

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

+ **CS(OS) 1718/2010 and IA Nos.11241/2010 and 11242/2010**

GURJEET KAPOOR

..... Plaintiff

Through: Mr. Pravin Sharma and
Ms. Kanika Sharma, Advocates

versus

M/S RCKC CREATIONS PVT LTD

..... Defendant

Through: Defendant is *ex parte*.

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Date of Decision : March 20, 2012

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. The plaintiff has filed the aforesaid suit, *inter alia*, for a decree of possession and recovery of a sum of ₹ 13,05,620/- (Rupees thirteen lakhs five thousand six hundred and twenty only) against the defendant along with *pendente lite* and future interest @ 18% per

annum from the date of the filing of the suit till the realisation of the amount.

2. The case of the plaintiff is that the plaintiff - Gurjeet Kapoor, son of late Shri Man Mohan Singh Kapoor, is the absolute owner of the suit premises, which is a flat on the first floor measuring 100 square yards situate at I-2 (adjoining I-1), Veer Savarkar Marg, Lajpat Nagar-II, New Delhi, by virtue of the last will and testament dated 10.05.1995 executed by the mother of the plaintiff, thereby bequeathing the said premises to the plaintiff. The plaintiff inducted the defendant as a tenant in this property vide Registered Lease Deed dated 28.03.2008, subject to terms and conditions mutually settled between the plaintiff and the defendant as incorporated in the said Lease Deed. The lease commenced from 15.04.2008 and the purpose of letting out the property to the defendant was commercial.

3. Under the terms of the Lease Deed dated 28.03.2008 as contained in Clause 6 thereof, the defendant was under an obligation to pay a monthly rent of ₹ 60,000/- (Rupees sixty thousand only) to the plaintiff by cheque/draft without any deductions by the 7th day of

each calendar month in advance for the month in respect of which such sum was payable. Clause 6 of the Lease Deed is as under:-

"6. Schedule of Payment of Lease Rentals/Other Dues: That the Lessee shall pay to the Lessor by Cheque/Bank Demand Draft payable at Delhi the rent and all other sums payable under this Lease Deed without any cuts or deductions by the 7th day of each calendar month in advance for the month in respect of which such sums are payable but after deduction of TDS as applicable from time to time. The Lessee shall issue 12 Post Dated Cheques to the Lessor for the payment of monthly rent for the first year and thereafter every year the Lessee shall issue 12 Post-dated cheques to the Lessor. The Lessor shall be entitled to get the post-dated Cheques encashed on due dates."

4. Further, under the terms of the lease as contained in Clause 7, the defendant was to pay by the due date, the electricity/energy charges as well as the water charges as recorded in the meters separately provided for recording the consumption of water and electricity for the leased premises.

5. It is the case of the plaintiff that the defendant never fulfilled its obligation to pay the rent of the premises and also the electricity

charges as agreed under the terms of the lease and repeatedly defaulted in payment of rent to the plaintiff.

6. It is further the case of the plaintiff that under the terms of the lease as contained in Clause 19 of the lease-deed, it was also stipulated that if and when the cheque issued by the defendant towards rent was dishonoured by its bank, the defendant would be liable to pay to the plaintiff a sum of ₹ 1000/- per day till such time the cheque was cleared from its bank. Similarly, it was also agreed that if the defendant continued to occupy the premises after the termination of the tenancy, a sum of ₹ 10,000/- per day would be paid by the defendant to the plaintiff towards damages for use and occupation of the premises after such termination. For the sake of ready reference, Clause 19 of the Lease Deed is reproduced hereunder, as follows:-

"19. Default in Payments by the Lessee: That if the Lessee defaults in payment of rent for two consecutive months, notwithstanding the terms of clause (18), the Lessors will have a right to terminate the lease forthwith. Further, in the event the Lessee is in breach of performance of terms and conditions of this Lease Deed and if such breach is not remedied within thirty days from the Lessors notice to the Lessee to this

effect, the Lessors shall be entitled to terminate this Lease Deed by giving thirty days notice of the same to the Lessee after which period the Lessee shall be liable to pay the damages/mesne profits to the Lessor equivalent to ₹ 10,000/- per day. In the event of dishonour of any Cheque given by the Lessee, the Lessee shall be liable for a penalty of ₹ 1000/- per day to the Lessor for the period of delay in encashment of Cheque."

