

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

% *Date of Judgment: 16.01.2012*

+ CM(M) 1332/2009

MOTOR INDUSTRIES COMPANY LTD Petitioner
Through Mr. Sandeep Sethi, Sr.
Advocate with Mr. Kalyan
Vadlamani, Adv.

versus

SETH ASSOCIATES PVT LTD & ORS Respondents
Through Mr. Ravinder Sethi, Sr.
Advocate with Mr. P.R.
Rajhans and Mr. Puneet
Sharma, Adv.

+ CM(M) 1333/2009

MOTOR INDUSTRIES COMPANY LTD Petitioner
Through Mr. Sandeep Sethi, Sr.
Advocate with Mr. Kalyan
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Rajhans and Mr. Puneet
Sharma, Adv.

+ CM(M) 1334/2009

MOTOR INDUSTRIES COMPANY LTD Petitioner
Through Mr. Sandeep Sethi, Sr.
Advocate with Mr. Kalyan
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SETH ASSOCIATES PVT LTD & ORS Respondents
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Through Mr. Ravinder Sethi, Sr.
Advocate with Mr. P.R.
Rajhans and Mr. Puneet
Sharma, Adv.

CORAM:
HON'BLE MS. JUSTICE INDERMEET KAUR

INDERMEET KAUR, J. (Oral)

1. The order impugned before this court is the order dated 13.10.2009 vide which three applications filed by the plaintiff and one application filed by the defendant had been disposed of. The petitioner before this court is the plaintiff in the Trial Court. He is aggrieved by the rejection of his three applications under Order 14 Rule 5 of the Code of Civil Procedure (hereinafter referred to as 'the Code'), a second application under Order 11 Rules 12 & 14 of the Code and a third application under Order 11 Rule 1 of the Code seeking discovery of interrogatories.

2. Record shows that the present suit is a suit for mandatory and permanent injunction filed by the plaintiff Motor Industries Company Ltd. against Seth Associates P. Ltd.; there are five defendants. The suit property is a property at the Rishyamook Commercial Complex 85/A. Punchkuin Road, New Delhi-110001. The parties had entered into an agreement dated 30.07.1986 by virtue of which the defendant/builder had agreed to construct the

property of the plaintiff and the parties were thereafter to share the building; upper basement, second floor and third floor has fallen to the share of the plaintiff and the lower basement and the ground floor had fallen to the share to the defendant. The agreement dated 30.07.1986 was followed by another document executed between the parties on 30.04.1988 by virtue of which the plaintiff had confirmed to the defendant that part of the possession of the suit property which had fallen to his share has been taken over by him. There were admittedly certain spaces which were common to both the plaintiff and the defendant.

3. This court shall first deal with that part of the impugned order which had rejected the application of the plaintiff under Order 14 Rule 5 of the Code. Record shows that the issues had been framed on 26.07.2004; the application seeking an amendment of the issues had been filed in 2009; evidence of the plaintiff was in progress on that stage. Learned counsel for the petitioner has drawn attention of the court to the averments made in para 3 of the plaint when it has been specifically averred that the plaintiff has the right over the common areas which include the foyer of the building on the ground floor of disputed property; contention is that this plea has not been incorporated in the issues which had been framed on 26.07.2004 and accordingly an

amendment has been prayed for. Further contention is that there is no specific denial in the corresponding para of the written statement and this amendment is thus necessitated. This contention is vehemently opposed; learned counsel for the respondent submits that there is unexplainable delay in filing this application; even otherwise the powers of superintendence under Article 227 of the Constitution of India which are vested with this court are for correction of a jurisdictional error and unless and until there is manifest error or injustice which has occurred to the other party; no interference is called for. To support this submission he has placed reliance upon the judgments of the Apex Court reported in (2002) 1 SCC 319 titled as Ouseph Mathai and Ors. vs. M. Abdul Khadir and (2003) 3 SCC 524 titled as Sadhana Lodh and National Insurance Co. Ltd. & Anr. .

4. The pleadings have been perused as also the admitted agreement between the parties dated 30.07.1986 as also the confirmation of possession letter dated 30.04.1988. The issues framed on 26.07.2004 have also been perused. Para 3 of the plaint categorically states that the right of the plaintiff has accrued to him over the common areas including the common area on foyer the ground floor which is in terms of part B of the Agreement dated 30.07.1986. Part B of the said agreement has

been perused; it has to be read in conformity with the subsequent possession letter dated 30.04.1988. In view thereof, the amendment in issue No. 3 is necessitated. It shall accordingly read as hereinunder:-

“Issue No.3. Whether there is a hindrance/obstruction to the plaintiff regarding the use of common pathways, passages, staircases, lifts and the like in terms of part B of the Agreement dated 30.07.1986 which has to be read inconformity with the subsequent letter dated 30.04.1988? OPP”

5. No other argument has been urged qua this application. Impugned order on the application under Order 14 Rule 5 of the Code is modified to the above extent.

6. The petitioner is also aggrieved by the orders passed on his application under Order 11 Rule 12 & 14 of the Code; his contention is that he had moved an application seeking impleadment of the MCD which had been declined. His contention is that the plan of the disputed premises sanctioned by the NDMC has not been placed on record. Learned counsel for the respondent submits that a true copy of the same has been placed on record; a perusal of this document shows that it is not a certified copy; in handwriting it has been written therein that this plan has been sanctioned by the NDMC on 08.07.1993 vide

resolution No. 17. Further submission of the leaned counsel for the respondent is that due inter se disputes which have now arisen between the family members of the respondent the NDMC will not furnish a certified copy of the plan to the respondent; he has no objection if the NDMC furnishes this sanctioned plan to the petitioner on his asking.

7. This document would be necessary to adjudicate the dispute between the parties. In view of the submission urged by the leaned counsel for the respondent, the NDMC on an application to be filed by the petitioner will furnish a certified copy of the plan sanctioned by it on 08.07.1993 vide Resolution No. 17 for which the requisite expenses shall be borne by the petitioner.

8. The third application filed by the petitioner seeking a reply on the interrogatories is not pressed in view of the orders passed on the aforementioned second application.

9. All these petitions are disposed of.

INDERMEET KAUR, J

JANUARY 16, 2012
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