

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

+ (1) CS(OS) No.693/2006

SHIV RAM BUILDERS PVT. LTD. Plaintiff

Through: Ms. Meenakshi Singh, Advocate

versus

JIWAN DASS (SINCE DECEASED)

THROUGH LRs

.... Defendants

Through: Defendants are *ex parte*.

+ (2) CS(OS) No.1215/1999

RAKESH KUMAR SHARMA

.... Plaintiff

Through: Ms. Meenakshi Singh, Advocate

versus

JIWAN DASS (SINCE DECEASED)

THROUGH LRs AND ORS.

.... Defendants

Through: Defendants Nos.1 to 7 are *ex parte*.

Mr. Sudhir K. Makkar,
Advocate for defendant No.8.

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Date of Decision : July 10, 2012

CORAM:
HON'BLE MS. JUSTICE REVA KHETRAPAL

J U D G M E N T

: REVA KHETRAPAL, J.

1. By this common judgment, both the aforesaid suits are being decided together in view of the commonality of facts and issues involved. The subject matter of both the suits is the same being property bearing Shop Nos.5 and 6, New Market, Malviya Nagar, New Delhi.

2. The facts in Suit No.CS(OS) 693/2006 may first be delineated as follows.

3. Late Shri Jiwan Dass was the owner of the suit property bearing Shop No.5, New Market, Malviya Nagar by virtue of Lease and Conveyance Deed duly registered in his favour as document No.1430 and 1431, in Additional Book No.I, Volume No.1717, on pages 160 to 170 and 172, dated 06.03.1967, in the office of the Sub-Registrar, New Delhi.

4. Late Shri Jiwan Dass was also the owner/lessee of property bearing Shop No.6, New Market, Malviya Nagar, New Delhi by

virtue of Mutation Letter No.L&DO/PS-III/373 dated 13.02.1987 issued by the Land Development Office, Nirman Bhawan, New Delhi read with Sale Deed duly registered in favour of Shri Jiwan Dass as Document No.8573 in Additional Book No.I, Volume No.5642 at pages 47-48, dated 8th October, 1986 in the Office of the Sub-Registrar at New Delhi. The original Lease and Conveyance Deed in respect of Shop No.6, New Market, Malviya Nagar, New Delhi was also duly registered as No.822-823 in Additional Book No.I, Volume No.1087, at pages 49 to 51 and 52 to 54 dated 04.02.1964, in the office of the Sub-Registrar, New Delhi in the name of late Shri Jiwan Dass.

5. Late Shri Jiwan Dass was the husband of the defendant No.1, Smt. Ram Datti and father of defendant Nos.2 to 7.

6. During his lifetime, Shri Jiwan Dass had entered into a Construction Agreement dated 3rd April, 1995 with the plaintiff M/s. Shiv Ram Builders Pvt. Ltd. through its Director Mr. Shiv Ram, by virtue of which the plaintiff was to construct a four storeyed building comprising of basement, ground floor, first floor and second floor, at the property bearing Shop Nos.5 and 6, New Market, Malviya Nagar,

New Delhi, measuring 84 sq. yards each (168 sq. yards in total) as per schedule of construction attached therewith on “WITH MATERIAL CONTRACT” basis. The complete specifications were set out in paragraphs 2(a) to (d) of the construction contract. In accordance with Clause 5 of the contract, the contractor was to deposit a security deposit of ₹ 6 Lacs (Rupees Six Lacs Only) with the owner, namely, Shri Jiwan Dass, which was to be refunded without interest by the owner to the contractor after completion of the construction, failing which the owner was to pay interest @ 2% per month on the security deposit and after further three months period Clause 10, which is stated to be the essence of the Agreement, was to become applicable. As per the aforesaid Clause 10, if the owner failed to make the full and final payment of construction charges and to return the security deposit to the contractor within a maximum period of nine months from the date of sanction of plans by MCD, then the contractor was to become the sole, absolute and exclusive owner and in possession of the entire ground floor in lieu of its costs of construction and security deposit along with interest on both. The relevant Clauses of the Agreement are being reproduced hereunder for facility of reference:-

“5. That the CONTRACTOR has agreed to deposit a Security Deposit of Rs.6,00,000/- (Rupees six lacs only) with the OWNER, as follows:

- i) Rs. 1,10,000/- at the time of signing of this Agreement.*
- ii) Rs. 25,000/- at the time of handing over the possession of the said property i.e. two Shops, for carrying out the construction.*
- iii) Rs. 4,65,000/- after sanction of plans by the M.C.D. for the construction over the said property.*

This security deposit will be refunded, without any interest, by the OWNER to the CONTRACTOR after completion of the construction of the property, failing which the OWNER shall bear 2% p.m. interest on the security deposit and after further three months period Clause No. 10, which is the essence of this Agreement, will be applicable.

