

\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% Date of Decision : 17<sup>th</sup> October, 2011

+ FAO(OS) 516/2009

SUSHIL KUMAR CHAKRAVARTY  
THRU LEGAL HEIRS ....Appellants  
Through: Mr.Rajesh Gupta and  
Mr.Harpreet Singh, Advocates

versus

M/S. TEJ PROPERTIES PVT. LTD. ....Respondent  
Through: Mr.Manoj Goel and  
Mr.Gopal Verma, Advocates.

FAO(OS) 517/2009

SUSHIL KUMAR CHAKRAVARTY ....Appellant  
THRU LEGAL HEIRS  
Through: Mr.Rajesh Gupta and  
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versus

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Mr.Gopal Verma, Advocates.

**CORAM:**  
**HON'BLE MR. JUSTICE PRADEEP NANDRAJOG**  
**HON'BLE MR. JUSTICE S.P.GARG**

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

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

1. By a common order dated 24.8.2009, the learned Single Judge has held that no sufficient cause was shown by the applicants of IA No.4531/2008 to have the delay condoned in filing that application as per cause shown in IA No.4532/2008; both applications were filed in CS(OS) No.1348/1996. Similarly, qua the same applicants it has been held that no sufficient cause was shown to condone the delay in filing IA No.3391/2008 in CS(OS) No.2501/1997. Thus neither was CS(OS) No.1348/1996, which was dismissed in default on 14.10.2004 restored, nor was the ex-parte decree dated 25.7.2007 passed in CS(OS) No.2501/1997 set aside.

2. The memo of parties in the appeal is misleading for the reason it evidences as if the legal heirs of late Sh.Sushil K.Chakravarty are litigating on the demise of late Sh.Sushil K.Chakravarty. We may highlight that both appeals have been filed by Arun K.Chakravarty and Sunil K.Chakravarty who claim to be Class-II heirs of late Sh.Sushil K.Chakravarty.

3. Both of them claim, that they learnt about CS(OS) No.1348/1996 which was dismissed in default on 14.10.2004, in the month of February 2008 and of CS(OS) No.2501/1997 being decreed in the same month and thus while seeking restoration of the former suit and setting aside of the ex-parte decree in the latter by filing applications under Order 9 Rule 9 CPC and Order 9 Rule 13

CPC respectively, in the 2 suits, both prayed that delay in filing the 2 applications be condoned.

4. Declining delay to be condoned, the learned Single Judge has opined that both of them were aware of the 2 suits being filed against their uncle during the life time of their uncle, when in reply to CCP No.450/1993 in Suit No.1479A/1989 as also reply to IA No.10161/1997 in said suit, it was disclosed by late Sh.Sushil K.Chakravarty that he was in litigation with Tej Properties Ltd. and for which 2 cross suits i.e. CS(OS) No.1348/1996 and CS(OS) No.2501/1997 were filed on the Original Side of the Delhi High Court. The learned Single Judge has accordingly opined that when reply was filed to IA No.10161/1997 on 25.8.1998 by late Sh.Sushil K.Chakravarty, it was disclosed about the pendency of the said 2 suits and thus the claim of the applicants that they learnt about the suits being filed only in the month of February 2008 was incorrect.

5. Relevant facts to be noted are that late Sh.Sushil K.Chakravarty had entered into a partnership with applicant No.2 i.e. Arun K.Chakravarty, his wife and his brother-in-law and pertaining to the partnership there was a dispute and since there existed an arbitration clause in the deed of partnership, wife of applicant No.2 i.e. Arun K.Chakravarty and his brother-in-law filed a petition under Section 20 of the Arbitration Act 1940 which was registered as Suit No.1479A/1989 and needless to state Sh.Sushil K.Chakravarty was the respondent therein.

6. We note that it was the wife of applicant No.2 and his brother-in-law and not applicant No.2 who were the petitioners in Suit No.1479A/1989.

7. An MOU dated 26.10.1986 pertaining to the partnership was also a subject matter of dispute, and seeking cancellation thereof applicant No.2 Sh.Arun K.Chakravarty, his wife and his brother-in-law filed a suit registered as Suit No.1275/1990. The defendant of the suit was late Sh.Sushil K.Chakravarty.