7. The plaintiff alleges that soon after the defendant was inducted in the premises as a tenant, it not only failed to fulfill its obligation under the lease to hand over advance cheques towards the rent to the plaintiff, but also the cheques given by the defendant to the plaintiff towards rent were dishonoured by its bank, firstly in the months of January and March, 2009 and again in the month of March, 2010. The cheques could be encashed by the plaintiff after doing a lot of follow up with the defendant. Since, as per the terms of the lease, a penalty @ ₹ 1,000/- per day was leviable against the defendant for each day the cheque could not be encashed after being dishonoured, the plaintiff claims to be entitled to recover this amount from the defendant as well.

17

8. The plaintiff further alleges that the defendant was also not depositing the electricity charges in respect of the leased premises in time and a sum of ₹ 6,000/- has been pending on that account since March, 2009.

9. It is further alleged by the plaintiff that right from the inception of the tenancy, the plaintiff had to make concerted efforts in order to realise the rent from the defendant. There was repeated failure on the part of the defendant to pay the rent in time causing harassment to the plaintiff. Not only the cheques for payment of rent were delayed, the cheque for the month of March, 2010 was also dishonoured by the bank of the defendant when presented to it by the plaintiff. Furthermore, the defendant did not pay the rent to the plaintiff due for the period between 15.03.2010 to 15.04.2010, thereby compelling the plaintiff to send a notice dated 31.03.2010 terminating the tenancy of the defendant with effect from 15.04.2010 in terms of Clause 19 of the Lease Deed and demanding payment of rent from him. The defendant replied to the aforesaid notice through his counsel vide its reply dated 15.04.2010, disputing the ownership of the plaintiff over the demised

premises, to which a rejoinder dated 20.05.2010 was sent by the plaintiff to the counsel of the defendant.

10. In view of the fact that the defendant in its reply dated 15.04.2010 disputed the validity of the notice of the plaintiff under Section 106 of the Transfer of Property Act, another notice dated 12.07.2010 was sent by the plaintiff to the defendant through his counsel, demanding the amount owed by the defendant to the plaintiff towards rent and reiterating that the lease stood terminated by the plaintiff owing to non-payment of rent by the defendant. The plaintiff also called upon the defendant in this notice to vacate the demised premises as the tenancy had been put to an end by the plaintiff in accordance with the terms and conditions contained in the Lease Deed.

11. The plaintiff, therefore, claims that the defendant has been in illegal possession of the suit premises after the termination of tenancy by the plaintiff by notice dated 31.03.2010 terminating his tenancy under Clause 19 of the Lease Deed, with effect from 15.04.2010 and is therefore liable to pay damages/mesne profits to the plaintiff.

12. It is pertinent to note at this juncture that during the pendency of the present suit, the defendant handed over the possession of the premises to the plaintiff on 15.01.2011 and the prayer made by the plaintiff in para 26(i) of the plaint was disposed of as satisfied on 14.07.2011. However, the defendant failed to clear the arrears of rent as well as the charges payable by it towards electricity and water (as per separate meters for the leased premises) for the period it was in occupation of the suit premises. Therefore, the plaintiff has confined his relief to the recovery of arrears of rent, electricity and water charges and *mesne* profits, along with *pendente lite* as well as future interest.

13. Summons of the suit were duly served upon the defendant who chose not to appear despite service and was accordingly proceeded *ex parte* in default of appearance on 14.07.2011.

14. The plaintiff, in order to prove his case, examined himself as PW1 and proved on record various documents *viz.* site plan of the property (Ex.PW1/1), copy of the registered leased deed (Ex.PW1/2), BSES Electricity Bills dated 31.01.2011 and 07.07.2011 (Ex.PW1/3

20

and PW1/4), Water Charges Bill dated 20.06.2011 (Ex.PW1/5), legal notice dated 31.03.2010 (Ex.PW1/6), reply dated 15.04.2010 to the said legal notice (Ex.PW1/7), rejoinder dated 20.05.2010 (Ex.PW1/8), legal notice dated 12.07.2010 (Ex.PW1/9), letters dated 04.04.2009 and 09.03.2010 of the plaintiff to the defendant demanding arrears of rent, TDS certificates for the tax deducted at source by the defendant as well as complaining about the repeated dishonour of cheques (Ex.PW1/10 and PW1/11).