6. That the CONTRACTOR shall complete the construction work of the said 4 storeyed building, as mentioned above, within six months from the date of sanction of the construction plans by the M.C.D, failing which Contractor will pay a penalty of Rs.500/- (Rupees five hundred only) per day for the period of delay.

7. That the lumpsum rate for the construction is settled between the parties at Rs.29,00,000/- (Rupees twenty nine lacs only). The full and final payment of construction as mentioned above, shall be paid by the OWNER to the CONTRACTOR either during the

construction by the Owner or within six months from the date of sanction of plans of construction, failing which the OWNER shall be liable to pay interest on the delayed payment @2% p.m. to the CONTRACTOR.

8. *That all the materials and labour for construction of the said 4 storeyed building shall be arranged by the CONTRACTOR.*

9. *That any action/consequence by the M.C.D, L&DO, Police, labour accidents, etc. during the construction will be the liability and responsibility of the CONTRACTOR.*

10. *That if under any circumstances the OWNER fails to make the full and final payment of construction charges and return the security deposit to the CONTRACTOR within a maximum period of 9 months from the date of sanction of plans by MCD, then the CONTRACTOR will become sole, absolute and exclusive owner and in possession of the entire Ground Floor in lieu of its cost of construction and security deposit alongwith interest on both. This clause is the essence of this Agreement and cannot be challenged by any party or their legal heirs or successors.*

11. *That till the full & final payment is made by the Owner to the Contractor, the Owner shall not use or enjoy the Ground Floor in any manner."*

7. It is the case of the plaintiff that the plaintiff in pursuance of the aforesaid Agreement constructed Shop No.5, New Market,

Malviya Nagar, New Delhi measuring 84 sq. yards and the rear portion measuring approximately 12' – 9" X 39' – 0" of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi with his own funds and resources.

8. It is further the case of the plaintiff that late Shri Jiwan Dass also executed a Receipt/Writing/Memorandum dated 10.06.1996 in favour of the plaintiff, whereby Shri Jiwan Dass agreed to sell the First Floor of the property bearing Shop Nos.5 and 6, New Market, Malviya Nagar, New Delhi to the plaintiff for a total sale consideration of ₹ 4 Lacs. The amount of ₹ 2 Lacs was paid by the plaintiff on 10.06.1996. A sum of ₹ 1,80,000/- was paid in cash while a sum of ₹ 20,000/- was paid vide cheque No.600008 dated 10th June, 1996 drawn on State Bank of India, Ring Road, Lajpat Nagar, New Delhi, as advance/earnest money towards part sale consideration of the property in question. The aforesaid cheque was duly encashed by late Shri Jiwan Dass. The possession of the property in question was also handed over by Shri Jiwan Dass to the plaintiff in part performance of the said Agreement/Writing/Memorandum. As per the Agreement, Shri Jiwan Dass, who had agreed to the sale of the

property in question, was to obtain the necessary permissions required for executing and completing the sale documents within six months from the date of the receipt. The balance sale consideration was to be paid at the time of execution of and completion of the sale documents by the plaintiff to late Shri Jiwan Dass. The sale documents were to be executed in the name of the plaintiff or its nominee within six months from 10.06.1996 as set out in the Memorandum/Writing/Receipt, which was duly executed in the presence of witnesses.

9. The plaintiff M/s. Shiv Ram Builders Pvt. Ltd. alleges that after handing over of possession of the first floor of property bearing Shop Nos.5 and 6, New Market, Malviya Nagar, New Delhi pursuant to the receipt executed by late Shri Jiwan Dass in part performance of the Agreement to Sell, late Shri Jiwan Dass and/or his legal heirs had no right, title or interest of any nature whatsoever left in the aforesaid portion of the property.

10. The plaintiff asserts that the plaintiff was always ready and willing to perform his part of the contract within the stipulated period of time as agreed between the plaintiff and Shri Jiwan Dass, but the

said Shri Jiwan Dass did not execute the instrument of transfer whereby the plaintiff has suffered loss to its interest. Late Shri Jiwan Dass and his legal heirs had turned dishonest and inspite of the repeated requests made by the plaintiff, both orally and in writing, failed to execute the Sale Deed of the property in question in favour of the plaintiff and even failed to obtain necessary permissions to enable them to execute the instrument of transfer in favour of the plaintiff.

11. The plaintiff asserts that the plaintiff has been in continuous, uninterrupted possession and enjoyment of the suit premises and has been enjoying possession thereof without any interruption or obstruction or demur or protest by late Shri Jiwan Dass and defendant Nos.1 to 7 from the date of the Receipt/Writing/Memorandum, i.e., 10th June, 1996.

