

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

Petition(s) for Special Leave to Appeal (Civil) No(s).16405/2011
(From the judgement and order dated 22/03/2011 in RFA No.15/2011 of The
HIGH COURT OF DELHI AT N. DELHI)

TERRA REAL ESTATE P.LTD.

Petitioner(s)

VERSUS

PRINCETORN NIKETAN P.LTD.& ANR

Respondent(s)

(With appln(s) for impleadment,c/delay in filing substitution
appln.,substitution,impleadment and prayer for interim relief and office
report)

Date: 06/01/2014 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE SUDHANSU JYOTI MUKHOPADHAYA
HON'BLE MR. JUSTICE KURIAN JOSEPH

For Petitioner(s) Mr. M.L. Verma, Sr. Adv.
Mr. Sanjay Adv.
Mr. Garvesh Kabra,Adv.

For Respondent(s) Mr. Lakshmi Raman Singh,Adv.

Mr. S.N. Tripathi, Adv.
Mr. Arvind Tiwary, Adv.

Mr. Chandra Prakash ,Adv

Mr. Shailesh Tiwary, Adv.
Mr. Mohan Pandey ,Adv.

Mr. Sanjay Singh, Adv.
Mr. Rajiv Ranjan Dwivedi ,Adv.

Mr. S.R. Setia ,Adv.

UPON hearing counsel the Court made the following
O R D E R

Delay condoned in filing application for substitution.
The application for substitution to bring on record the
Legal Representatives of deceased respondent

No.2 is allowed.

The application for impleadment is rejected.

Leave granted.

The appeal stands disposed of in terms of the Signed Order.

[RAJNI MUKHI]
SR. P.A.

[USHA SHARMA]
COURT MASTER

(Signed Order is placed on the file)

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 193 OF 2014
(arising out of SLP(C) No.16405 of 2011)

TERRA REAL ESTATE P. LTD.

... APPELLANT

VERSUS

PRINCETON NIKETAN P. LTD. & ANR.

... RESPONDENTS

O R D E R

Delay condoned in filing application for substitution.

The application for substitution to bring on record the Legal Representatives of deceased respondent No.2 is allowed.

The application for impleadment is rejected.

Leave granted.

The appellant has preferred this appeal against the order dated 22nd March, 2011 passed by the High Court of Delhi at New Delhi in RFA (OS) No.15/2011. By the impugned order, the High Court, allowed the prayer of respondent No.1, Princeton Niketan Pvt. Ltd. to withdraw the suit and observed as follows:

"The result of the aforesaid is that there is really no lis between the appellant and R-1, which is required to be adjudicated upon. No rights have been exercised by R-2 in pursuance of agreement dated 01.01.2010 for which evidently notice of cancellation has been given.

In view of the aforesaid, learned counsel for the appellant states that the appellant may be permitted to withdraw the suit itself with liberty to take out appropriate legal proceedings at an appropriate stage if anyone disputes the rights under the agreement between the appellant and Smt. Sayeeda Mehdi Imam.

Liberty granted.

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The result of the aforesaid is that the impugned order dated 30.11.2010 stands substituted by the order of withdrawal of the suit at the behest of the appellant (original plaintiff) in the facts and circumstances set out aforesaid.

The appeal and the application accordingly stand disposed of."

The grievance of the appellant is threefold, namely,

- i) The impugned order was passed without issuing any notice to him though he was the second respondent in the first appeal.

- ii) The High Court made observation that no rights have been exercised by respondent No.2 i.e. appellant herein in pursuance of agreement dated 01.01.2010. On that ground the notice of cancellation has been given.

- iii) Respondent No.1 (original plaintiff) has been permitted to withdraw the suit itself with liberty to take out appropriate legal proceedings without deciding the question whether second suit for same cause of action is barred by limitation or res judicata.

Notices were issued on respondents. They have not disputed that no notice was issued to the appellant by the High Court while passing the impugned order with certain observations against the appellant. The High Court has left the question open about maintenance of second suit for same cause of action while giving liberty to take out appropriate proceedings.

For the reasons aforesaid, we are inclined to interfere with the part of the impugned order whereby the High Court observed that "No rights have been exercised by R-2 in pursuance of agreement dated 01.01.2010 for which evidently notice of cancellation has been given". We set aside the above mentioned part of the order and do not interfere with the grant of permission to respondent No.1(original plaintiff) to withdraw the suit itself with liberty to take out appropriate legal proceedings at an appropriate stage,

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making it clear that such suit shall be subject to limitation and res judicata, if any, as may be raised by the defendants. The order dated 22nd March, 2011 passed by the High Court is modified to the extent above. The appeal stands disposed of.

.....J.
(SUDHANSU JYOTI MUKHOPADHAYA)

.....J.
(KURIAN JOSEPH)

JANUARY 06, 2014.