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1.

Luv Kumar Kaul

through :

VERSUS

Tosh Apartments Pvt. Ltd. & Ors.

through :

Mr. Yakesh Anand with
Mr. Sanjeev Anand, Mr. Kajal
Chandra and Mr. Murari Kumar,
Advocates for respondent No.2.

Mr. Arjun Pant, Advocate
for the respondent No.3.

2.

M/s. Bhagwati Developers Pvt. Ltd.

through :

VERSUS

Tosh Apartments Pvt. Ltd. & Ors.

through :

for the respondent No.1/Tosh.

Mr. Yakesh Anand with
Mr. Sanjeev Anand, Mr. Kajal
Chandra and Mr. Murari Kumar,
Advocates for respondent No.2.

Mr. Arjun Pant, Advocate
for the respondent No.3.

Mr. P.S. Patwalia, Sr. Advocate
with Mr. Amit Kumar, Mr. Ritesh
Ratnam and Mr. Sumesh C. Jha,
Advocates for respondent No.4.

3. FAO (OS) No. 324/2008

Vidur Impex & Traders Pvt. Ltd.

. . . Appellant

through :

Mr. Dushyant Dave with
Mr. Sandeep Sethi, Sr. Advocates
Mr. Ashok Jain and
Mr. Amit Kasera, Advocates

VERSUS

Tosh Apartments Pvt. Ltd. & Ors.

. . . Respondents

through :

Dr. A.M. Singhvi and
Mr. Sanjay Jain, Sr. Advocates
with Mr. Mahendra Rana and
Mr. M.S. Vinayak, Advocates
for the respondent No.1/Tosh.

Mr. Yakesh Anand with
Mr. Sanjeev Anand, Mr. Kajal
Chandra and Mr. Murari Kumar,
Advocates for respondent No.2.

Mr. Arjun Pant, Advocate
for the respondent No.3.

Mr. P.S. Patwalia, Sr. Advocate
with Mr. Amit Kumar, Mr. Ritesh
Ratnam and Mr. Sumesh C. Jha,
Advocates for respondent No.4.

Mr. C. Mukund with
Mr. Shashank Sharma, Advocates

CORAM :-

THE HON'BLE MR. JUSTICE A.K. SIKRI

THE HON'BLE MR. JUSTICE MANMOHAN SINGH

1. Whether Reporters of Local newspapers may be allowed to see the Judgment?
2. To be referred to the Reporter or not?
3. Whether the Judgment should be reported in the Digest?

A.K. SIKRI, J.

1. Against the order dated 3.9.2007 passed by the learned Single Judge, these appeals have been preferred by different parties, though their grievance is not the same. It is for this reason that these appeals were heard together, which we are deciding by this common judgment.
2. Before we mention the applications in which the impugned order is passed, it would be necessary to give the narration of the pleadings in the main suit and the manner it has progressed in the last 15 years, as the suit was filed way back in the year 1993.
3. M/s. Tosh Apartments Pvt. Ltd. (respondent No.1 in these appeals) is the plaintiff in the original Suit No. 425/1993. It has filed this suit for specific performance, damages and injunction. Specific performance of Agreement to Sell dated 13.9.1988 between the plaintiff and Shri Pradeep Khanna (defendant No.1 in the suit and since deceased) is sought. Other two persons arrayed as defendants in the said suit are Shri Arun Kumar Bhatia as the defendant No.2 and Shri Luv Kumar Kaul as the defendant No.3. For the sake of clarify and to avoid any confusion, we are maintaining the same nomenclature as appear in the suit by describing the aforesaid parties as plaintiffs, defendant

No.1, defendant No.2 and defendant No.3 respectively. We may, however, point out that the LRs of Shri Pradeep Khanna have been brought on record and the expression defendant No.1 would include reference to them as well.

4. As per the averments made in the plaint, vide aforesaid agreement dated 13.9.1988, property bearing No. 21, Aurangzeb Road, New Delhi, constructed on a plot of land measuring 0.91 acres, i.e. 4418 sq. yds., was agreed to be sold by the defendant No.1 to the plaintiff for a total consideration of Rs.2.5 crores. The plaint avers events anterior to the execution of the said agreement but it is not necessary to go into all those details. Suffice is to point out the basic facts pleaded by the plaintiff, as noted by the learned Single Judge, which are as under:

The Pleadings

(a) It is the case of the plaintiff that the aforesaid property had been previously let out to Sudan Embassy by the defendant No.1. Since the defendant No.1 wanted to sell this property, efforts had to be made to get back the possession of the property. A No-Objection Certificate was also to be obtained from Income-Tax Authorities, as required under Chapter XX-C of the Income Tax Act, 1961 coupled with few more sanctions and permissions from the competent authority for completion of the sales transactions. Defendant No.1 though assured the plaintiff that to obtain no objection and other permissions was his obligation, yet defendant No.1 advised the plaintiff that it would be better if the plaintiff, in order to have early

transfer of the property, hire the services of defendant No.3 for speedy permission and No Objection Certificate and also for vacant possession of the property.

(b) It is further the case of the plaintiff that the defendant No.3 also represented that he was capable to execute the aforesaid jobs and for completion of the said task, he demanded Rs.1.25 crores as his service charges. Defendant No.3 also insisted on being inducted as Addl. Director in the plaintiff company as in that capacity he represented that he would be in a better position to operate for obtaining possession of the property from Sudan Embassy as well as other sanctions.

(c) The plaintiff believed in such a representation and pursuant thereto the defendant No.3 agreed to render his services and confirmed so by writing a letter to the plaintiff on 30.9.1988.

(d) Pursuant to the said arrangements, the plaintiff paid two cheques bearing No. 297959 and 297960 of Rs.5 lacs each to the defendant No.3.

(e) As regards sales transactions between the plaintiff and the defendant No.1, the plaintiff paid a sum of Rs.25 lacs to defendant No.1 on 13.9.1978 by bankers' draft issued by the Dena Bank, Karol Bagh. Details of the terms of agreement to sell entered into between the plaintiff and the defendant No.1 find mention in para 15 of the plaint.

(f) As regards the arrangements done with defendant No.3, it was agreed that defendant No.3 shall do all acts, deeds and things necessary and shall obtain sanction as well as obtain vacation of the suit property from the Sudan Embassy.