12. It is alleged by the plaintiff that late Shri Jiwan Dass with ulterior motives and designs lodged a false complaint against the plaintiff for forgery and fabrication before the Crime Branch of the Delhi Police in the middle of the year 1998, in order to wriggle out of the Agreement dated 10.06.1996 and to avoid the execution of the

Sale Deed in respect of the first floor of the property in question in favour of the plaintiff. The plaintiff on December 29, 1998 sent a legal notice to Shri Jiwan Dass to comply with his obligations under the receipt dated 10.06.1996 and to transfer the suit property in the name of the plaintiff but with no result. Hence, the plaintiff was compelled to institute the present suit for specific performance of the Agreement/Receipt dated 10.06.1996 with a prayer for permanent injunction against the defendant Nos.1 to 7, who are the legal heirs of late Shri Jiwan Dass, restraining them from, in any manner, obstructing the business activities of the plaintiff on the first floor of the suit property and/or from in any manner interfering in the plaintiff's peaceful possession and enjoyment of the suit property.

13. Adverting to the facts in CS(OS) 1215/1999, it is the case of the plaintiff in the said suit, namely, Shri Rakesh Kumar Sharma, that he is the purchaser of the entire ground floor of property bearing Shop No.5, New Market, Malviya Nagar, New Delhi measuring 84 sq. yards, with rear portion measuring approximately 12' – 9" x 39' – 0" out of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi with structure standing thereon, fittings and

fixtures installed therein along with proportionate share of leasehold rights in the land underneath, by virtue of an Agreement to Sell dated 03.07.1996, entered into between him (Rakesh Kumar Sharma) and Shri Jiwan Dass (father of the defendant Nos.2 to 7 and husband of defendant No.1) and the defendant No.8, M/s. Shiv Ram Builders Pvt. Ltd. through its Director Shri Shiv Ram Sharma.

14. It is alleged that Shri Jiwan Dass had entered into a Construction Agreement dated 03.04.1995 with the defendant No.8 by virtue of which the defendant No.8 had constructed Shop No.5, New Market, Malviya Nagar, New Delhi measuring 84 sq. yards and rear portion of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi with his own funds and resources.

15. In terms of the Construction Agreement dated 03.04.1995 between late Shri Jiwan Dass and defendant No.8, late Shri Jiwan Dass was required to pay ₹ 29 Lacs as full and final payment for construction in terms of Clause 7 of the said Agreement, either during the construction by the owner or within six months from the date of sanction of plans of the construction, failing which Shri Jiwan Dass was liable to pay interest at the rate stipulated in the

Agreement itself. Clause 10 of the said Agreement further stipulated that in case Shri Jiwan Dass failed to make full and final payment of construction charges and return the security deposit of ₹ 6 Lacs to the defendant No.8 within a maximum period of nine months from the date of sanction of plans by MCD, then in such an event the defendant No.8 will become the sole, absolute and exclusive owner and shall be entitled to seek possession of the entire ground floor in lieu of the costs of construction incurred by him and the security amount deposited by him along with interest on both the said amounts. It was specifically stated in the said Agreement that this clause was the essence of the Agreement and could not be challenged by either party or their legal heirs or successors. Hence, the said Clause and the Agreement would bind defendant Nos.1 to 7, who are the legal representatives of late Shri Jiwan Dass.

16. It is the case of the plaintiff that late Shri Jiwan Dass was not in a position to make payment of the costs of construction in terms of the Construction Agreement dated 03.04.1995 and thus committed breach of Clause 10 of the Construction Agreement. The plaintiff submits that since late Shri Jiwan Dass was unable to perform his

obligations under the Construction Agreement, he (late Shri Jiwan Dass) by his letter dated 08.03.1996 required the defendant No.8 [plaintiff in CS(OS) No.693/2006] to retain the entire ground floor of the property bearing Shop No.5, New Market, Malviya Nagar, New Delhi and the rear portion of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi measuring approximately 12'x9" X 39'x0" on ownership basis. Consequently, Shri Jiwan Dass executed several documents on 27.03.1996 in favour of the defendant No.8 transferring his right, title and interest in the property in question in favour of the defendant No.8 for consideration, including Registered General Power of Attorney and Will alongwith supporting affidavits. According to the plaintiff, all the said documents are of a binding nature and would also bind the legal heirs of late Shri Jiwan Dass.