15. In his affidavit by way of evidence (ExhibitPW1/A), PW1 deposed that the lease had commenced on 15.04.2008 and the defendant was in continuous possession of the leased property from 15.04.2008 till 15.01.2011. It was further deposed that the defendant neither fulfilled its obligation to pay the rent of the premises nor it paid the electricity charges as agreed under Clause 7 of the terms of the lease; and repeatedly defaulted in payment of rent to the deponent as well as the dues towards the electricity/water consumed by it. There were, on the date of the filing of the suit, arrears of ₹ 6000/- towards electricity charges since March, 2009, which the defendant

had failed to clear/pay to the deponent, and as the defendant failed to pay the bills subsequent thereto, there were arrears of ₹ 19,380/- towards electricity charges on the date he vacated the property. A copy of the electricity bill of BSES Rajdhani Power Ltd. in respect of the rented premises for the period upto 28.01.2011 is proved on record by the plaintiff as Ex.PW1/3. The plaintiff had paid a sum of ₹ 25,090/- vide bill, which is Ex.PW1/4, towards the arrears of electricity and claims that he is entitled to recover this amount as well from the defendant.

16. PW1 further deposed that the defendant had also failed to pay the water charges in respect of the premises which it was liable to pay under the terms of the lease and arrears of ₹ 16,316/- for the period 30.11.2010 to 06.05.2011 were still outstanding. A copy of the bill for the aforesaid sum of money is proved on record by the plaintiff as Ex.PW1/5. The plaintiff accordingly claims to be entitled to recover this amount as well from the defendant.

17. During the pendency of the present suit, as stated hereinabove, the defendant handed over vacant possession of the premises to the

22

plaintiff on 15.01.2011. The plaintiff alleges that, therefore, between the date of termination of his tenancy on 15.04.2010 till the date when the defendant handed over possession to the plaintiff, i.e., on 15.01.2011 (276 days), the defendant was in illegal occupation of the premises and, therefore, liable to pay damages/*mesne* profits to the plaintiff @ ₹ 10,000/- per day as agreed to between the parties under the terms of the lease, which works out to ₹ 27,60,000/-.

18. The plaintiff concedes that after the filing of the suit the defendant has paid ₹ 2 Lacs to the plaintiff out of the total amount due from him towards unpaid rent.

19. It is thus the case of the plaintiff that the plaintiff is entitled to recover the following amounts from the defendant:-

(i)	Arrears of Rent @ ₹ 60,000/- per month from 15.03.2010 to 14.04.2010	60,000/-
(ii)	Damages @ ₹ 10,000/- per day from 15.04.2010 (date when the lease was terminated) to 31.07.2010 (108 days) [as claimed in the plaint]	10,80,000/-

23

(iii)	Damages @ ₹ 10,000/- per day between 01.08.2010 to 14.01.2011 (168 days) [period subsequent to filing of suit]	16,80,000/-
(iv)	TDS deducted by defendant but not deposited with I.T. Department (deducted @ ₹ 9,270/- per month between April, 2009 to September, 2009 and @ ₹ 6000/- per month between October, 2009 to January, 2010)	79,620/-
(v)	Pending electricity bill since March, 2009 (Till filing of suit)	6,000/-
(vi)	Pending electricity bill and water charges (₹19,380/- + ₹ 16,316/-) (after filing of suit till 14.01.2011)	35,696/-
(vii)	Penalty for dishonouring of the cheques @ ₹ 1,000/- per day from 15.01.2009 to 30.01.2009 (16 days), 15.03.2009 to 28.03.2009 (14 days) and 15.02.2010 to	80,000/-

24

	05.04.2010 (50 days)	
	Total 80 days	
	TOTAL	30,21,316/-
	LESS (Received after filing of this suit)	2,00,000/-
	Total Due	28,21,316/-

20. Having heard the counsel for the plaintiff and scrutinized the documents on record, I am satisfied that there is credible evidence on record in support of the case of the plaintiff, which is wholly un rebutted and unchallenged.

21. In view of the aforesaid, the Court finds no impediment in granting the relief prayed for by the plaintiff which is claimed on the basis of the terms and conditions of the Lease Deed (Ex.PW1/2) as agreed to between the parties. The plaintiff is accordingly held entitled to a decree in his favour and against the defendant for a sum of ₹ 28,21,316/- as detailed hereinabove along with *pendente lite* and future interest. Though the plaintiff has claimed interest @ 18% per annum, keeping in view the prevalent rate of interest, the plaintiff is

25

granted interest @ 9% per annum from the date of the filing of the suit till the realization of the amount by the plaintiff. The plaintiff shall also be entitled to costs of the suit as prayed for by him.

