

*** IN THE HIGH COURT OF DELHI AT NEW DELHI**

FAO 491/2011

Judgment delivered on: 21st November, 2011

DELHI PROPERTIES & ORS Appellant
Through: Mr. Ajay Kohli, Adv.

versus

BRITISH MOTOR CAR CO 1934 LTD Respondent
Through: None

CORAM:

HON'BLE MR. JUSTICE KAILASH GAMBHIR:

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| 1. Whether the Reporters of local papers may be allowed to see the judgment? | No |
| 2. To be referred to Reporter or not? | No |
| 3. Whether the judgment should be reported in the Digest? | No |

KAILASH GAMBHIR, J. (Oral)

*** CM No.21009/2011**

1. Allowed, subject to all just exceptions.

FAO No.491/2011 & CM No.21010/2011

2. By way of this appeal filed under Order XLIII Rule 1 of the Code of Civil Procedure, 1908, the appellant seeks to challenge the order dated 13.9.2011, whereby the learned Trial Court has allowed the application of the respondent moved by them under Order XXXIX

Rules 1 and 2 of the CPC.

3. Arguing for the appellant, Mr. Ajay Kohli, learned counsel submits that the order under challenge was passed by the learned Additional District Judge in great haste and that too without granting any opportunity to the appellant to address arguments on the said injunction application. Counsel further submits that the learned Additional District Judge has not given any reasons to allow the application and, therefore, the appellant is not even in a position to know as what in fact had prompted the learned Trial Court to allow the application moved by the respondent.

4. I have heard learned counsel for the appellant.

5. A perusal of the impugned order clearly shows that the learned counsel representing the appellants, who are respondent nos.1 and 2 before the Court, prayed for some more time to file reply to the application moved by the respondent/plaintiff under Order I Rule 10 of the CPC read with Order VI Rule 17 of the CPC. Since notice of the said application could not be served on the proposed defendants to be impleaded by the respondents/plaintiffs, therefore, the respondent/plaintiff pressed for the interim injunction so as to seek a restraint order against the present appellants not to alienate or part with the possession or lease or licence the said premises to any third

party. The said prayer of the respondent for interim injunction was allowed by the Court and the present appellants/defendants no. 1-2 were restrained from alienating, parting with possession or inducting any other third party either by way of lease or licence the area under their occupation. The contention raised by learned counsel for the appellants is that after the passing of the said order, the appellants would be deprived even to license the various portions of the premises under their occupation in favour of its various customers although the exclusive control and possession of the premises always remains with the appellants. To demonstrate the nature of activities of the appellants, reliance has been placed on Agreement dated 25.8.2008 executed by the appellants in favour of M/s. Metlife India Insurance Co.Ltd. This Court is not inclined to give any view on the merits of the controversy in the main suit or in the interim application.

6. However, this Court does find itself distressed to find that the learned Additional District Judge has not given any reasons for allowing the said application of the respondents under Order XXXIX Rules 1 and 2, CPC. It is a well settled legal position that to know that the order should be a well reasoned and speaking order else without spelling out the reasons, none of the parties can have the advantage to know as to what in fact had transpired in the mind of the Court to take one particular view. In a recent judgment of the Supreme Court

in the case of ***State of Uttarakhand vs. Sunil Kumar Vaish*** **2011(8)SCC670**, the Court has again laid strong emphasis for the Courts to give sufficient reasons in their orders to take one particular view. It would be worthwhile to reproduce the relevant para of the said judgment as under:

"15. Judicial determination has to be seen as an outcome of a reasoned process of adjudication initiated and documented by a party based, on mainly events which happened in the past. Courts' clear reasoning and analysis are basic requirements in a judicial determination when parties demand it so that they can administer justice justly and correctly, in relation to the findings on law and facts. Judicial decision must be perceived by the parties and by the society at large, as being the result of a correct and proper application of legal rules, proper evaluation of the evidence adduced and application of legal procedure. The parties should be convinced that their case has been properly considered and decided. Judicial decisions must in principle be reasoned and the quality of a judicial decision depends principally on the quality of its reasoning. Proper reasoning is an imperative necessity which should not be sacrificed for expediency. The statement of reasons not only makes the decision easier for the parties to understand and many a times such decisions would be accepted with respect. The requirement of providing reasons obliges the judge to respond to the parties' submissions and to specify the points that justify the decision and make it lawful and it enables the society to understand the functioning of the judicial system and it also enhances the faith and confidence of the people in the judicial system.

16. We are sorry to say that the judgment in question does not satisfy the above standards set for proper determination of disputes. Needless to say these types of orders weaken our judicial system. Serious attention is called for to enhance the quality of adjudication of our courts. Public trust and confidence in courts stem, quite often, from the direct experience of citizens from the judicial adjudication of their disputes."

7. In the present case, the appellants, in the impugned order, were

restrained from alienating, parting with possession or inducting any third party either by way of lease or licence for the area under their occupation and certainly such an order has a serious effect on the rights of the appellants and such rights cannot be decided on taking a *prima facie* view of the matter without in fact going into the controversy and without giving an opportunity to both the parties to address arguments. The order passed by the learned Additional District Judge clearly shows that the same has been passed in a cavalier manner and such an approach of a judicial officer of the rank of Additional District Judge cannot be appreciated. This Court does not find necessary to direct notice of the present appeal and deems it fit to straightway remand the matter back to the learned Trial Court to decide the application of injunction filed by the respondent afresh. Needless to state, the learned Trial Court shall pass a reasoned order afresh after affording both the parties an opportunity to address arguments on the said application.

8. With the above observations, the appeal stands disposed of.

9. Dasti.

KAILASH GAMBHIR,J

NOVEMBER 21, 2011
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