17. Consequent to the execution of the aforesaid documents by Shri Jiwan Dass in favour of the defendant No.8, the property in question built by the defendant No.8 was sold by the said defendant to the plaintiff, Shri Rakesh Kumar Sharma for a sale consideration of ₹ 27 Lacs. The total sale consideration was paid by the plaintiff to

the defendant No.8 on 03.07.1996, viz., ₹ 26,50,000/- (Rupees Twenty Six Lacs and Fifty Thousand Only) was paid by cheque No.511645 dated 03.07.1996, drawn on Punjab National Bank, Sector 27, Noida, and the sum of ₹ 50,000/- was paid in cash. The possession of the said property was also handed over on the spot by the defendant No.8 to the plaintiff in part performance of the Agreement to Sell dated 03.07.1996. Significantly, late Shri Jiwan Dass, being the registered owner/lessee of the said built up property and land had agreed to confirm and recognize the sale of the said portion of the suit property to the plaintiff by the defendant No.8 and his signatures, therefore, appear on the Agreement dated 03.07.1996 as a “Confirming Party”.

18. Late Shri Jiwan Dass and defendant No.8 specifically stated in the said Agreement dated 03.07.1996 that they had no right, title or interest of any nature whatsoever left in the aforesaid portion of the suit property sold by virtue of the said Agreement and the said property had been transferred absolutely with all rights to transfer by way of sale, mortgage, gift, lease, etc. by the plaintiff in favour of any other party.

19. Apart from the aforesaid, the defendant No.8 [plaintiff in CS(OS) 693/2006] also executed various other documents confirming the right, title and interest of the plaintiff in the aforesaid property including an Undertaking, General Power of Attorney, Indemnity Bond, Special Power of Attorneys, Affidavit, Will, Receipt and Possession Letter, all dated 03.07.1996. Late Shri Jiwan Dass and Shri Tula Ram Sharma also signed the Possession Letter executed by the defendant No.8 dated 03.07.1996. In fact, late Shri Jiwan Dass signed as a witness on the said document in his capacity of a Confirming Party to the Agreement to Sell dated 03.07.1996.

20. It is asserted by the plaintiff that after being put in possession in part performance of the Agreement to Sell, in the property in question on 03.07.1996, he started running a departmental store in the premises in the name and style of “Uma Maheshwari General Store” and remained in continuous and uninterrupted possession of the suit property from the aforesaid date, i.e., 03.07.1996 till about the middle of 1998. Thereafter, late Shri Jiwan Dass with ulterior motives and designs started a cycle workshop right in front of the departmental store of the plaintiff, thereby obstructing the business

activities of the plaintiff and causing harassment to the employees and customers of the plaintiff by creating an impediment in the ingress and egress to the shop of the plaintiff. Late Shri Jiwan Dass also repeatedly interfered in the business activities of the plaintiff, *inter alia*, by obstructing the water supply, putting sign board adjacent to the stairs at the entrance of the plaintiff's departmental store, etc., due to which the plaintiff had to approach the police authorities from time to time. On 30th September, 1998, the plaintiff learnt that late Shri Jiwan Dass had lodged an FIR with the Deputy Commissioner of Police, Crime Branch, New Delhi alleging that the defendant No.8 had illegally inducted several persons including the plaintiff in the property in question, which was allegedly being managed by one Manoj @ Chunnu. The lodging of the aforesaid FIR by Shri Jiwan Dass clearly demonstrated the fact that he had turned dishonest and was trying to resile from the Agreement to Sell dated 03.07.1996 and to oust the plaintiff from his lawful possession in the property in question in view of the escalation of the price of property in the area.

21. The further case of the plaintiff is that the fear psychosis generated by the police officials and the Crime Branch brought the plaintiff's legitimate business activities to a standstill causing huge financial losses to the plaintiff and tarnishing his name and goodwill. The contents of the said FIR were false to the knowledge of late Shri Jiwan Dass, who was a "Confirming Party" to the Agreement dated 03.07.1996 executed in favour of the plaintiff by the defendant No.8. Hence, the present suit for specific performance of the Agreement dated 03.07.1996 filed by the plaintiff Shri Rakesh Kumar Sharma with a prayer for a decree of permanent injunction against the defendant Nos.1 to 7, the legal heirs of late Shri Jiwan Dass, from in any manner interfering in the peaceful possession of the plaintiff and a decree of declaration that the plaintiff is in possession of the suit property in part performance of the Agreement to Sell dated 03.07.1996.

22. Although initially the legal representatives of late Shri Jiwan Dass appeared in response to the summons issued to them in both the suits and filed their written statements, subsequently, for reasons best known to them the said defendants were proceeded *ex parte* in

default of appearance. *Ex parte* evidence was adduced by the plaintiff by way of affidavits in both the suits.