(g) Despite having paid the aforesaid amounts to defendant No.3, neither the defendant No.1 nor defendant No.3 took steps for necessary permission, sanctions, etc.

(h) Later on, the plaintiff came to know that defendant No.1 had taken the vacant possession of the property from Sudan Embassy and was in actual and vacant possession thereof. The plaintiff, thereafter, immediately approached defendant Nos. 1 & 3 and asked defendant No.1 to execute sale deed in its favour, but defendant Nos. 1 & 3 represented that though vacant possession of the property had been taken from Sudan Embassy, but necessary permission/No Objection Certificate had not yet been obtained and assured the plaintiff that as soon as the same was obtained, the sale deed will be executed.

(i) To the utter surprise of the plaintiff, he came to know that defendant No.1 & 3, with evil designs, were negotiating and making efforts to sell the suit property on a much higher price than it was agreed with the plaintiff.

5. Along with the plaint, the plaintiff also preferred an application for interim injunction under Order XXXIX Rule 1 & 2 of the CPC in which *ex-parte* order dated 18.2.1993 was passed restraining

defendant No.1 & 3 from transferring, alienating and parting with possession of the suit property. However, even when this injunction was operating, the defendant No.1 executed six sale deeds in favour of six purchasers on 20.5.1997. These six purchasers are the closely held limited companies of Shri Mahesh Sharma, M/s. Haldi Ram Bhujia Bhandar, M/s. Panchvati Plantation Pvt. Ltd and M/s. Convenient Tours & Travels Pvt. Ltd. The events that occurred thereafter can be stated in capsulated manner in chronological order as they have bearing insofar as the present appeals are concerned:

The Events:

(i) 29.05.1997 – Six sale deeds by defendant No.1 though the injunction orders were operating.

(ii) 15.09.1998 - IA No. 8145/1998 filed by the plaintiff seeking restraint against defendant Nos. 1 & 3 from handing over and delivering possession of the suit property to the said purchasers.

- Defendant No.1 filed reply to this application stating that he had not executed any such sale deeds nor created any third party rights. He rather blamed that it was the handy work of the plaintiff and the vendees in collusion with each other. Defendant No.2 in his reply stated that he had already parted possession to the defendant No.3 on 12.5.1992.

(iii) CCP No. 118/1998 filed by the plaintiff. In reply to this CCP, defendant No.1 again reiterated that he had not executed any sale deed. He also stated that he had filed a suit in January 1999 seeking

declaration that alleged sale deeds were forged and fictitious documents. (This suit was, however, later withdrawn by him).

(iv) 15.09.1998 – The plaintiff moved IA No. 8146/1998 under Order XXVI Rule 9 read with Order XXXIX Rule 7 and Section 151 of CPC in Suit No. 425/1993 seeking inspection of the suit premises by a Local Commissioner to ascertain as to whether defendant No.1 and 3 are in possession of the premises or not.

(v) 15.09.1998 - IA No. 8147/1998 filed by the plaintiff under Order XL Rule 1 read with Section 151 of the CPC seeking appointment of a Receiver

(vi) 31.01.2000 – *Ad interim* injunction granted on 18.2.1993 was confirmed and the defendant No.3 was restrained from creating any third party interest in the suit property.

(vii) 08.02.2001 – One Mr. Lodha, Advocate declaring himself to be Receiver appointed by the Calcutta High Court, sought to dispossess the defendant No.3 on 2.2.2001. The defendant No.3 moved IA No. 1211/2001 in Suit No. 425/1993 seeking *ex-parte* injunction against the defendant Nos. 4 to 13 therein from dispossessing the defendant No.3. The learned Single Judge of this Court allowed the application of the defendant No.3 and restrained the defendants from disturbing the possession of the defendant No.3 from the suit property. Counsel for the plaintiff got the statement recorded in the order of the learned Single Judge stating that the defendant No.3 is in possession of the property only as a caretaker.

(viii) 31.01.2000 – The learned Single Judge passed orders dated 31.1.2000 in IA No. 8146/1998 appointing the Local Commissioner to submit his report with regard to the possession of the suit premises. The learned trial court also recorded in its order the statement of the counsel for the plaintiff that the possession of the suit premises was given to the defendant No.3 on 12.5.1992.

(ix) 10.02.2000 – The Local Commissioner submitted his report dated 10.2.2000 recording that the defendant No.3 is in actual physical possession of the entire suit property.

(x) 22.01.2001 – The plaintiff filed IA No. 625/2001 under Order XXXIX Rule 1 & 2 read with Section 151 CPC seeking order to restrain the defendant No.3 and defendant No.1 from delivering the possession of the suit property to six vendees. The learned trial court, on the same date, also referred to the statement of counsel for the defendant No.1 made on 31.1.2000 regarding handing over of the possession of the property to the defendant No.3.

(xi) 18.03.1997 - Six purchasers/vendees entered into an agreement to sell the property with Bhagwati Developers, Kolkata (hereinafter referred to as 'Bhagwati Developers'). This agreement contained an arbitration clause. Purported disputes were referred to the Arbitrator named therein, namely, Shri Debashish Kundu, Advocate, Calcutta High Court.

(xii) 07.01.1999 - Arbitrator gave consent award directing six purchasers to hand over peaceful and vacant possession of the suit

property to Bhagwati Developers on or before 31.1.1999. Bhagwati Developers was also directed to make payment of Rs.1,20,90,000/- to the six vendees.

(xiii) 17.8.2000 - Bhagwati Developers filed execution petition under Section 36 of the Act seeking execution of the award. In this execution petition, the Calcutta High Court passed orders dated 17.8.2000 appointing a Receiver with a direction to take physical possession of the suit property.

(xiv) 22.1.2001 - According to the plaintiff, agreement to sell in favour of Bhagwati Developers, arbitration proceedings and execution petition were also collusive and fraudulent, in conspiracy with the defendant No.3. The plaintiff, therefore, filed IA No. 621/2001 in the Calcutta High Court seeking injunction against all these parties from taking possession of the said property by force through court order or decree.

In this application, *ex-parte ad interim* injunction was passed restraining the defendant Nos. 1 & 3 from delivering possession of the suit property to the six purchasers and Bhagwati Developers. Thereafter, on 15.2.2001, the Calcutta High Court adjourned the proceedings *sine die* observing that the orders passed by it shall be subject to the orders that may be passed by the Delhi High Court in the suit.

