

2. The first plaintiff is the absolute owner of L-14 Basement, Kailash Colony, measuring 229 sq. yards. The second plaintiff is her husband and duly Constituted Attorney. The plaintiff refers to – and relies upon an agreement dated 12.02.2009 entered into with the first defendant wherein it was agreed that the said property would be furnished as security in a Probate case filed by the first defendant. The relevant conditions of the said agreement are as follows:

“XXXXXX XXXXXX XXXXXX

1. *That the First party shall be giving the surety in court of his property for the benefit and as a favor to the second party.*

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4. *That in the event the second party fails to get the first party property that he has given for surety purpose discharged from all liabilities on or before the completion of the deal of the property of the second party bearing no. N-23, G.K.I, New Delhi-110048 then it shall be the duty of the second party to ensure that the first party property is discharged from all liability and that any liability if any is raised for the property of the second party then despite acting as surety of the second party the first party shall not be liable to make any payments to anyone and the liability to make up any damages or loss or payment shall solely be of the Second Party. For this if the Second party has to provide money to the First party it shall be bound to do so.*

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3. The plaintiff relies upon a further condition apparently inserted by hand and signed by both the parties in the agreement which is in the following terms:

“XXXXXX XXXXXX XXXXXX

I Steven Singh Lamba hereby Guarantee that I shall get the surety property discharged by the 13th March 2009 or within one year from the date of court judgment whichever is earlier.

XXXXXX XXXXXX XXXXXX”

4. The plaintiff next contends that the Probate Case culminated by the judgment of the learned Additional District Judge dated 25.07.2008 where the first defendant was

granted Letters of Administration dated 06.02.2005 in respect of the Will of his deceased mother. The judgment required the first defendant to furnish administration and surety bonds and also file the final accounts within one year. Apparently, an application for discharge of the plaintiff's security was moved; however, the learned ADJ did not accept the same. The surety of the plaintiffs' property, therefore, continued even after the grant of Letters of Administration. In these background of circumstances, the plaintiff had earlier approached this Court by filing CS (OS) 1366/2009, arguing that the defendants, despite the grant of Letters of Administration, failed to adhere to the terms of his agreement and get the surety discharged within the time agreed, and on the contrary, entered into an agreement sometime in July 2009 with one Sh. Subhash Arora to negotiate the sale of the property which was the subject matter of the Letters of Administration. In these circumstances, decree for mandatory injunction, not to encash an amount of ₹ 50,00,000/- lying in the first defendant's account, with the second defendant bank and also a mandatory injunction to direct the first defendant to release the Surety Bond, was sought.

5. In CS (OS) 1366/2009, on a motion for temporary injunction, the Court issued notice and granted *ad interim ex-parte* relief in the following terms:

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I.A. No. 9554/2009 (Under Order 39 Rule 1 & 2) in CS (OS) 1366/2009

Issue notice to the defendant, returnable on 17.08.2009; dasti in addition. The service may also be effected through e-mail; the plaintiffs' counsel shall provide e-mail identity of the defendant to the Court during the course of the day.

The plaintiffs claim injunctive relief against the defendant; the Plaintiff No.1 is the owner of property, being L-14 (basement), Kailash Colony, New Delhi; the plaintiffs contend that the defendant applied for Letters of Administration in respect of property, being no. N-23, Greater Kailash Part-I, which was granted by the Court; a copy of the judgment of the Addl. District Judge is placed on the record. A condition of the Letters granted by the Court required the defendant to furnish Administration and Surety Bonds; it is claimed that he relied upon the plaintiffs, who agreed to furnish the security of her property.

The plaintiffs allege that now the defendant, without the disclosure to the Court, is wishing to sell the said Greater Kailash property thus imperiling her property furnished as a surety to the Court for grant of due administration of letters. It is contended that this is plainly contrary to Section 317 of the Indian Succession Act.

The plaintiffs' counsel contends that the defendant is presently in New Delhi, staying in a hotel and is likely to leave the country on 04.08.2009.

Having regard to the averments made and the documentary material placed on record, the Court is of the opinion that prima facie the plaintiffs have shown a strong case for grant of interim relief; in the event of refusal of which, they are likely to suffer serious injury.

In the circumstances, the defendant is restrained from selling, parting with possession or creating in any manner, third-party rights in respect of the property, being N-23, Greater Kailash-I, till the next date of hearing.

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6. Subsequently, the present plaintiff approached the Court, contending that after the above interim order had been made, the first defendant apparently furnished some other security and had discharged all their properties. In these circumstances, the plaintiff sought for withdrawal of suit which was granted with liberty to file a fresh case. The order dated 24.08.2009 is in the following terms:

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Learned counsel submits that the reliefs sought in this case have been rendered academic since the defendants have now furnished some other security. It is, however, stated that the plaintiffs are entitled to amounts in terms of the agreement in question and that in addition, the plaintiffs have a cause of action to claim certain amounts as damages for being driven into unwarranted litigation.