23. In CS(OS) No.693/2006, the plaintiff M/s. Shiv Ram Builders Pvt. Ltd. adduced the evidence of Mr. Shiv Ram Sharma, who in the course of his evidence reiterated the contents of the plaint and proved on record the following documents:-

- (i) Certified copy of the Board Resolution dated 30th April, 1999 of the plaintiff Company authorizing Mr. Shiv Ram Sharma, Director of the plaintiff Company to file and institute the suit on behalf of the Company – **Ex.PI.**
- (ii) Memorandum and Articles of Association of the Plaintiff Company – **Ex.PII.**
- (iii) Receipt/Memorandum/Writing dated 10.06.1996 – **Ex.PIII.**
- (iv) Site plan/map filed with the plaint – **Ex.PIV.**
- (v) Statement of Account of the plaintiff – **Ex.V.**
- (vi) Copy of the legal notice dated 29.12.1998 sent by the plaintiff Company to late Shri Jiwan Dass by registered A.D. post requesting him to execute the Sale Deed in its favour along with registered A.D. receipt and A.D. Card – **Ex.PVI.**

(vii) Final Report under Section 173 Cr.P.C. in case FIR No.445 dated 21.10.2002 – **Ex.PVII.**

24. In CS(OS) 1215/1999, affidavit by way of *ex parte* evidence was filed by the plaintiff Shri Rakesh Kumar Sharma, who apart from reiterating the contents of the plaint and the allegations against the defendants, proved on record the following documents:-

- (i) Agreement to Sell dated 03.07.1996 – **Ex.PW1/1.**
- (ii) Construction Agreement dated 03.04.1995 entered into between late Shri Jiwan Dass and M/s. Shiv Ram Builders Pvt. Ltd. – **Ex.PW1/2.**
- (iii) General Power of Attorney dated 03.07.1996 executed by Shri Shiv Ram Sharma in favour of the plaintiff Shri Rakesh Kumar Sharma – **Ex.PW1/3.**
- (iv) Indemnity Bond dated 03.07.1996 executed by Shri Shiv Ram Sharma in favour of the plaintiff Shri Rakesh Kumar Sharma – **Ex.PW1/4.**
- (v) Will dated 03.07.1996 executed by Shri Shiv Ram Sharma in favour of the plaintiff Shri Rakesh Kumar Sharma in respect of the suit property – **Ex.PW1/5.**

- (vi) Affidavit in support of the Will dated 03.07.1996 – **Ex.PW1/6.**
- (vii) Special Power of Attorney authorizing the plaintiff to represent before the offices of DESU/MCD or any concerned authority for the purpose of getting water and electricity connections/meters in the suit property – **Ex.PW1/7.**
- (viii) Special Power of Attorney authorizing the plaintiff to sell/transfer the suit property to any intending purchaser and to sign and execute all relevant documents, including Sale Deed – **Ex.PW1/8.**
- (ix) Undertaking dated 03.07.1996 issued by Shri Shiv Ram Sharma in favour of the plaintiff to sign and execute all relevant documents in all times to come for the smooth transfer of the suit property bearing the signatures of late Shri Jiwan Dass as a witness thereto – **Ex.PW1/9.**
- (x) Affidavit dated 03.07.1996 executed by Shri Shiv Ram Sharma stating on oath that pursuant to the Agreement to Sell dated 03.07.1996 and the receipt of the full sale consideration, the possession of the suit property had been transferred to the plaintiff – **Ex.PW1/10.**

- (xi) Possession Letter dated 03.07.1996 executed by Shri Shiv Ram Sharma in favour of the plaintiff handing over the suit property to the plaintiff which also bears the signature of late Shri Jiwan Dass as a witness thereto – **Ex.PW1/11.**
- (xii) Receipt in the sum of ₹ 27 Lacs dated 03.07.1996 executed by Shri Shiv Ram Sharma bearing the signatures of late Shri Jiwan Dass as a witness thereto – **Ex.PW1/12.**
- (xiii) Telegraphic notice dated 10.02.1999 sent by the plaintiff to Mr. R.S. Dahiya Assistant Commissioner of Police, Crime Branch, stating that the plaintiff Shri Rakesh Kumar Sharma was the owner of the property in question and was in lawful possession of the said property by virtue of the Agreement dated 03.07.1996 executed by M/s. Shiv Ram Builders Pvt. Ltd. for lawful consideration and asking the police to refrain from threatening the plaintiff and his employees – **Ex.PW1/13.**

25. No evidence in rebuttal was adduced by the defendants either in the first suit or in the second suit.

26. Having heard the learned counsel for the plaintiffs in both the suits and scrutinized the documentary evidence on record as well as

the affidavits by way of evidence filed by the plaintiffs – Shri Shiv Ram Sharma and Shri Rakesh Kumar Sharma, which are unchallenged on record, it is deemed necessary to highlight the admitted facts, but before doing so, a look at the written statements of the *ex parte* defendant Nos.1 to 7 is warranted to gauge the nature of the controversy involved and to note the facts which are not disputed by the defendants.