(xv) 3.9.2007 - Impugned orders passed by the learned Single Judge allowing IA No. 8147/1998 of the plaintiff for appointment of a

Receiver and appointed Mr. Rajesh Gupta, Advocate, as the Receiver. By reason of the same order, IA No. 7373 preferred by the defendant No.3 for amendment of the written statement is dismissed.

(xvi) 18.9.2007 - On the strength of the orders dated 3.9.2007, Receiver visited the suit property and took possession.

6. Defendant No.3 has filed FAO (OS) No. 400/2007 whereby he has challenged the order of appointment of Receiver as well as rejection of his application for amendment.
7. FAO (OS) No. 514/2007 is filed by Bhagwati Developers. This appellant is also aggrieved by the appointment of Receiver on the ground that in the proceedings taken out by it in the Calcutta High Court, Receiver has already been appointed and, therefore, there could not have been such order passed by the Trial Court appointing any Receiver disregarding the orders of the Calcutta High Court, that too in the absence of Bhagwati Developers, which is not a party in the suit filed in the Delhi High Court, as the order directly and adversely affects Bhagwati Developers.
8. The six vendees, in whose favour purported sale deeds were executed on 20.5.1997, had filed application under Order I Rule 10(2) of the CPC for their impleadment. This application has, however, been dismissed by the learned Single Judge vide orders

dated 3.9.2007. Assailing this order, FAO (OS) No. 324/2008 is filed.

9. These are, thus, the subject matters of the three appeals. With this background, we take up each appeal separately for consideration.

10. FAO (OS) No. 400/2007 & FAO (OS) No. 514/2007

The Arguments

Mr. Patwalia, learned counsel appearing for the defendant No.3 (appellant in this appeal), submitted that the defendant No.3 was put in possession of the suit property on 12.5.1992 with the specific consent and permission of the original owner, namely, defendant No.1. He was, thus, in such possession even before the filing of the suit and remained in possession till he was evicted by the Receiver appointed vide impugned orders. In order to show his possession, learned counsel referred to the pleadings, namely, para (b) of prayer clause. He also submitted that at various places and in various pleadings, the defendant No.1 had admitted that he had given possession of the premises to the defendant No.3 on 12.5.1992. Even the Local Commissioner appointed by the Court had found defendant No.3 to be in possession. He also referred to orders dated 8.2.2001 passed by the learned Single Judge in IA No. 1211/2001 whereby the respondents in the said application were restrained from disturbing the possession of the defendant No.3 (applicant in the said application) from the suit property. He, thus, submitted that admitted position was that the possession of the

appellant/defendant No.3 was acknowledged and he was given possession by the owner. Thus, such a possession was legal possession.

Mr. Patwalia also submitted that the defendant No.3 was put in possession by the defendant No.1 because of the reason that defendant No.1 owed substantial amounts to the defendant No.3. According to him, defendant No.1 had approached him in February 1992 seeking his services for getting the suit property vacated from the Embassy of Sudan. For rendering these services, it was agreed that defendant No.1 shall pay defendant No.3 a sum of Rs.4 crores towards service charges and expenses to be borne by the defendant No.3 in getting the suit premises vacated. These terms were duly recorded and signed by the defendant No.1 as well as defendant No.3. It was also agreed by the defendant No.1, as Karta of HUF, that in the event of non-payment of the service charges to the defendant No.3, after the suit property is vacated, the defendant No.1 would deliver peaceful vacant possession of the property to the defendant No.3 and the defendant No.3 would be entitled to retain its possession without any charges and by way of security for the payment of the dues until such time the dues of defendant No.3 are paid.

The suit premises was vacated by the Embassy of Sudan on 12.5.1992 and since the defendant No.1 was not in a position to pay the service charges to the defendant No.3, he was put in possession by the defendant No.1 and simultaneously deposited the original

supplementary lease deed, along with other documents such as pro-note and letter confirming deposit of original supplementary lease deed, by way of an equitable mortgage.

Further, the defendant No.3 advanced to defendant No.1 and his wife a sum of Rs.1,75,16,669/-, which included payments made to tax authorities, and the said fact has been admitted by the defendant No.1 in Suit No. 161/1999 filed by him before this Court. As the suit property was in a dilapidated condition, at the instance of defendant No.1, the defendant No.3 carried out extensive repair work in the said property.

On this basis, it is claimed that not only defendant No.3 has to recover substantial amount, which adds up to Rs.200 crores, after including interest accumulated thereupon, the appellant/defendant No.3 is in fact the mortgagee in possession.

On the aforesaid premise, right to remain in possession of the suit premises is claimed on the following basis:

(a) Defendant No.3 was given the possession of the suit premises by the owner himself, which was legal possession, and, therefore, he was not a trespasser. Such a person in settled possession could not be ousted, except in due course of law, i.e. by filing a suit and obtaining decree of possession.

(b) As the defendant No.3 was a mortgagee in possession, his possession could not be disturbed without clearing the mortgage, i.e. paying him the entire amount which was due to him.

(c) There was no occasion to appoint a Receiver in the year 2007 in an application which was filed almost 9 years ago in the year 1998. More so, when there was no allegation regarding danger to the property or it being frittered away.

11. As far as rejection of the application for amendment of the written statement is concerned, we may note that the defendant No.3 wanted to add certain facts in the written statement on the plea that these were relevant facts but could not be incorporated in the written statement filed in 1993-94 by his earlier lawyer. The plea which the defendant No.3 wants to add by amendment is that the defendant No.1 had agreed to pay a sum of Rs. 4 crores to the defendant No.3 and requested him to help seeking vacation of the said property from the Embassy of Sudan for a consideration of Rs.4 crores as service charges. According to him, it was further agreed that in the event defendant No.1 failed to pay the said amount, he would be liable to pay interest on that amount @ 2% p.m. It was further agreed that on failure to pay the amount, the defendant No.1 would deliver actual vacant and peaceful possession of the suit property to defendant No.3, who would be entitled to retain the same without any charges thereof, by way of security for payment of its dues. As defendant No.3 succeeded in getting the property vacated, but defendant No.1 expressed his inability to pay the service charges or part thereof, he handed over actual vacant peaceful possession of the suit property to defendant No.3 as security for

repayment of that amount. That is how defendant No.3 is in possession of the premises.