8. Agricultural land in village Chattarpur, popularly known as 'Maharani Rosary' was held as a bhumidar by late Sh.Sushil K.Chakravarty. Applicant No.2 i.e. Arun K.Chakravarty, his wife and his brother-in-law were claiming the same to be an asset of the partnership firm and had obtained an injunction in the suits above-mentioned filed by them whereby Sushil K.Chakravarty was restrained from selling or encumbering the said land.

9. Late Sh.Sushil K.Chakravarty entered into an Agreement to Sell on 17.3.1992 with the respondent company M/s.Tej Properties Pvt. Ltd. whereunder for a sale consideration of ₹60 lakhs he agreed to sell the land comprising Maharani Rosary to the company and received ₹22 lakhs as part sale consideration.

10. A dispute ensued between late Sh.Sushil K.Chakravarty and M/s.Tej Properties Pvt. Ltd. pertaining to the Agreement to Sell dated 17.3.1992. Late Sh.Sushil K.Chakravarty filed CS(OS) No.1348/1996 praying for a decree to cancel the agreement and by way of cross-suit, seeking specific performance of the Agreement to Sell dated 17.3.1992, M/s.Tej Properties Pvt. Ltd. sought enforcement of the Agreement to Sell by and under CS(OS) No.2501/1997.

11. Having filed a written statement in CS(OS) No.1348/1996, late Sh.Sushil K.Chakravarty stopped prosecuting CS(OS) No.1348/1996. Whereas CS(OS) No.1348/1996 was dismissed in default on 14.10.2004, he was proceeded against ex-parte in CS(OS) No.2501/1997.

12. As noted herein above, when applicant No.2 Sh.Arun K.Chakravarty and his wife as also his brother-in-law learnt of the Agreement to Sell dated 17.3.1992, CCP No.450/1993 and thereafter IA No.10161/1997 in CS(OS) No.1479A/1989 were filed by the wife and the brother-in-law of Sh.Arun K.Chakravarty, in which, as noted herein above, when reply was filed to IA No.10161/1997 on 25.8.1998 by late Sh.Sushil K.Chakravarty, he disclosed about pendency of CS(OS) No.1348/1996 and CS(OS) No.2501/1997 between him and M/s.Tej Properties Pvt. Ltd. as also the fact that the subject matter of the two cross suits was the Agreement to Sell dated 17.3.1992 pertaining to the land comprising Maharani Rosary.

13. Now, the appellants i.e. the applicants before the learned Single Judge urge before us that from the fact that the wife and the brother-in-law of appellant No.2/applicant No.2 had knowledge of CS(OS) No.1348/1996 and CS(OS) No.2501/1997, it cannot be inferred that the applicants also had knowledge of the 2 suits.

14. It is not disputed that the wife of applicant No.2 has cordial relations with him and resides with him. Thus, her knowledge being passed on to her husband on an issue of vital interest concerning her husband is a matter of fact which we do not believe that she did not pass on to her husband. But, we need not rest our decision on our belief

which requires an inference to be drawn based on normal human conduct i.e. of a matter of vital interest concerning a husband and a wife being within the knowledge of either spouse and passed on to the other, for the reason there exists a fact of vital importance which unequivocally shows the knowledge of applicant No.2 qua the pendency of the two cross suits between Late Sh.Sushil K.Chakravarty and M/s.Tej Properties Pvt. Ltd.

15. As noted by us herein above, applicant No.2 Sh.Arun K.Chakravarty, along with his wife and brother-in-law had filed CS(OS) No.1275/1990 seeking a declaration that the MOU dated 26.10.1986 pertaining to the partnership which they had entered into with late Sh.Sushil K.Chakravarty be declared illegal and not binding on them and this Suit was admittedly directed to be tagged on, though not consolidated, but listed with CS(OS) No.1479A/1989. It is not in dispute that the 2 suits were being listed together, and thus from said fact one can safely conclude knowledge of Arun K.Chakravarty that his uncle late Sh.Sushil K.Chakravarty and M/s.Tej Properties Pvt. Ltd. were in litigation as cross plaintiffs and defendants in CS(OS) No.1348/1996 and CS(OS) No.2501/1997.