27. In the written statement filed on behalf of the defendant Nos.1 to 7, the main defence set up by the said defendants is that all the documents relied upon by the plaintiffs were either forged or drawn on blank papers on which the signatures of late Shri Jiwan Dass had been fraudulently obtained at the time of the execution of the Construction Agreement dated 3rd April, 1995. In normal course, such documents could not have been executed and thus a fraud had been played upon late Shri Jiwan Dass by Shri Shiv Ram Sharma in collusion with his henchmen who are land grabbers. In fact, late Shri Jiwan Dass was not even the owner of the suit property in Suit No.1215/1999, which was sold by Shri Shiv Ram Sharma to Shri Rakesh Kumar Sharma after purchasing the same from late Shri

Jiwan Dass. It was the defendant No.1, Smt. Ram Datti (wife of Shri Jiwan Dass), who was the owner thereof. It was asserted that the defendant No.1 had filed Suit No.544/1995, in which suit a compromise application was filed by the parties on the basis of which the suit was decreed by the Court. It is further asserted that Shri Shiv Ram Sharma was a signatory to the said compromise application and had full knowledge of the fact that it was the defendant No.1 who had ownership rights in the ground floor of the suit property. To put it differently, the ownership rights of the defendant No.1 in the ground floor of the Shop No.5 had been recognized by both late Shri Jiwan Dass and Shri Shiv Ram Sharma in the compromise application dated 30.01.1996, and in view of this, the Agreement to Sell dated 03.07.1996 could not have been entered into by Shri Shiv Ram Sharma in respect of the same portion of the suit property. Likewise, late Shri Jiwan Dass could not have acted as “Confirming Party” to the said Agreement.

28. Certain other circumstances have also been set out by the defendant Nos.1 to 7, which are not narrated in detail in view of the fact that the said defendants have chosen not to defend the suits and

were proceeded against *ex parte* in default of appearance. A reference was, however, made to the written statements of the defendant Nos.1 to 7 to bring out the admitted facts, which emerge as follows.

29. The defendant Nos.1 to 7 have not denied the existence of either the Construction Agreement dated 03.04.1995 between late Shri Jiwan Dass and M/s. Shiv Ram Builders Pvt. Ltd. or for that matter other documents executed between these two parties. The defendant Nos.1 to 7 have also not denied in their pleadings the execution of the Agreement to Sell dated 03.07.1996 between M/s. Shiv Ram Builders Pvt. Ltd. and Shri Rakesh Kumar Sharma, on which late Shri Jiwan Dass signed as “Confirming Party”. As noted above, the only defence raised by the defendant Nos.1 to 7 is that the aforesaid documents were got signed from late Shri Jiwan Dass when they were blank and a fraud was thus played upon him.

30. It also emerges from the record that at the time of execution of the Construction Agreement dated 03.04.1995 and pursuant to Clause 7 thereof, a sum of ₹ 6 Lacs was deposited by M/s. Shiv Ram Builders Pvt. Ltd. with the owner (late Shri Jiwan Dass), out of which

an amount of ₹ 5,40,000/- was paid by account payee cheques drawn in favour of late Shri Jiwan Dass. The defendant Nos.1 to 7 have not denied the receipt of this amount which was paid by cheque, although there is some dispute about the payment of balance sum of ₹ 60,000/-. There is also no material on record to suggest that late Shri Jiwan Dass had paid the costs and expenses incurred in the construction of the property by M/s. Shiv Ram Builders Pvt. Ltd. amounting to ₹ 29 Lacs. Inferentially, Clause 10 of the Agreement thus came into operation which provided that if under any circumstances the owner fails to make the full and final payment of the construction charges and return the security deposit to the contractor within a maximum period of nine months from the date of the sanction of plans by MCD, then the contractor will become the sole, absolute and exclusive owner of the entire ground floor in his possession in lieu of its costs of construction and security deposit along with interest on both. Clause 10 also specifically states:-

“This Clause is the essence of the Agreement and cannot be challenged by any party or their legal heirs or successors.”