12. While dismissing the application and refusing the permission to the defendant No.3 to incorporate the aforesaid pleas, the learned Single Judge has given the following reasons:-

“3. I have heard learned counsel for the parties on this application. True, law of amendment is quite liberal and Courts ordinarily permits amendment provided such amendments are not mischievous in nature with a view to delay the legal proceedings and setting up entirely new case than the one pleaded earlier but in this case, I may say that written statement was filed way back in 1993 and good number of years have passed, but it never struck the defendant to make such amendment simply by putting the blame on earlier lawyer. Even otherwise, amendment which is sought to be made was well within the knowledge of defendant No.3. During all these years when proceedings were continuing that he was being termed as trespasser. What prevented him to explain his true position at the earliest is not explained at all. To me it seems that when arguments were being heard and the counsel for the parties put up their respective claims then it has struck the mind of defendant No.3 to apply for such amendment as it might work to his advantages. If at all he was in possession because of defendant No.1's consent he should have pleaded so at the earliest. Such belated amendment which is otherwise totally inconsistent to the stand taken earlier in the written statement cannot be allowed as in that case it would amount to take the case back to the year 1993 when the suit was filed. Therefore, this application has no merit, it being full of malice, the same is dismissed.”

13. Mr. Patwalia submitted that the approach of the learned Single Judge was clearly erroneous inasmuch as: (i) defendant No.3 was treated as a trespasser, which was factually incorrect, (ii) no new case was set up by the defendant No.3 since delivery had already been taken, which was only expanded/substantiated further, (iii) there was no delay in filing the application inasmuch as only issues were framed and trial had yet to commence, and (v) in dealing with the

amendment of pleadings, particularly written statement, liberal approach is required, as held by the Supreme Court in the following cases :-

- (i) *Baldev Singh & Ors. etc. v. Manohar Singh & Anr. etc.*
(2006) 6 SCC 498
- (ii) *Usha Balasaheb Swami & Ors. v. Kiran Appaso Swami & Ors.,*
(2007) 5 SCC 602
- (iii) *Andhra Bank v. ABN Amro Bank N.V. & Ors.*
(2007) 6 SCC 167

14. Since in FAO (OS) No. 514/2007 preferred by Bhagwati Developers the appellant has assailed the same very order, insofar as it relates to the appointment of Receiver, it would be appropriate to note the basis of challenge to the said order in this appeal at this stage itself so that holistic view is taken while considering the submissions in both the appeals relating to this aspect.
15. As already mentioned above, Bhagwati Developers is staking its claim over the property on the basis of six sale deeds executed in its favour by Vidur Impex & Traders etc. who had allegedly purchased the property from the defendant No.1. We have also noted above that on the basis of arbitration clause contained in the agreement to sell entered into between the said six vendees in favour of Bhagwati Developers, the matter was referred to the Arbitrator, who passed consent award dated 7.1.1999 and execution petition seeking execution of the said award was filed in the Calcutta High Court, which passed orders dated 17.8.2000 appointing a Receiver with a direction to take physical possession of the suit property.

16. On that basis, submission of learned counsel appearing for Bhagwati Developers is that since the Calcutta High Court had already appointed a Receiver, those orders could not be disregarded by this Court thereby appointing another Receiver. According to the learned counsel, such an order was, in fact, an order against the Calcutta High Court and comity of jurisdictions should have been respected. It was also submitted that Bhagwati Developers was not even a party to the proceedings in the suit filed in Delhi and, therefore, an order which affected its rights adversely could not have been passed in its absence. Learned counsel further submitted that pursuant to the orders passed by the Calcutta High Court, the said Receiver had dispossessed Mr. Luv Kumar Kaul and it is the said Receiver who was in possession of the property. No steps were taken by Mr. Kaul that he be put back in possession. No steps were taken by M/s. Tosh Apartments seeking vacation/variation of the orders passed by the Calcutta High Court. Therefore, the impugned order appointing another Receiver amounted to dispossessing the Receiver appointed by the Calcutta High Court.
17. Mr. Mukund, learned counsel for the appellant also pointed out that the defendant No.1 had filed Suit No. 161/1999 seeking declaration that the six sale deeds executed by him in favour of Vidur Implex & Traders etc. were void. However, this suit was dismissed as withdrawn on 10.1.2001. Thereafter, IA No. 1537/2001 was preferred seeking restoration of the suit. However, in the meantime,

the defendant No.1 died on 12.1.2002 and till date the said suit has not been restored. Therefore, these six sale deeds in favour of Vidur Implex & Traders etc. were to be treated as valid and sale deeds by them in favour of Bhagwati Developers, in turn, were also to be treated as valid while deciding the application for appointment of the Receiver. Not only that, argued the learned counsel, the award, even when it was a consent award, amounted to decree under the provisions of the Arbitration and Conciliation Act, 1996 and as there was no challenge to the same, this decree had become final. More so, when no steps were taken to challenge that decree or the order of the Calcutta High Court. Order dated 18.4.2001 of the Calcutta High Court, therefore, should have been respected.

18. Dr. A.M. Singhvi appeared for Tosh Apartments and made his detailed submissions rebutting the arguments of counsel for the appellants in both the appeals. Mr. Yakesh Anand appeared for the LR's of the defendant No.1 and supported the impugned order of appointment of the Receiver. We shall take note of arguments of Dr.Singhvi as well as Mr. Yakesh Anand while dealing with the arguments of counsel for the appellants.

Orders of the Calcutta High Court and its effect:

19. The first and foremost question that would arise for consideration would be the purport, scope and effect of the orders passed by the Calcutta High Court, as the hurdle in the form of those orders, which is sought to be created by the learned counsel for Bhagwati

Developers, has to be crossed over by Tosh Apartments before examining the validity of the order of appointment of Receiver passed by the learned Single Judge on merits.

