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IN THE HIGH COURT OF DELHI AT NEW DELHI

CS(OS) 1312/2007

UJJAL S. MAKKER

.....Plaintiff

Through: Mr. Rahul Sharma & Ms. Jyoti
Dutt Sharma, Advs.

versus

KAVAL BAJAJ & ORS

.....Defendants

Through: Dr. Sarbjit Sharma & Ms.
Himani Rawat, Advs. for D-1
Mr. Prashant Katara & Mr. Soin
Khan, Advs. for D-3

CORAM:

**JOINT REGISTRAR (JUDICIAL) MS. PRIYA
MAHENDRA, (DHJS)**

ORDER

% **05.11.2024**

**I.A.No.14910/2021 (under Order I Rule 10 CPC filed
by defendant no.3 seeking deletion)**

1. Pleadings are already complete.
2. Learned counsel for the defendant no.3 undertakes to pay total previous cost of Rs.10,000/- to learned counsel for the plaintiff digitally by tomorrow. He also submits that he will also deposit previous cost of Rs.3000/- in Delhi High Court Legal Services Committee within one week. Let needful be done as stated and defendnat no.3 is also directed to file proof of cost with the registry before the next dater of hearing.
3. Again, the defendant no.3 has not complied the order dated 26.09.2023. It is stated by learned counsel for the plaintiff that intentionally Affidavit has not been filed by defendant no.3 in compliance of order dated 26.09.2023, as defendant no.3 is acting in collusion with defendant no.1 to hoodwink the court. The learned counsel for the defendant no.3 submits that he has filed Affidavit in another IA i.e. IA No.1137/2023 and it amounts to



sufficient compliance of the order dated 26.09.2023. The learned counsel for the defendant no.3/applicant further submits that he does not want to press the captioned IA further and wants to withdraw the same.

4. Learned counsel for the plaintiff has vehemently opposed withdrawing of the captioned IA at this stage. He points out that the IA no.14910/2021 seeking deletion of defendant no.3 is premised on the Settlement between the defendant no.1&3. He further submits that the said Settlement between defendant no.1&3 was nothing but an eyewash purportedly created to frustrate the rights of the plaintiff. He further submits that cleverly the defendant no.1 has not filed any reply to the captioned IA and thereby evaded to confirm the execution of the said Settlement and its compliance by defendant no.1&3. Further on 26.09.2023, the defendant no.1 and learned counsel for the defendant no.3 expressed their willingness to file an Affidavit that all the terms and conditions of the said Settlement dated 04.11.2020 have been duly complied with by the defendant no.1&3. Despite the same, no such Affidavit has been filed by defendant no.1&3 till date. Instead of filing the said Affidavit, the defendant no.3 has filed Affidavit in IA no.1137/2023 which is yet pending consideration before this court. In the said Affidavit, now it has been stated that even the amount of settlement has not been encashed by defendant no.3. He submits that it clearly reflects that the defendant no.1&3 are acting in collusion with each other and intentionally not complied the order dated 26.09.2023. The same is denied by learned respective counsels for the defendant no.1 and defendant



no.3.

5. Learned counsel for the plaintiff submits that the withdrawal of captioned IA by the applicant at this stage is a malafide act on the part of the defendant no.3 and may be allowed subject to very heavy cost. I find merits in submission made by learned counsel for the plaintiff. On 26.09.2023, the defendant no.1 and learned counsel for the defendant no.3 expressed their willingness to file an Affidavit that all the terms and conditions of the said Settlement dated 04.11.2020 have been duly complied with by the defendant no.1&3. The defendant no.1 and defendant no.3 have not filed an Affidavit till date to the effect that terms and conditions of Settlement dated 04.11.2020 have been duly complied with by defendant no.1&3, despite repeated opportunities. So, it makes it apparent that false statement was made by learned counsel for defendant no.1&3 before this court on 26.09.2023 that all the terms and conditions of the Settlement deed dated 04.11.2020 have been duly complied with by defendant no.1 and defendant no.3 and for this reason, the said statement was not made on Affidavit by defendant no.1&3. The withdrawal of the captioned IA by the defendant no.3/applicant at this stage also establish that purported Settlement was reached in order to unduly benefit the defendant no.3 with no intention to comply the terms of Settlement. It amounts to abuse of process of law. In view of the same, the captioned IA is allowed to be withdrawn subject to cost of Rs.50,000/- to be paid to the plaintiff by the applicant/defendant no.3.

6. Accordingly, in view of aforesaid terms and subject



to payment of total cost of Rs.60,000/- to the plaintiff and deposit cost of Rs.3,000/- with Delhi High Court Legal Services Committee, the captioned IA stands disposed of as being withdrawn.

7. It is also not clear that how and under which provision of law, Affidavit has been filed by defendant no.1 vide diary no.2062147/24 as recorded in the last order dated 14.08.2024. No sufficient explanation regarding the same is forthcoming on the part of counsel for the defendant no.1. So, the Affidavit filed by defendant no.1 vide diary no.2062147 is taken off the record.

I.A.No.1137/2023 (under Order XI Rule 12 & 14 CPC filed by the plaintiff)

8. Pleadings are already complete.

9. As per the last order, the captioned IA is still pending consideration after completion of pleadings. However, learned counsel for the defendant no.3 has filed one Affidavit stating therein that it has been filed in the captioned IA.

10. Learned counsel for the plaintiff points out that Affidavit filed in the captioned IA by defendant no.3 conceals more than it reveals. He submits that at Sr. No.1 of reply, the defendant no.3 has stated that some Communication is annexed with the Affidavit which has not been filed. He submits that in Sr. No.3 of the Affidavit, the defendant no.3 has not categorically stated that to whom and when the possession of the suit property has been handed over and cleverly it has been stated that no document regarding the handing over of the possession was executed. Similarly, the defendant no.3 has simply



stated that he has not encashed the cheque of Rs.7.50 crore dated 21.09.2020 till date without furnishing any explanation that why the said cheque was not encashed though the possession of the suit property has been allegedly handed over as per the said Affidavit.

11. I agree with learned counsel for the plaintiff that the defendant no.3 has obfuscated the relevant information by clever drafting of aforesaid Affidavit. So, learned counsel for the defendant no.3 is directed to file fresh Additional Affidavit as to whom and when the possession of the suit property has been handed over in compliance of Settlement in question and also reasons for non encashment of cheque of Rs.7.50 crore dated 21.09.2020 by the defendant no.3 till date, within ten days with copy to the plaintiff. He is also directed to file the Communication mentioned at Sr. No.1 of reply.

Re-notify the captioned IA for arguments qua defendant no.1 on the next date of hearing.

IA No.13310/2022 (for passing of Preliminary Decree and for directions filed by defendant no.1)

12. Pleadings are already complete.

Re-notify the captioned IA on the next date of hearing.

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13. An application stated to have been filed by the plaintiff qua impleadment of LRs of deceased defendant no.2 is still not on record. So, cost of Rs.3000/- is imposed upon the plaintiff to be deposited with Delhi High Court Legal Services Committee and now the last and final opportunity is granted to the plaintiff to take requisite steps as per law to bring said application on record.



Re-notify the matter for further proceedings on
20.01.2025.

PRIYA MAHENDRA (DHJS)
JOINT REGISTRAR (JUDICIAL)
NOVEMBER 5, 2024/ab
Click here to check corrigendum, if any