31. In CS(OS) No.693/2006, the plaintiff M/s. Shiv Ram Builders Pvt. Ltd. has adduced the evidence of its Director Shri Shiv Ram Sharma to state that the plaintiff had paid the security deposit of ₹ 6 Lacs to late Shri Jiwan Dass—₹ 1.10 Lacs was paid by cheque on 03.04.1995, ₹ 25,000/- was paid in cash on 17.04.1995, ₹ 65,000/- was paid in cash before the sanction of the plans of the property and ₹ 4 Lacs was paid on 14.12.1995. The witness has also deposed that all the documents in favour of the plaintiff were executed by late Shri Jiwan Dass of his own volition and no blank papers signed by him were given by him to the plaintiff. The possession of the property in question was given to the plaintiff by late Shri Jiwan Dass on 07.04.1995. The plaintiff did not get possession of the front portion of Shop No.6 as late Shri Jiwan Dass stated that the possession of the said portion was with one of the tenants, namely, Shri Amar Nath, who remains a tenant till date. The gallery in Shop No.6 was also not handed over to the plaintiff and hence no construction could be carried out in the said portion. On 08.05.1995, late Shri Jiwan Dass received a letter of re-validation of the building plans in respect of the suit property; the entire security deposit had been furnished to him

before 14.12.1995 and the construction was completed by 31.01.1996, which had begun on 08.04.1995 after Shri Jiwan Dass had handed over the property to the plaintiff (except for the front portion of Shop No.6 and the gallery of Shop No.6). Since Shri Jiwan Dass was not in a position to re-pay the amount of security deposit and to pay the construction costs to the plaintiff, he executed various documents in favour of the plaintiff giving the ground floor of the property to the plaintiff, including Letter dated 08.03.1996, Registered General Power of Attorney and Will along with supporting Affidavit. The defendants had filed photographs of the portion in occupation of the tenant and the gallery in Shop No.6 with a view to mislead the Court and to make it believe that the building had not been completed till date and hence there was no occasion for late Shri Jiwan Dass to issue the letter dated 08.03.1996, or of his failure to pay the sum of ₹ 29 Lacs along with the security deposit of ₹ 6 Lacs.

32. PW Shri Shiv Ram Sharma further stated in his sworn affidavit that the plaintiff Company was in possession of the first floor of the property in question on account of the fact that it had paid a sum of ₹

2 Lacs to late Shri Jiwan Dass for the suit property out of the sale consideration of ₹ 4 Lacs. The balance sum of ₹ 2 Lacs was to be paid by the plaintiff to late Shri Jiwan Dass upon the latter executing the Sale Deed in his favour. Since he failed to execute the documents of sale in favour of the plaintiff Company, it had no alternative but to approach the Court by filing suit for specific performance. He further stated that late Shri Jiwan Dass and the defendants had been harassing the plaintiff by filing false criminal complaints in Malviya Nagar Police Station, before the DCP (Crime Branch) in order to deprive the plaintiff of the possession of the property due to the escalation in the prices of the property. However, the closure report of the Crime Branch dated 21.10.2002 (Ex.PVII) had been received closing the case.

33. The testimony of PW Shiv Ram Sharma was corroborated by the testimony of PW Rakesh Kumar Sharma in CS(OS) No.1215/1999. In his affidavit by way of evidence, Shri Rakesh Kumar Sharma stated on oath that the ground floor of Shop No.5, New Market, Malviya Nagar and the rear portion of Shop No.6, New Market, Malviya Nagar, New Delhi had been sold to him by M/s.

Shiv Ram Builders Pvt. Ltd. by an Agreement to Sell dated 03.07.1996; that he had paid the entire sale consideration of ₹ 27 Lacs to M/s. Shiv Ram Builders Pvt. Ltd., which fact was admitted by the said Company and that he was in continuous uninterrupted possession of the said property ever since 03.07.1996 when possession was handed over to him in part performance of the Agreement to Sell dated 03.07.1996 and he was, therefore, entitled to seek specific performance of the said Agreement to Sell, which was fully supported by a registered General Power of Attorney, two Special Power of Attorneys, Construction Agreement, Indemnity Bond, Will, Affidavits, Undertaking, Possession Letter and Receipt in his favour.

34. The aforesaid evidence of the plaintiffs is unrebutted and unchallenged on record. Thus, apart from the admissions contained in the written statement filed by the defendant Nos.1 to 7, there is evidence on record adduced by the plaintiffs to establish their case. As stated hereinabove, the evidence is suggestive of the fact that construction was completed by M/s. Shiv Ram Builders Pvt. Ltd. for which it was not paid the agreed construction costs of ₹ 29 Lacs and refund of the security deposit, thereby entitling the plaintiff to

possession of the entire ground floor of the suit property (Clause 10 of the Construction Agreement – Ex.PW1/2). There is also evidence on record to show that a sum of ₹ 27 Lacs was paid by Shri Rakesh Kumar Sharma to M/s. Shiv Ram Builders Pvt. Ltd. pursuant to Agreement to Sell dated 03.07.1996, out of which a sum of ₹ 26,50,000/- was paid by way of an account payee cheque drawn on the Punjab National Bank. The payment of such a huge amount by means of a cheque on execution of the agreement lends credence to the case of the plaintiffs that such an agreement was in fact entered into. Indubitably also, as on the date of the filing of the suit, M/s. Shiv Ram Builders Pvt. Ltd. was in possession of the first floor of the suit property and Shri Rakesh Kumar Sharma was in possession of the ground floor of the suit property, who was running his business from this property. Thus, the possession of the plaintiffs in the suit property in both the suits also stands established.