20. In the execution petition filed by Bhagwati Developers in the Calcutta High Court under Section 36 of the Arbitration and Conciliation Act, 1996, it was averred that award was passed on 7.1.1999 and even when no appeal was preferred nor the award had been challenged, sale deeds in favour of Bhagwati Developers were not executed by the six vendees. In this petition, order dated 18.8.2000 was passed directing execution of the sale deeds in favour of Bhagwati Developers within four weeks, failing which Mr. N.N. Ganguly, Advocate, was appointed as the Receiver to take possession of the suit premises. Thereafter, the Receiver came to Delhi to take possession. Initially, he could not take possession because of resistance put by the occupants. He, thus, requested for police help, which was given by the Calcutta High Court. Order dated 15.2.2001 records that on the basis of police assistance the Receiver had taken possession of the property and had sealed the same. At that stage, application for intervention was filed by the defendant No.3 and facts relating to filing of the present suit in Delhi High Court as well as the various orders passed therein were brought to the notice of the Calcutta High Court. It was, *inter alia*, pointed out that there was an agreement to sell executed by the defendant No.1 in favour of Tosh Apartments, on the basis of which suit for specific performance was filed by Tosh Apartments in the Delhi High Court;

in the said suit, certain interim orders were passed, including the order restraining the defendant No.1 from transferring or alienating the property in question, which order was in force since 18.2.1993, which was confirmed on 13.1.2000; certain orders were passed recording that the defendant No.3 was in possession of the suit property and he did not intend to part with the possession thereof.

21. After taking note of these facts in detail, the Calcutta High Court, in its order dated 15.2.2001, *inter alia* observed as under :-

“The facts remain that these facts were neither disclosed to the decree-holder nor to the Arbitrator and this question was not necessary to be gone into while executing the decree and, as such, it was also not placed before this Court and this Court having not been apprised of such facts had passed an order for taking over possession of the property. In the order dated 8.2.2001 the Delhi High Court had taken a note of this position. Be that as it may, it is not necessary to many my observation with regard to the findings made therein, nor this Court can comment on the order passed by another Court on the basis of the materials placed before it. But it appears that there is every possibility of conflicting orders being passed in respect of the self-same properties between the parties or those claiming through one or the other of them by two High Courts. Judicial propriety demands that the court should maintain its decorum and dignity and should not pass any order which will lie in conflict with each other. It is the parties who may fight each other but not the courts. If some order is passed, it is expected that another Court should pay proper regards and respect to such order. Since it is pointed out that these facts were not disclosed this Court, therefore, what would have been the effect if these facts would have been disclosed before this Court is a question which cannot now be presumed, but in all probabilities it seems that if these facts were disclosed before this Court, this Court might have been slow in passing the order that had been passed earlier. Therefore, the order passed by this Court, if it is in conflict with the order passed by the Delhi High Court, the same shall always be subject to the order that might be passed by the Delhi High Court.

Since Delhi High Court has also passed an order by which certain direction was given to the Receiver appointed by this Court, therefore, it is no more necessary to pass any further order. In my view, the decree-holder in this proceeding who is added as defendant no. 10 in the Delhi High Court suit should

approach the Delhi High Court for obtaining the appropriate orders if he is so advised. If there is a conflict of decree which might affect a proceeding in another High Court, in that event the same has to be thrashed out in an appropriate proceeding. It is very difficult to enter into such question in an execution proceeding unless such question be raised in a proceeding under Order XXI Rule 97 CPC. From the records of this Court, it does not appear that any such application under Order XXI Rule 97 has ever been made in order to enable the parties to resisting possession in execution of the decree, so that they would have an opportunity to place their cases about the executability of the decree against them.”

22. It is clear from the above that the Calcutta High Court noted conflict between the orders passed by it and by this Court. It laid emphasis on maintaining comity of jurisdictions and giving respect to the orders passed by the other High Court. It also expressed that there was a possibility that it would not have passed the orders of appointment of the Receiver had it been apprised of the orders passed by Delhi High Court. In this context, aforequoted observations came to be passed, including:-

“...Therefore, the order passed by this Court, if it is in conflict with the order passed by the Delhi High Court, the same shall always be subject to the order that might be passed by the Delhi High Court.”

The Calcutta High Court, thus, in no uncertain terms, mentioned that since Bhagwati Developers and the vendors, who had sold the suit property to Bhagwati Developers by six sale deeds, were now parties in the suit filed in the Delhi High Court (defendant Nos. 10 and 4 to 9 respectively) and thus, it is the Delhi High Court which could be approached for necessary orders.

In view thereof, we are of the opinion that the learned Single Judge was right in recording that the Calcutta High Court itself stated

that its order for appointment of Receiver was subject to the orders that might be passed by the Delhi High Court. It is more so when, after taking note of the aforesaid facts, the Calcutta High Court deemed it proper not to pass any further orders and left the matter to the Delhi High Court giving permission to Bhagwati Developers to approach this Court for obtaining the appropriate orders, if so advised.

23. The arguments of Bhagwati Developers or the so-called six purchasers, namely Vidur Impex & Traders etc. based on the proceedings in the Calcutta High Court and orders passed in those proceedings would, therefore, be of no avail. No doubt, comity of jurisdictions among the courts is to be given credence, but what is seen in this case was that the Calcutta High Court, though passed order appointing Receiver, when informed about the proceedings in the Delhi suit, itself respected the comity and went to the extent of observing that if the orders in Delhi suit were in the knowledge of the Calcutta High Court, probably it would not have passed the orders which it passed and that would include order for appointment of the Receiver. Therefore, respecting this very comity, the Calcutta High Court clarified that its orders would be subject to the orders that may be passed by the Delhi High Court as all the parties were in the Delhi High Court; suit in Delhi High Court was much prior in time and Delhi High Court took a holistic view of the entire matter.

24. We may state at the cost of repetition here that when there was an injunction against defendant No.1 to create third party interest in the suit property, passed way back in the year 1993 and confirmed thereafter, it would put a big question mark on the validity of the purported sale deeds executed by defendant No.1 in favour of Vidur Impex & Traders and others and consequently by Vidur Impex & Traders etc. in favour of Bhagwati Developers. We do not want to express our final opinion on this as the matter has to be gone into either in the suit or in other appropriate proceedings finally.

The core issue

25. With this, we address the basic issue as to whether it was reasonable and/or proper for the learned Single Judge to pass the order of appointment of Receiver under the given circumstances.

26. Following developments and circumstances in this behalf need mention and/or reiteration:

(a) The suit filed by the plaintiff is predicated on agreement to sell dated 13.9.1988 purportedly executed in its favour by the defendant No.1, owner of the suit property, which is earliest transaction in point of time.

(b) Suit, on this basis, filed in April 1993 is also earliest legal proceeding instituted by the plaintiff. In this suit, *ad interim* injunction dated 18.2.1993 was passed restraining defendant Nos. 1 & 3 from transferring, alienating or parting with possession of the suit property in any manner or creating third party rights therein.