16. His claim that he learnt about the Suits only in the month of February 2008 is patently false.

17. We may highlight that late Sh.Sushil K.Chakravarty was proceeded ex-parte vide order dated 1.8.2000 in CS(OS) No.2501/1997. We also note that he died on 3.6.2003 and M/s.Tej Properties Pvt. Ltd. filed IA No.9676/2003 under Order 22 Rule 4(4) of the Code of Civil Procedure informing the Court that the company had no

knowledge about the deceased having left any legal heir and in any case prayed to the Court that since the defendant i.e. Sh.Sushil K.Chakravarty having filed written statement but had failed to appear and contest the suit, judgment be pronounced against him without bringing on record anybody as the legal heir.

18. Though the said application was not decided when the suit was decreed, but as held by the learned Single Judge, a reasoning with which we concur, the Court proceeded in the suit by treating there being no necessity to bring on record anybody as the legal heir of the deceased.

19. We may note that the subject property i.e. Maharani Rosary was mortgaged with New Bank of India, which right was vested in Punjab National Bank and to enforce the mortgage OA No.797/1995 was filed by the bank in which applicant No.2 Sunil K.Chakravarty was impleaded as respondent No.3. We note that the mortgage pertained to a debt taken by the partnership firm and on the death of late Sh.Sushil K.Chakravarty the fact of the deceased having executed a will in which he had specifically barred any brother or nephew of his to inherit his property was disclosed. Though not relevant for the purposes of the present decision, we would only highlight that both appellants are fully aware that they have no right and are litigating to trouble M/s.Tej Properties Pvt. Ltd.

20. We also need to highlight that though under the Agreement to Sell, it was the obligation of late Sh.Sushil K.Chakravarty to clear the mortgage, the company M/s.Tej Properties Pvt. Ltd. paid ₹1.28 crores to Punjab National Bank and got the mortgage redeemed. Apart from paying

₹22 lakhs to late Sh.Sushil K.Chakravarty the company has also paid ₹1.28 crores to Punjab National Bank.

21. Facts noted herein above would show that if not earlier, at least when late Sh.Sushil K.Chakravarty filed reply to IA No.10161/1997 in CS(OS) No.1479A/1989, reply being filed on 25.8.1998, the appellants acquired knowledge of the fact that pertaining to the Agreement to Sell dated 17.3.1992 their uncle, late Sh.Sushil K.Chakravarty and M/s.Tej Properties Pvt. Ltd. were in litigation and cross suits being CS(OS) No.1348/1996 and CS(OS) No.2501/1997 were pending. The 2 have not denied knowledge of their uncle having died on 3.6.2003. Thus, as Class-II heirs, a claim which they stake to inherit the properties of their uncle, they ought to have taken steps to seek substitution to prosecute, as plaintiffs CS(OS) No.1348/1996, and defend as defendants CS(OS) NO.2501/1997, within the limitation period prescribed to do so. Having knowledge of the pendency of the 2 suits, the former being dismissed in default on 14.10.2004 and in the latter their uncle being proceeded ex-parte on 1.8.2000 and the suit being decreed on 25.7.2007, it was too late in the day for the two to seek restoration of the former and setting aside of the ex-parte decree in the latter by filing applications in February 2008. Their claim that they had no knowledge of the two suits prior to first week of February 2008 is a false stand and thus we agree with the view taken by the learned Single Judge that both of them failed to show sufficient cause entitling them to have the delay condoned in preferring IA No.4531/2008 in CS(OS) No.1348/1996 and IA No.3391/2008 in CS(OS) No.2501/1997, and thus we dismiss both appeals

imposing costs (one set) in sum of ₹20,000/- against the appellants and in favour of the respondent.

(PRADEEP NANDRAJOG)  
JUDGE

(S.P.GARG)  
JUDGE

OCTOBER 17, 2011  
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