35. It also deserves to be highlighted that the defendant Nos.1 to 7 have not filed any case against the plaintiffs to obtain possession of the property which they claim had been illegally usurped from them in the year 1995. They have also not filed any suit or proceeding

against M/s. Shiv Ram Builders Pvt. Ltd. or Shri Rakesh Kumar Sharma, alleging that the plaintiff Company could not enter into the Agreement to Sell dated 03.07.1996, as it was the defendant No.1 who was the owner of the ground floor of the property. On the contrary, PW Shiv Ram Sharma has categorically stated in his sworn affidavit that his signatures on the compromise application filed in Suit No.544/1995 were forged and fabricated by the defendants in order to procure a decree in their favour in the said collusive suit. It was for the defendants to have rebutted the aforesaid evidence and to have led positive evidence to prove their defence. The defendants have chosen to sit on the fence rather than adduce any evidence in support of the stand taken by them in their written statement. Clearly, therefore, the plaintiffs are entitled to the relief prayed for by them in both the suits.

36. In the result, the prayer in CS(OS) No.1215/1999 is allowed by passing a decree in favour of Shri Rakesh Kumar Sharma and against the defendant Nos.1 to 7 as follows:-

- (a) A decree of specific performance of agreement dated 03.07.1996 directing defendant Nos.1 to 7, the legal heirs of

late Shri Jiwan Dass and the defendant No. 8 to execute a Sale Deed in respect of ground floor of Shop No.5, New Market, Malviya Nagar, New Delhi, measuring 84 sq. yds., with rear portion, measuring approximately 12' – 9" x 39' – 0" of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi, along with fixtures and fittings installed therein with the proportionate share of leasehold rights in the land underneath in favour of the plaintiff in terms of the Agreement to Sell dated 03.07.1996;

- (b) A decree for permanent injunction against the defendant Nos.1 to 7, legal heirs of late Shri Jiwan Dass restraining defendant Nos.1 to 7, their heirs, employees, servants, etc. from obstructing the business activities of the Plaintiff in ground floor, Shop No.5, New Market, Malviya Nagar, New Delhi, measuring 84 sq. yds., with rear portion, measuring approximately 12' – 9" x 39' – 0" of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi, on the ground floor, or causing harassment to the Plaintiff or his employees

and restrain defendant Nos.1 to 7 from in any manner interfering in the peaceful possession of the plaintiff;

- (c) A decree of declaration that the plaintiff is in possession of the Suit property on the ground floor of Shop No.5, New Market, Malviya Nagar, New Delhi, measuring 84 Sq. Yds., with rear portion measuring approximately 12' – 9" x 39' – 0" of the property bearing Shop No.6, New Market, Malviya Nagar, New Delhi, in part performance of the Agreement to Sell dated 03.07.1996 entered into by and between the plaintiff and late Shri Jiwan Das and defendant No.8.

37. CS(OS) No.693/2006 is decreed by passing a decree in favour of M/s. Shiv Ram Builders Pvt. Ltd. and against the defendant Nos.1 to 7 as follows:-

- (a) A decree of specific performance of Receipt/Writing dated 10.06.1996 executed by Jiwan Dass (since deceased) directing defendant Nos.1 to 7, who are the legal heirs of late Shri Jiwan Dass to execute Sale Deed and the instrument of transfer in respect of the first floor of property, bearing Shop Nos.5 and 6, New Market, Malviya Nagar, New Delhi, along with fixtures

and fittings installed therein with the proportionate share of leasehold rights in the land underneath in favour of the plaintiff in terms of Receipt/Writing dated 10.06.1996;

- (b) A decree for permanent injunction against the defendant Nos.1 to 7, who are the legal heirs of late Shri Jiwan Dass restraining them, their employees, servants, etc. from in any manner obstructing the business activities of the Plaintiff on the first floor of property No.5 and 6, New Market, Malviya Nagar, New Delhi, or causing any harassment to the plaintiff or his employees, servants, agents and restrain defendant Nos.1 to 7 from in any manner interfering in the peaceful possession and enjoyment of the suit property of the plaintiff.

38. CS(OS) No.693/2006 and CS(OS) No.1215/1999 stand disposed of accordingly.

**REVA KHETRAPAL
JUDGE**

July 10, 2012
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