(c) The plaintiff also filed another IA No. 9154/1993 seeking restraint against the defendant No.1 as well as defendant No.3 from changing the nature of the suit property by making structural changes, additions or alterations therein. In this application orders were passed directing them not to carry out any structural additions, alterations and permitted only the renovations like painting, polishing of the suit property.

(d) In spite of the restraint order dated 18.2.1993, the defendant No.1 allegedly transferred the suit property by executing purported six sale deeds on 28.5.1997 in favour of Vidur Impex & Traders and others.

It is the submission of learned counsel appearing for the plaintiff that intentionally six sale deeds were executed showing consideration of Rs.48 lacs each keeping the same below the prescribed limit of Rs.50 lacs with a fraudulent intent to avoid the application of Chapter XX-C of the Income-Tax Act.

(e) On coming to know of the aforesaid sale transactions, the plaintiff filed application under Order XXXIX Rule 1 & 2 CPC for restraining the defendant Nos. 1 & 2 from transferring possession of the suit property to the said six transferees under the alleged six sale deeds. Restraint order to this effect was passed by the learned Single Judge. Further orders were passed restraining these six transferees (defendant Nos. 4 to 9) from acting upon the impugned sale deeds.

(f) Defendant No.1 in his reply took the stand that impugned sale deeds were forged and fabricated and were not executed by him. He even filed suit No. 161/1999 for declaration to this effect. However, this suit was withdrawn on 10.1.2001 vide application IA No. 255/2001 purported to have been moved by him through Shri. Bhupinder Singh, Advocate, on the statement of Advocate without the presence of the defendant No.1 or his statement. Thereafter, IA No. 1537/2001 was moved by the defendant No.1 stating that he had not authorized any counsel to make an application for withdrawal of the suit and the whole proceedings were collusive, fraudulent and that he had not entered into any compromise with the said six transferees.

Though we are not concerned with these proceedings, this fact is mentioned to highlight the manner in which the transactions are taking place, that too in the teeth of injunction order passed in Suit No. 425/1993 and the vacillating attitude of the defendant No.1 (since deceased).

(g) Though there was restraint order against defendant Nos. 4 to 9, i.e. Vidur Impex & Traders and others, not to act upon the impugned sale deeds, they entered into agreement dated 18.3.1997 for transfer of their purported rights and interest in the suit property in favour of Bhagwati Developers. This agreement contained an arbitration clause, on the basis of which the Arbitrator was appointed and consent award passed. Again, without commenting upon the validity or otherwise of such proceedings, which would naturally be

thrashed out in appropriate proceedings, suffice it to state was that all this was happening in violation of the injunction order passed in the instant suit. Attempt was made to get the Receiver appointed from the Calcutta High Court and take possession of the suit property.

27. At this stage, when the plaintiff came to know of the appointment of the Receiver by the Calcutta High Court, who had taken possession of the property and was going to deliver it to Bhagwati Developers, that the plaintiff pressed its IA No. 2625/2001, which was already pending, for appointment of a Receiver. Aforesaid facts when taken into consideration, would make it imperative for the court to protect the property by appointing a Receiver. Mere passing of injunction orders against the parties was not serving any purpose. Such appointment under the aforesaid circumstances is clearly valid, reasonable and justified exercise of power.

28. In the case of *Surjeet Singh & Ors. v. Harbans Singh & Ors.*, JT 1995 (6) SC 415, the Supreme Court has held as under :-

“If an alienation or assignment is made in the defiance of a restraint order passed by the court, such an alienation or assignment is against the public policy and is void. It was held that if the court was to let it go as such, it would defeat the ends of justice and the prevalent public policy. It was further held that “when the court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court in these circumstances has the duty, as also the right to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees respondents could not have been impleaded by the trial court as parties to the suit in

disobedience of its orders. The principles of lis pendense are all together on a different footing.”

29. Again, it will also be useful to extract the following observations of the Apex Court in the case of *Jayant Mudaliar v. Ayyaswamia & Ors.*, AIR 1973 SC 569, which are to the following effect :-

“Lis pendense literally means a pending suit and the doctrine of the lis pendense has been defined as the jurisdiction, power or control which a court acquires over the property involved in a suit pending the continuance of the action and until final judgment therein.”

It was further observed that :-

“Exposition of doctrine indicates that the need for it arises from the very nature of the jurisdiction of courts and their control over the subject matter of litigation so that parties litigating before it may not remove any part of the subject matter outside the power of the court to deal with it and thus make the proceedings infructuous.”

30. In yet another case decided by the Supreme Court entitled *Rajinder Singh & Ors. v. Santa Singh & Ors.*, AIR 1973 SC 2537, it was held :-

“The doctrine of lis pendense was intended to strike at attempt by parties to a litigation to circumvent the jurisdiction of a court, in which a dispute on right or interests in immovable property is pending, by private dealings, which may remove the subject matter of the litigation from the ambit of the court’s power to decide a pending dispute or frustrate its decree. Alienees acquiring any immovable property during a litigation over it are held to be bound by an application of doctrine, by the decree passed in the suit, even though they may not have been impleaded in it. The whole object of the doctrine of lis pendense is to subject parties to the litigation as well as others, who seek to acquire rights in immovable property which are the subject matter of a litigation, to the power and jurisdiction of the court so as to prevent the object of pending action from being defeated.”

31. This Court in *Joginder Singh Bedi v. Sardar Singh & Ors.*, 26 (1984) DLT 162 Del (DB) and *Sanjay Gupta v. Kalawati & Ors.*, (1992) 53 DRJ 653 followed the aforesaid principle.