In the circumstances, the plaintiffs seek permission to withdraw this Suit and to file a fresh one in respect of the other claims and in respect of the subsequent developments.

Suit is dismissed as withdrawn. Liberty sought for is granted.

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7. The plaintiffs submit that the surety of their property was discharged because another security was furnished by Sh. Subhash Arora, who had intended to purchase the first defendant's property for which Letters of Administration was issued. The plaintiffs reply upon the stipulation in Clause-2 of the agreement dated 12.02.2009 which obliged the first defendant to pay ₹ 12,00,000/- on or before 13.03.2009 or 16.03.2009, whichever was earlier. It is also submitted that the Defendant No.1 did not intentionally adhere to these bargain and on the other hand, came to India, stayed in Metropolitan Hotel, New Delhi and negotiated for the sale of the said Greater Kailash property and even received the part consideration for that purpose even while the plaintiffs' property continued to be pledged as surety for the proper accounts. It is contended that this is contrary to the terms of the agreement and as a result the plaintiffs are entitled to ₹ 12,00,000/- with costs which are quantified at ₹ 10,90,000/-. The plaintiffs also seek permanent injunction against the defendant from operating NRO Account No. 166-158642-006 with the second defendant bank.

8. The first Defendant was directed to be served through e-mail; service was in fact completed pursuant to which he sent e-mail communications on 09.11.2009 and dated 20.03.2010. These do not confirm to the requirements spelt-out in the Civil Procedure Code (CPC) for a written statement. However, it would be worthwhile to notice the first defendant's admission. He does not dispute the agreement entered into with the plaintiffs and that the latter furnished a surety. Yet, he contests that the surety was for a period of one year. He also alleges that the plaintiff was paid equivalent of ₹ 12,00,000/- in US currency during his (first defendant's) visit when he stayed in New Delhi. He further admits that no receipt was issued or secured from the plaintiffs at that time.

9. The absence of a written statement, despite service on the defendant invests the Court with discretion under Order 8 Rule 10 to proceed to either decree the suit or make such order as is appropriate under the circumstances. The plaintiff has placed on record

the originals of the agreement dated 12.02.2009 and certified copies of this Court's order in the previous case, i.e. CS (OS) 1366/2009. The plaintiff has also placed on the record a copy of the order of the Addl. District Judge dated 25.07.2008. The plaintiff relies upon Bill of Costs for ₹ 1,61,700/- in respect of the previous case, i.e. CS (OS) 1366/2009.

10. The terms of agreement dated 12.02.2009 clarify that the plaintiffs were to furnish surety in respect of the property as Security in the first defendant's probate proceedings. The stipulations in the agreement clearly are that the surety was for a period of one year. The Court granted letters of administration on 25.07.2008. However, the one year period was granted for furnishing final accounts till which surety could not be discharged. In the meanwhile, the first defendant appears to have negotiated for sale of the property which was subject matter of letters of administration; he also came to Delhi for that purpose in July 2009. This was done despite the plaintiffs continuing with their surety of their premises in support of the grant of the letters of administration to the first defendant. The plaintiffs' apprehension that unless their interests were secured, proved to be correct because after the injunction was made in CS (OS) 1627/2009, the first defendant was able to arrange for discharge of the surety furnished by the plaintiff in the probate Court. In these circumstances, the Court is satisfied that the plaintiffs have established entitlement to the amount agreed by the parties on 12.02.2009, i.e. ₹ 12,00,000/-.

11. As far as the costs and damages are concerned, the plaintiffs claim ₹ 1,61,700/- as counsel's fee for the previous case, CS (OS) 1366/2009 and the further amount of ₹ 3,03,500/- towards counsel's fee for the present case and Court Fee of ₹ 88,000/- in both the suits.

12. Having considered the overall circumstances, this Court is of the opinion that the ends of justice would be met with if the plaintiffs are awarded 12% interest from 31.03.2009 on the amount of ₹ 12,00,000/- as well as *pendente lite* interest and future interest at the same rate. In addition, the plaintiffs are also held entitled to ₹ 3,50,000/- towards damages and costs, of the two legal proceedings. The interim injunction issued in this case, shall be continued for a further period of three weeks; the second defendant is

bound by its terms for that period; this is to enable the plaintiffs to initiate appropriate proceedings for execution of the present judgment and decree.

13. The suit is accordingly decreed in the above terms.

Order dasti.

S. RAVINDRA BHAT
(JUDGE)

SEPTEMBER 23, 2010
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