

IN THE HIGH COURT OF DELHI

FAO No.185/2007

Sh.Prabhat Kumar Singh Appellant
! through: Mr.Sanjeev Saraswat, Adv.

VERSUS

\$ Sh.Rama Kant Aggarwal & Ors. Respondents
^ through: Mr.S.K.Bhaduri, Adv.

% DATE OF DECISION: 16.02.2008

CORAM:

* **Hon'ble Mr.Justice Pradeep Nandrajog**

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the Reporter or not?
3. Whether judgment should be reported in Digest?

: **PRADEEP NANDRAJOG, J. (Oral)**

1. The appellant is aggrieved by the order dated 7.4.2007 declining interim relief to the appellant.
2. Briefly stated case of the appellant was that he along with Rama Kant Aggarwal and Mahesh Kumar Aggarwal, impleaded as defendants No.1 and 2 in the suit were partners of the firm M/s.Kanishka Builders vide a deed of partnership dated 15.1.1998. It was stated that the partnership firm entered into a collaboration agreement with the owner of

property bearing No.G-1/5, Model Town-III, Delhi as per which on construction of a new building certain flats on different floors were to be the property of the partnership firm and the remaining of the owners of the land. It was stated that apart from other flats, Flat No.14 on the first floor and Flat No.33 on the third floor were assigned to the partnership firm. It was further stated that on construction of the building, save and except Flat Nos.14 and 33 other flats falling to the share of the partnership firm were sold but money was dishonestly misappropriated by Rama Kant Aggarwal and Mahesh Kumar Aggarwal. Pertaining to Flat No.33 it was averred that all 3 partners joined in the sale of the flat to Amit Aggarwal and his father S.N.Aggarwal impleaded as defendants No.3 and 4 respectively. The sale being through an agreement to sell and a general power of attorney, the general power of attorney was executed in favour of S.N.Aggarwal. Other documents were executed in favour of Amit Aggarwal. It was further stated that the sale consideration in sum of Rs.9 lacs was tendered by 3 cheques in the name of the partnership firm but later on, the issuer of the cheques, namely Amit Aggarwal colluded with Rama Kant Aggarwal and Mahesh Aggarwal by striking off the name of the payee i.e. M/s.Kanishka Builders and re-writing thereon Rama Kant Aggarwal as the payee. The cutting and

re-writing was initialled by Amit Aggarwal. It was accordingly averred that Rama Kant Aggarwal and Mahesh Kumar Aggarwal in collusion with S.N.Aggarwal and Amit Aggarwal had deprived the appellant of his share in the money which was to be received by the partnership firm, but was instead received by Rama Kant Aggarwal.

3. The suit sought rendition of accounts cancellation of the sale documents pertaining to flat No.33 was prayed for. A decree of permanent injunction was also prayed for to restrain S.N.Aggarwal and Amit Aggarwal from further alienating the flat.

4. S.N.Aggarwal and Amit Aggarwal relied upon a receipt which contained the terminal endorsement as under:-

'All cheques are drawn in favour of Shri Rama Kant Aggarwal'

5. Declining relief, learned Trial Judge has opined that S.N.Aggarwal and Amit Aggarwal were bona fide purchasers for valuable consideration and hence injunction could not be granted against them. It has been held that right of the plaintiff is against his partners.

6. The core issue which needed to be concentrated upon by the learned Trial Court, for purposes of interim injunction, was whether S.N.Aggarwal and Amit Aggarwal have

colluded with Rama Kant Aggarwal and Mahesh Aggarwal for interpolating the receipt as also on the 3 cheques issued in sum of Rs.3 lacs each as sale consideration.

7. It is not in dispute that as per sale documents the 3 cheques have been tendered as sale consideration of the flat to the partnership firm.

8. In a criminal proceeding between the parties the receipt relied upon by S.N.Aggarwal and Amit Aggarwal was sent to the CFSL Laboratory for opinion whether the transcript *'All cheques are drawn in favour of Shri Rama Kant Aggarwal'* was an interpolation or not.

9. CFSL report (page 64 of the appeal paper book record) records that the typed script portions marked Q1-Q2 have been subsequently added. The said marked portions are the afore-noted words in the receipt.

10. Photocopy of the receipt relied upon by S.N.Aggarwal and Amit Aggarwal has been shown to me. The words *'Industrial Complex, Delhi.'* precede the words *'All cheques are drawn in favour of Shri Rama Kant Aggarwal'*. A visual look at the receipt evidences that the alignment of the words *'All cheques are drawn in favour of'* is a little above the straight line of the alignment of the preceding 3 words *'Industrial Complex, Delhi.'*

11. Prima facie it is a case where S.N.Aggarwal and Amit Aggarwal have colluded with Rama Kant Aggarwal. Collusion being, after issuing the cheques in the name of the partnership firm they have changed the name of the payee to Rama Kant Aggarwal. In the receipt issued by the 3 partners of the firm, an interpolation has been made. In this connection it is important to note that as per the plaintiff/appellant S.N.Aggarwal is related to Rama Kant Aggarwal through blood. Relationship being that Rama Kant Aggarwal is the nephew of S.N.Aggarwal. Needless to state the respondents dispute the relationship.

12. Unfortunately, the learned Trial Judge has nowhere discussed the interpolation on the cheques and the interpolation on the receipt relied upon by the respondents as also the CFSL report. Prima facie, respondents No.3 and 4 are instrumental in respondents No.1 and 2 siphoning off the funds of the partnership firm.

13. Under the circumstances, appellant would be entitled to an interim injunction restraining the defendants of the suit from transferring, alienating, encumbering or parting with possession of Flat No.33 in the building bearing Municipal No.G-1/5, Model Town-III, Delhi.

14. Before concluding I may note that observations in the present order are a prima facie opinion of this Court and not to be treated as a conclusive opinion on the matter in issue. Needless to state at the end the trial learned Trial Court would adjudicate the suit in light of the evidence brought on record.

15. LCR be returned forthwith.

16. No costs.

February 16, 2008
d.k.bainsla

(PRADEEP NANDRAJOG)
JUDGE