32. The conduct of Mr. Luv Kumar Kaul is also not above board and, therefore, his so-called interest has to be ignored while confirming the orders of appointment of Receiver passed by the learned Single Judge. It appears that he has taken advantage of the weaknesses of defendant No.1 who, during his lifetime, acted in contradictory manner at the instance of one person or the other. Mr. Kaul came into possession of the suit property as a caretaker when, according to him, the so-called remuneration fixed for him for getting the premises vacated from the Embassy of Sudan were not paid. As per Mr. Kaul, whopping consideration of Rs.4 crores was agreed for this purpose that too way back in the year 1992. Various kinds of pleadings filed by the defendant No.1 admitting the claims of Mr. Kaul throw suspicion about the voluntary nature of those pleadings/admissions. More importantly, it needs to be highlighted that with the passage of time claims of Mr. Kaul kept on increasing in geometrical progression. What started with a claim of Rs.4 crores in the year 1992 (which was in any case very huge even at that time) has touched a startling figure of Rs.200 crores (approx.) today. All types of possible rights are asserted over the property by him. He claims to be a tenant and also in possession of the property as a mortgagee. However, apart from self-serving admissions in the pleadings, which he got from defendant No.1, there is no valid document in his favour on the basis of which, *prima facie*, he can assert any right, title or interest in the suit property. Fifteen years have passed since the suit

was filed. Proceedings are delayed on one account or other and because of various developments which took place in the intervening period, as narrated above, the suit has not been decided so far. In case the suit is ultimately decreed in favour of the plaintiff/Tosh Apartments, it may even become difficult to reap the fruits thereof in case the property is tossed between Mr. Kaul, Vidur Impex & Traders and others or Bhagwati Developers for that matter. That is yet another justification for maintaining the order of appointment of the Receiver.

33. In this behalf, we agree with the submission of Mr. Singhvi, learned senior counsel for the plaintiff, that in a suit for specific performance, the court has ample power and jurisdiction to appoint a receiver. In Kerr on Receivers 16th Edition (on page 58), it has been laid down that if a fair *prima facie* case for the specific performance of a contract is made to appear, the court may interfere upon motion and appoint receiver. In Foot Note No. 37, reference has been made to case law including *C Kennedy v. Lee* (1870) 3 MER 441, *M. Cloud v. Phelps*, (1838) 2 JUR 962. The appointment may be made in such circumstances before the order for a sale is made absolute. (**Re: Stephard**, (1892) 31 1R 95).

34. In 'Law On Receivers' by S.K. Bose, 3rd Edn. (page 593, para 624), it has been laid down that :-

“In a suit for specific performance of agreement of sale a receiver can be appointed when the plaintiff has a good *prima facie* case and the circumstances justify it.”

35. In Halsbury's Laws of England, Vol. 44(1), 4th Edn. (Re-Issue), in para 931 (at page 545), it has been laid down that :-

"The Court has power to make an interlocutory order to enforce the performance of a contractual obligation. In a purchaser action, the defendant may be restrained in injunction from disposing of the property or creating rights over it inconsistent with the terms of the contract. The defendant may also be restrained by injunction from damaging the subject matter of the contract or taking it out of jurisdiction. The court has power to make an order of detention or preservation of any property which is the subject matter of the action or for the inspection of any such property in the possession of a party. If it is necessary for the preservation of the property, the court may appoint some person to act as a receiver pending the determination of the proceedings. If the subject matter of the sale is the property (such as farm land) which needs to be worked in order to prevent deterioration, the receiver may also be appointed to act as a manager."

36. In Halsbury's 4th Edn. (Re-Issue) Vol. 39(2) in para 330, it has been laid down as follows :-

"In an action for specific performance or recession of a contract for the sale of land and especially for mining property, a receiver and if necessary a manager is frequently appointed to preserve the property until the right is decided."

37. In American Jurisprudence (Vol.75) Corpus Juris Secundum (in para 7), it is held as under :-

"Generally receiver may, in proper case, be appointed in an action involving real property, such as an action for partition, specific performance."

38. It is also necessary to mention here that the instant suit is of specific performance filed by the plaintiff on the basis of agreement dated 13.9.1988 executed in its favour by the defendant No.1. Mr. Luv Kr. Kaul is staking his claim *qua* that property on different grounds that cannot be the subject matter of these proceedings in which Tosh Apartments is the plaintiff. Mr. Kaul can assert his rights, if any, by

way of independent and substantive proceedings. We may also clarify that observations made in this order *qua* Mr. Kaul are totally tentative keeping in view only the nature of the suit filed by Tosh Apartments and these observations would not come in the way of Mr. Kaul in the independent proceeding, if he chooses to institute the same.

For this reason, even the amendment sought by Mr. Kaul appears to be unnecessary and not relevant, keeping in view the nature of suit filed by Tosh Apartments. In these proceedings, Mr. Kaul cannot assert his rights on the basis he wants to do.

39. For this reason, as well as other reasons given by the learned Single Judge, we affirm the order of rejection of the amendment application as well. As a result, these appeals are dismissed.

40. FAO (OS) No. 324/2008

This appeal is filed by Vidur Impex & Traders and five others against orders dated 26.5.2008 passed by the learned Single Judge whereby their application for impleadment in the suit has been dismissed by the learned Single Judge. These six appellants are the same persons who alleged that six agreements to sell dated 20.5.1997 in respect of the suit property were executed in their favour by the defendant No.1.

41. It is not necessary to repeat the facts, which we have already taken note of, including the fact that thereafter these six appellants entered into an agreement to sell with Bhagwati Developers, on the basis of

which consent award was passed and execution filed by Bhagwati Developers in the Calcutta High Court. In the application filed by the appellants for impleadment in the year 2008 (IA No. 1861/2008), they averred that they became aware of the injunction orders passed in the suit only after orders were passed by the Calcutta High Court in the execution petition filed by Bhagwati Developers. Their application was contested by Tosh as well as LR's of the defendant No.1.

42. The learned Single Judge has dismissed the application primarily on the ground that in a suit for specific performance filed by Tosh Apartments against the defendant No.1, predicated on agreement dated 13.9.1988, these appellants, being third party or stranger to the said contract/agreement, could not claim impleadment. It is also recorded that the purported sale transactions by the defendant No.1 in favour of these appellants was after the injunction order passed against defendant No.1 and Mr.Luv Kumar Kaul. It also noted that on 22.1.2001, the said defendants were restrained from delivering possession of the suit property to these very appellants (respondent Nos. 3 to 8 in the application in which orders were passed). The learned Single Judge took note of judgments of the Supreme Court, as per which under these circumstances these appellants could not be impleaded as defendants, which can be found from the following discussion :-

“18. The applicants are correct in their submission that in *Kasturi's* case, the Supreme Court considered as to who would be necessary parties in a suit for specific performance.