22. CS(OS) 1718/2010 stands disposed of in the above terms. IA Nos.11241/2010 and 11242/2010 also stand disposed of accordingly.

Reva Khetrapal
REVA KHETRAPAL
(JUDGE)

March 20, 2012
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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CS(OS) 1718/2010**

GURJEET KAPOOR

..... Plaintiff

Through: Mr. Pravin Sharma and
Ms. Kanika Sharma, Advocates

versus

M/S RCKC CREATIONS PVT LTD

..... Defendant

Through: Mr. Avinash Sharma,
Mr. Rohit Gandhi and
Mr. Milan Deep Singh,
Advocates.

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Date of Decision : December 14, 2012

CORAM:

HON'BLE MS. JUSTICE REVA KHETRAPAL

ORDER (ORAL)

: REVA KHETRAPAL, J.

1. The present suit was filed by the plaintiff, praying for following reliefs:-

“i) *Pass a decree of possession in favour of the Plaintiff and against the Defendant thereby directing the defendant to immediately hand over vacant peaceful*

31

vacant possession of the leased property being a Flat on the first floor measuring 100 square yards (shown Red in the site plan) bearing No.I-2, (adjoining I-1), Veer Savarkar Marg, Lajpat Nagar-II, New Delhi,

- ii) Pass a decree in favour of the Plaintiff and against the Defendant for a sum of Rs.13,05,620/- along with pendentelite and future interest @ 18% from the date of filing of this suit till the amount is realized by the Plaintiff,*
- iii) Pass a decree in favour of the Plaintiff and against the Defendant for mesne profits/damages @ Rs 10,000/= per day for being in illegal occupation of the Premises, from 31/7/2010 till the vacant peaceful possession is actually recovered by the Plaintiff from the Defendant, along with 18% p.a. interest on the amount so calculated, from the date of filing of this suit till the date of recovery of possession and the actual payment received,*
- iv) Pass a decree of permanent injunction thereby restraining the Defendant from creating any kind of third party rights in respect of the suit property,*
- v) Pass a decree of mandatory injunction thereby directing the Defendant to continue to pay the electricity and water charges to the respective authorities on the basis of the actual consumption/bill received in this regard,*
- vi) Allow the costs of the suit as well as the litigation expenses in favour of the Plaintiff and against the Defendant,*
- vii) any other order as this Hon'ble court deems fit and proper in the facts and circumstances of the case may also be passed."*

2. The suit was decreed by *ex parte* judgment and order dated 20.03.2012, which has been set aside on an application filed by the defendant on the ground that the plaintiff and the defendant had, during the pendency of the present suit, entered into a Settlement Agreement dated 22.11.2010 which was not brought to the notice of this Court.
3. For the sake of facility, the Settlement Agreement dated 22.11.2010 is reproduced hereunder:

"SETTLEMENT AGREEMENT"

This Settlement Agreement is between Mr. Gurjeet Kapoor, R/o 545, Sector-37, Faridabad and M/s RCKC Creations Pvt. Ltd represented by Sh. Amit Rastogi, R/o Ram Bhawan, 24, Daryaganj, New Delhi — 110 002 made on the 22nd November, 2010. The court case filed in Delhi High Court by Sh. Gurjeet Kapoor for the rent recovery & other charges. It has been explained to Mr. Gurjeet Kapoor by Mr. Amit Rastogi, that due to some financial problems Mr. Amit Rastogi, Director, RCKC (P) Ltd. was unable to pay the rent and other charges immediately. It has been mutually agreed between the two parties that RCKC will vacate the premises, I-2, First Floor, Lajpat Nagar-2, New Delhi-24 on or before 15-Dec-2010 upon which the rent agreement between two parties will stand terminated. The same has been explained to Mr. Gurjeet Kapoor and asked him to settle the issue on following terms & conditions :

1. *After settlement of the issue It has been agreed by both the parties that total amount payable by RCKC is Rs. 4.22 Lacs (Four Lacs and Twenty two thousand*

only), including the security deposit of Rs.1.80 Lacs (One Lac & eighty thousand only).

