior counsel for the defendant states that defendant herein had submitted a proposal for mutual settlement to the plaintiff on 29.05.2024 and the plaintiff herein was directed to respond to the said proposal. He states that defendant is still awaiting the said response.

23. In response, learned counsel for the plaintiff states on instructions from the plaintiff that plaintiff is unwilling to accept the proposal as it is inequitable.

24. In view of the submission of the plaintiff, it is clear to this Court that the proposal dated 29.05.2024 submitted by the defendant has been rejected by the plaintiff.

25. Learned senior counsel for the defendant states that the defendant has incurred approximately INR 1.04 Crores towards expenses over the past 5 ½ years towards the maintenance of the suit property. He states that defendant has claimed recovery of 50% of the said amount from the plaintiff.



26. The said claim of the defendant shall be considered at the time of disposal of this application, however, the same cannot detain adjudication of the admitted claims between the parties.

27. Learned senior counsel for the defendant states that he seeks two (2) weeks' time to file his reply to the present application. It is ordered accordingly.

28. Rejoinder thereto, if any, be filed within a period of two (2) weeks thereafter.

29. List on **14.01.2025**.

I.A. 38467/2024 (Application on behalf of the plaintiff under Section 151 of CPC for seeking directions in the larger interest of justice and equity)

30. This is an application filed on behalf of the plaintiff seeking directions for allowing the plaintiff and the defendant to lease the following properties:

- a) Flat No. 104, First Floor, Tower 6, Taxila Heights, Sector-37C, Gurugram, Haryana ('Taxila Heights Property');
- b) House-Building at 727, Housing Board Colony, Saraswati Vihar, Chakkarpur, Gurugram - 122001, Haryana ('Saraswati Vihar Property'); and;
- c) Duplex Apartment at 1F18-04, Raheja Vedaanta Floors, Sector - 108, Gurugram, Haryana ('Raheja Vedaanta Floors Property')

31. Learned counsel for the plaintiff states that the permission is being sought to lease out the properties mentioned at prayer clause (a) of the present application on the same terms and conditions as recorded by this Court in the order dated 29.05.2024 vis-à-vis the leasing of Vasant Vihar property.

32. In reply, learned senior counsel for the defendant states on instructions from the defendant that defendant has no objection to the



prayers sought in this application. He states however possession of Raheja Vedaanta Floors Property is still with the developer. He states that the Saraswati Vihar Property has to be made fit for habitation and Taxila Heights Property has to be finished before letting out. He states appropriate directions be issued by this Court to enable the parties to let out these properties.

33. In view of the aforesaid submission of the parties, since separate directions are being sought, each property is being dealt with separately in this order.

Saraswati Vihar Property

34. Learned senior counsel for the defendant states that the house at Saraswati Vihar, Gurugram has the belongings of late Smt. Radha Rani Sharma and those belongings would have to be collected and preserved before the said property can be leased out to a third party/tenant. He states, however, the defendant has no objection to the lease out of the Saraswati Vihar property after the articles of the late Smt. Radha Rani Sharma are removed and preserved. He states that the electricity at Saraswati Vihar property has been disconnected for the last six (6) years and steps have to be taken for restoring electricity. He states that property is in a state of dis-repair and requires refurbishment and repairs before letting out.

35. In reply, learned counsel for the plaintiff states that plaintiff has no objection to the aforesaid suggestion and he is also willing to keep the articles in his personal residential premises. He states that plaintiff will cooperate in applying/restoring the electricity supply. He states all necessary steps for brining the property in a condition fit for letting out will be undertaken.

36. To enable the plaintiff and defendant to preserve and/or mutually dispose of the articles of late Smt. Radha Rani Sharma lying in Saraswati



Vihar Property, Mr. Uday Bali, Advocate is hereby appointed as a Local Commissioner to visit the suit property on **25.10.2024** at **12 PM**.

37. The keys to this property are with the defendant and he shall open the property to grant access to the Local Commissioner and the plaintiff.

37.1 The plaintiff and defendant are directed to remain present along with the one lawyer each on the abovesaid date and time at the Saraswati Vihar Property.

37.2 The plaintiff and defendant shall mutually identify the articles belonging to late Smt. Radha Rani Sharma. The articles which the plaintiff and defendant mutually agree to divide and retain, will be permitted to be retrieved by the parties. The articles which the plaintiff and defendant mutually decide to dispose of will be permitted to be disposed.

37.3 However, if there is any dispute with respect to an article, whether with respect to its division or disposal, the Local Commissioner will make an inventory of the said article(s) and place it on the first floor of the said premises. The directions with respect to the division/disposal of the said articles will be passed on the next date of hearing.

37.4 The Local Commissioner will be at liberty to undertake photograph and videography of the disputed articles placed on the first floor.

37.5 The Local Commissioner will file his report within two weeks after completion of the local commission.

38. The fee of the Local Commissioner is fixed at Rs.1 Lakh to be shared equally by both the parties. The fee will be paid to the Local Commissioner at the conclusion of Local Commission on 25.10.2024.

39. The plaintiff and defendant are at liberty to jointly apply to the electricity supply company for either restoring the old connection or



installing a new connection.

40. Needless to state that the parties will jointly bear the expenses towards the electricity supply company in equal ratio so as to make the property fit for habitation to lease it to a tenant.

Duplex Apartment at Raheja Vedaanta Floors

41. Learned senior counsel for the defendant states that the possession of the Duplex Apartment at 1F18-04, Raheja Vedaanta Floors, Sector 108, Gurugram, Haryana has yet not been received by the parties from developer.

42. Learned counsel for the plaintiff on instructions states that the Duplex Apartment at 1F18-04, Raheja Vedaanta Floors, Sector 108, Gurugram, Haryana is ready for taking over possession and if plaintiff and defendant jointly approach the developer upon clearing the dues, the possession of the said property will be handed over to the parties jointly.

43. The plaintiff and defendant state that they are willing to complete the formalities required with the developer for taking over the possession of the property at Duplex Apartment at 1F18-04, Raheja Vedaanta Floors, Sector 108, Gurugram, Haryana.

44. Accordingly, the plaintiff and defendant are hereby directed to jointly approach the developer of the property Duplex Apartment at 1F18-04, Raheja Vedaanta Floors, Sector 108, Gurugram, Haryana and sign all requisite documents for taking over possession of the said property. The parties shall visit the developer between **21.10.2024** and **24.10.2024** at a time mutually convenient to the both the parties.

45. It is clarified that at this stage, all payments against the due and payable amount to developer will be paid by both the parties in equal proportion without prejudice to their respective rights to claim any refund or



set off, which claims are sub-judice before this Court.

Directions

46. In view of the aforesaid submission of the parties, the plaintiff and defendant are hereby granted permission to lease out the all the properties mentioned in prayer clause 'a' of this application on a joint lease to be executed by the parties in terms of the order dated 29.05.2024.

47. The defendant has stated that the Taxila Heights Property and Saraswati Vihar Property would require refurbishment and repairs to make it fit for leasing out. The plaintiff states that the plaintiff will take all necessary steps jointly with the defendant for making the properties fit for leasing.

48. It is accordingly directed that all expenses which are to be incurred by the parties for making the said properties fit for leasing out will be borne by both the parties in equal proportion.

49. No party shall withhold its contribution on the basis of any pending claim of refund or reimbursement, which is currently sub-judice.

50. The plaintiff and defendant state that the directions issued in this I.A. 38467/2024 are agreeable and they shall abide by the same. The statement of the parties is taken on record.

51. List on **15.01.2025**.

52. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 16, 2024/rhc/sk