Although, there are some observations in the decision which seem to favour the applicants, at the same time, the Court after noticing previous judgments, particularly, *Anil Kumar singh vs. Shivnath Mishra*, (1995) 3 SCC 147, *Vijay Pratap v. Sambhu Saran Sinha*, (1996) 10 SCC 53 held that a third party or a stranger to a contract cannot be added to the proceeding so as to convert its character into a suit of different character. The Court further held that in a proceeding for specific performance adjudication of collateral matters should not be permitted, so as to change the nature of the proceeding into a complicated suit for title between the plaintiff and others, who were not parties to the contract for specific performance, but claimed to have acquired title subsequently. Therefore, this court is of the opinion that the Supreme Court in *Kasturi's* case did not uphold a broad proposition that every subsequent purchaser of property, which in a matter of suit for specific performance of a contract, is a necessary party.

19. The decisions in *Bibi Zubaida Khatoon* and *Surjit Singh* are in this context of some significance. *Bibi Zubaida Khatoon* was a case where during pendency of the suit for specific performance the vendor sold the property without seeking leave of the Court. The Court upheld the rejection of application (for impleadment of the transferee) by the trial court as affirmed by the High Court on the ground that a transferee pendente lite cannot, as of right, seek impleadment as a party in such suit unless the sale was preceded by leave of Court. *Surjit Singh* was a suit for partition where the Court had restrained all parties alienating or otherwise transferring a suit property. Contrary to that order, one of the parties sold his share. The assignee sought impleadment in the suit. The Court, although dealing with the issue under Order XXII Rule 10 CPC made observations which are quite apt in the present context :

“In defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seisin of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the Court orders otherwise. The Court, in these circumstances has the duty, as also the right, to treat the alienation/assignment as having not taken place at all for its purposes. Once that is so, Pritam Singh and his assignees, respondents herein, cannot claim to be impleaded as parties on the basis of assignment. Therefore, the assignees-respondents could not have been impleaded by the trial court as parties to the suit, in disobedience of its orders. The principles of lis pendens as altogether on a different footing. We do not propose to examine their involvement presently. All what is emphasized is that the assignees in the present facts and

circumstances had not cause to be impleaded as parties to the suit.”

20. The cumulative sequence of events noticed above leads this Court to conclude that the vendor P.K. Khanna allegedly sold the properties in 1997. The applicants also claim as such. They were aware about the existence of this suit if not in 1999 at least from 2001 onwards, when they were made parties in an application and subject to an injunction. Their conduct in approaching, for impleadment, now seven years later, cannot be countenanced. That apart, as held in *Kasturi's* case their impleadment would completely alter the nature of the suit which was instituted in 1993 for specific performance of a contract, of 1988.”

43. Mr. Dushyant Dave, learned senior counsel for the appellants, referred to the orders dated 22.1.2001 passed in IA No. 625/2001 whereby injunction orders were passed against the present appellants as well. Similarly, in IA No. 9576/2001, the learned Single Judge had issued direction against the appellants to deposit the title deeds. On this basis, he argued that it clearly showed that even as per the respondents, the appellants were necessary parties. He also cited the following judgments of the Supreme Court in support of his submission :-

(i) *Khemchand Shankar Choudhari & Anr. v. Vishnu Hari Patil & Ors.*
(1983) 1 SCC 18

(ii) *Ramesh Hirachand Kundanmal v. Municipal Corpn. of Greater Bombay & Ors.*
(1992) 2 SCC 524

(iii) *Razia Begum v. Sahebzadi Anwar Begum & Ors.*
AIR 1958 SC 886

44. We are of the opinion that order of the learned Single Judge does not need any interference and in the circumstances of this case the trial court rightly refused the prayer of the appellants to implead

themselves as parties in the suit. Our conclusion is based on the following reasons :-

- (a) Even as per the version of the appellants, they have further sold the property to Bhagwati Developers and, therefore, as of today, they have no direct or commercial interest left in the property.
- (b) They never approached earlier for their impleadment and application was filed only in the year 2008, by which date they had, as per their own showing, lost interest in the suit property.
- (c) Defendant No.1 purportedly sold the property in their favour even when there was an injunction order. In these circumstances, it cannot be said that they were the *bona fide* purchasers.

In *Surjit & Ors. etc. etc. v. Harbans Singh & Others etc. etc.*, JT 1995 (6) SC 415, the Supreme Court, in similar circumstances observed as under :-

“4. In sum, it did not make any appreciable difference whether the property per se had been alienated or a decree pertaining to that property. In a defiance of the restraint order, the alienation/assignment was made. If we were to let it go as such, it would defeat the ends of justice and the prevalent public policy. When the Court intends a particular state of affairs to exist while it is in seizing of a lis, that state of affairs is not only required to be maintained, but it is presumed to exist till the court orders otherwise. The court in these circumstances has the duty as also the right to treat the

alienation/assignment as having not taken place at all for its purposes”

To the same effect is the judgment of this Court in *Sanjay Gupta v. Smt. Kala Wati*, 85 (2000) DLT 828, and following observations contained therein need a mention :-

“15. it is immaterial whether the alienee pendent lite had or had no notice of the pending proceedings. Nor is it necessary that the alienee must be impleaded as a party to the suit. Such transferee has no prior equity nor any pre-existing right

16. The broad purpose of Section 52 is to maintain the status quo unaffected by the act of any party to the litigation pending its determination [*Gauri Dutt Maharaj v. Sukur Mohammad*, AIR 1948 PC 149 and *Joginder Singh Bedi (supra)*]. Section 52 placed a complete embargo on the transfer of immovable property right which is directly and specifically in question in a pending litigation and applies irrespective of the strength or weakness of the case on one side or other (*Kedarnath v. Sheonarain*, AIR 1970 SC 1717)”

45. Insofar as orders passed by this Court in IA No. 625/2001 and IA No. 9576/2001 are concerned, those applications were moved when the plaintiff/Tosh Apartments came to know that in spite of the injunction orders, the defendant No.1 wanted to fritter away the property and created third party interest and since such a move on the part of the defendant No.1 was in favour of these appellants, in order to secure effective implementation of the injunction order passed earlier, these appellants were made respondents for limited purpose. That would not mean that in a suit for specific

performance of agreement to sell, in which these appellants are the strangers, they will have any right or so.

46. We, therefore, do not find any merit in this appeal and dismiss the same with costs.

(A.K. SIKRI)
JUDGE

(MANMOHAN SINGH)
JUDGE

February 20, 2009
nsk