2. The Details of balance amount of Rs.2.42 lacs is given below

- a) cheque No. 175151 dt. 20.12.2010 Rs. 70000/-
 - b) Cheque No. 175152 dt. 20.1.2011 Rs. 30000/-
 - c) Cheque No. 175153 dt. 20.2.2011 Rs. 30000/-
 - d) Cheque No. 175154 dt. 20.3.2011 Rs. 30000/-
 - e) Cheque No. 175155 dt. 20.4.2011 Rs. 40000/-
- All the cheques are drawn on Vijaya Bank, Karol Bagh, New Delhi. & TDS deducted Rs. 42000/-

3. TDS Certificate will be handed over to Mr. Gurjeet Kapoor before 31.3.2011 for Rs. 42000/-.

4. TDS Certificate for last year will be handed to Mr. Gurjeet Kapoor within a week.

5. That the electricity and water charges till the date of handing over the procession (sic:possession) will be borne by RCKC Creations and receipt of the same will be handed over to Mr. Gurjeet Kapoor.

6. That the above settlement is subject to the above mentioned terms & conditions being honoured by RCKC Creations Pvt. Ltd.

7. **This is the full & final settlement & Mr. Gurjeet Kapoor will withdraw the Court case filed in Delhi High Court for recovery of rent other charges after above mentioned terms & conditions are fulfilled."**

4. It is not denied by the plaintiff that the aforesaid Settlement Agreement was entered into between the parties .on 22.11.2010. The entire case of the plaintiff is, however, premised on the ground that

34

the premises were vacated by the plaintiff on 15.01.2011 instead of 15.12.2010; the cheques payable under clause 2 of the said Agreement were dishonoured and the amount agreed was paid in cash after much delay; TDS certificate for Rs. 42,000/- which was to be handed over by the defendant to the plaintiff by 31.03.2011 has not been handed over till date; TDS certificates for last year though handed over to the plaintiff were handed over after the date of filing return had already expired; and the electricity and water charges which remained unpaid by the defendant have not been paid till date. On the basis of the aforesaid, the counsel for the plaintiff contends that the Settlement Agreement entered into between the parties was not honoured by the defendant and as provided under Clause 6 of the Agreement, the plaintiff is not bound by the terms thereof.

5. Per contra, the learned counsel for the defendant contends that the plaintiff, deliberately and with *malafide* intent, did not disclose before this Court the fact that the parties had entered into a settlement during the pendency of the suit, whereunder the plaintiff agreed to withdraw the suit filed before this Court for recovery of rent and other charges. The plaintiff is, therefore, guilty of concealment and suppression of material facts and the present suit is liable to be dismissed on this ground alone. To buttress his contentions, the learned counsel for the defendant places reliance upon the following judgments of this Court:

35

- (i) *Holy Health And Educational Society (Regd.) V/s. Delhi Development Authority, 80 (1999) DLT 207*
- (ii) *Arun Khanna And Anr. V/s. Rajeev Gupta And Ors., 129 (2006) DLT 14 (DB)*
- (iii) *Neelima Bagaria V/s. Govt. Of NCT of Delhi And Ors., W.P(C) 6877/2009, dated 09.08.2011.*

6. The learned counsel for the defendant, however, without prejudice to his aforesaid contentions, very fairly conceded that TDS certificate for Rs.42,000/- has not been provided to the plaintiff and undertakes to give the same to the plaintiff.

7. Heard the learned counsel for the parties and scrutinised the record.

8. It may be noted that though the fact that during the pendency of the suit, the possession was handed over to the plaintiff and a sum of Rupees Two Lakhs was paid by the defendant to the plaintiff are on record and taken note of in the *ex parte* judgment dated 20.03.2012, the fact that parties executed a Settlement Agreement dated 22.11.2010 was *malafidely* concealed from this Court, for it would have entailed passing of decree in terms thereof. As regards the plaintiff's contention that the plaintiff is not bound by the Settlement Agreement as defendant failed to fulfill the conditions thereof, the same appears to be an afterthought as the plaintiff has not placed on

record any document to show that the said Settlement Agreement stood cancelled or that the possession of the premises and/or the payment of Rupees Two Lakhs in cash in lieu of dishonoured cheques was received by the plaintiff under protest. The plaintiff acted upon the Settlement Agreement by accepting the possession of the premises and the payment of Rupees Two Lakhs from the defendant without raising any plea of cancellation of Settlement Agreement, and cannot be allowed to claim before this Court for the first time that the Settlement Agreement is not binding upon him. The conduct of the plaintiff in alleging unilateral cancellation of the Settlement Agreement without even informing the defendant of his intention to cancel the settlement and of his intention to prosecute the suit, far from inviting consideration, establishes how the plaintiff has played fraud on both the Court and his adversary i.e., fraud on the Court by concealing the factum of settlement and fraud on the defendant by deliberately causing him to believe that pursuant to the settlement arrived, he would withdraw the present suit. In fact, the plaintiff almost succeeded in his *malafide* intentions when this Court passed an *ex parte* judgment dated 20.03.2012.

9. In view of the aforesaid, this Court is of the considered opinion that the Settlement Agreement dated 22.11.2010 was a vital document for adjudication of the present suit and the plaintiff ought to have disclosed the same. The plaintiff deliberately and with ulterior motive withheld the Settlement Agreement from the consideration of this

36A

Court in order to obtain *ex parte* judgment against the defendant, as the plaintiff very well knew that the defendant was under the impression that the suit had been withdrawn. Non-production and non-mentioning of the said document by the plaintiff, therefore, amounts to playing fraud upon this Court and is sufficient to disentitle the plaintiff to prosecute the present suit.

10. Reference in this regard may usefully be made to the judgment of the Supreme Court rendered in the case of ***S. P. Chengalvaraya Naidu V/s. Jagannath And Others (1994) 1 SCC 1***, wherein the Supreme Court, taking a strict view against unscrupulous litigants, observed as under:

"The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court-process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation."

11. Reliance placed by the learned counsel for the defendant on the decision of this Court in the cases of ***Holy Health And Educational Society (Supra)*** and ***Arun Khanna And Anr. (Supra)*** is also apposite. In the case of ***Holy Health And Educational Society (Supra)***, the plaintiff had instituted a suit for permanent injunction

37

seeking to restrain the Delhi Development Authority from giving effect to the letter dated 17.08.1995 cancelling the allotment and lease of the land of the plaintiff. *Ex parte* injunction was passed against the defendant in the injunction application filed by the plaintiff alongwith the suit. However, later on it came to the notice of the Court that though the plaintiff had disclosed in the plaint the factum of earlier suit filed before the Civil Judge challenging the show-cause notice dated 03.02.1995 issued by the Delhi Development Authority, the plaintiff, had not disclosed that an interim application had also been filed in the earlier suit and the prayer for interim injunction had been rejected by the Civil Judge as well as the Appellate Court and the Civil Revision was pending before this Court. In the circumstances, a learned Single Judge of this Court, relying upon an earlier decision of this Court in the case of **Satish Khosla V/s. Eli Lilly Ranbaxy Ltd. And Anr. 71 (1998) DLT 1** and the principle laid down by the Supreme Court in the case of **S. P. Chengalvaraya Naidu (Supra)**, held as under:

"17. I am, therefore, of the considered opinion that the plaintiff did not come to this Court with clean hands and has also suppressed material facts from this Court with a view to gain advantage in the second suit and this is clearly over-reaching the Court. In coming to the aforesaid conclusions, I am fortified by the decision of the Division Bench in Satish Khosla (supra). Thus, an attempt has been made by the plaintiff to over-reach the Court and the plaintiff has played fraud upon the Court as well as upon the opposite party and thus, the suit

filed by the plaintiff itself is liable to be dismissed, in view of suppression and concealment of material facts by the plaintiff and his failure to come to the Court with clean hands."

12. In *Arun Khanna and Anr. (Supra)*, the appellants had filed a suit for recovery of possession of immovable property premised on various documents executed by the respondent no. 2 in favour of the appellants. The appellants, however, did not disclose before the Court a subsequent Collaboration Agreement entered into between the parties, whereunder the appellant no.1 had undertaken to develop the subject property by raising three storeys with a clear stipulation that the respondent no.1 would sign, execute, and register a general power of attorney in favour of the appellant no.1 /builder or its nominees regarding ground floor and first floor without roof rights. A Division Bench of this Court, after concluding that recitations made in the Collaboration Agreement were material and relevant for the purpose of deciding the suit, held that the appellants had come to the Court with unclean hands and had suppressed material and relevant facts, which were relevant for effective determination of all the disputes in the suit, and in view of the suppression of material facts, the appellants had disentitled themselves to pursue the suit.

13. In view of the aforesaid conclusions, the present suit is dismissed, taking on record the undertaking of the counsel for the defendant that the TDS certificate for Rs. 42,000/- will be handed over to the plaintiff within four weeks from today.

39

14. CS(OS) 1718/2010 stands disposed off. Parties shall bear their own costs.

Reva Khetrapal
REVA KHETRAPAL
(JUDGE)

December 14, 2012