

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

+ **CM(M) 637/2014**

% **16th July, 2014**

SH. DEVENDER PAL SINGH Petitioner
Through: Mr. Puneet Agrawal, Advocate.

VERSUS

SHRI RAJAN PAL SINGH Respondent
Through:

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J (ORAL)

C.M. No.10766/2014 (exemption)

1. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

+ C.M.(M) No.637/2014

2. This petition under Article 227 of the Constitution of India is filed impugning the order of the trial court dated 2.4.2014 by which the trial court has dismissed the application under Order 6 Rule 17 of Code of Civil Procedure, 1908 (CPC) filed by the petitioner/defendant. Trial court has

dismissed the application under Order 6 Rule 17 CPC by observing that if the application is allowed, admissions which are made in the written statement of the subject documents bearing the signatures of the petitioner/defendant will be permitted to be withdrawn.

3. The subject suit is a suit for specific performance which was filed by the respondent/plaintiff. The respondent/plaintiff in the plaint states that the entire sale consideration of Rs.7 lacs was paid on 30.3.2007 when the usual documents being the agreement to sell, general power of attorney etc were executed by the petitioner/defendant in favour of the respondent/plaintiff. The present petitioner/defendant filed the written statement and in para 6 of the preliminary objections, as many as five times, it is stated that the subject documents dated 30.3.2007 were got signed by the respondent/plaintiff from the petitioner/defendant by intoxicating the petitioner/defendant with liquor. In preliminary objections para 6 of the written statement the petitioner/defendant hence repeatedly admitted that the documents have been signed, but, signatures were obtained by undue influence of liquor and therefore the documents are void. Effectively therefore the signatures and execution of the documents stands admitted, but since the execution of the documents was stated to be under the influence of liquor, hence the validity of these documents was challenged.

4. I have gone through the written statement and I find that in the written statement in various other places also there is mention of the documents dated 30.3.2007 having been executed under the influence of liquor i.e the signatures were admitted by the petitioner/defendant on the documents but the same were alleged to have been obtained under the influence of liquor. The present preliminary objections para no.6 of the written statement reads as under:-

“6. That the present suit is an abuse of the process of law. The plaintiff has not come to the Hon’ble Court with clean hands and is guilty of egregious fraud against the defendant. It is stated that the purported documents namely Agreement to sell dated 30.03.2007, Receipt dated 30.03.2007, Receipt dated 30.03.2007 and Affidavit dated 09.4.2007 have been got fraudulently signed from the defendant by the plaintiff in the last week of April, 2007 by intoxicating the defendant with alcohol. The plaintiff came to the house of the defendant alongwith a bottle of whisky, he also brought alongwith some papers telling that the same were required for obtaining identification papers and for getting registration of security firm as well as getting a partnership firm thereto registered in plaintiff’s and defendant’s wife name jointly and at the address of the defendant. The plaintiff and his brother Sh. Sheo Raj Singh after playing the defendant with lot of alcohol asked the defendant to take out all the papers and tiles pertaining to the house bearing no. M-74-75, Sunder Nagri, Delhi -110093 so as to make some entries in the documents. While the defendant brought the files containing original documents and kept the same before the plaintiff the defendant himself went to the first floor of the house to bring some namkeen (snacks). Thereafter the plaintiff lured the defendant into signing some documents by giving a false representations that the same were required for registration of partnership/security agency as aforesaid. The defendant was made to sign the purported documents while his mental capacity was temporarily effected/impaired by reason of alcoholic intoxication as well as under mental and bodily distress, illness, etc. The plaintiff through his misrepresentations attempted to obtain an unfair advantage over the defendant and also deceived the defendant by falsely

inducing him to sign the purported documents representing the same to be absolutely innocuous. Thus, the defendant was fraudulently deceive by the plaintiff as well as the said brother Sh. Sheo Raj Singh into signing the papers which defendant neither had any opportunity nor he was granted any time/shown to read and understand the same. Pertinently, the defendant cannot fully read/understand English in which the purported were drafted as produced. There is/was no consensus ad-idem between the parties relating to any of the aforesaid documents as well as several others which were got signed by the plaintiff form the defendant and the same are slowly coming to light through production of same by the plaintiff before the Hon'ble Court and at other Forum namely before police Authority, including a possession letter and a General Power of Attorney dated 30.3.2007, which have yet not been filed by the plaintiff in the present suit. It is also stated that the purported documents are the outcome of the well planned criminal conspiracy in order to obtain the signatures of the defendant by fraud, deceit, misrepresentation, undue influence and without his free consent while the mental capacity of the defendant was impaired as aforesaid. It is further stated that thereafter in the last week of May. 2007 the plaintiff and his said brother Sheo Raj Singh spread false rumor in the locality that they have got defendant's subject house no. M-75 as well as M-74 (owned by defendant's wife), Sunder Nagar, Delhi -110093 and defendant had executed the sale documents thereto in their home. Upon hearing such rumors the defendant checked his files and original documents and found that the original title documents as well as other original documents pertaining to both the house/plots no. M-74-75, Sundar Nagar, Delhi were missing from the files. The defendant thereupon realized that the plaintiff and his brother had stolen the same form his house in the last week of April, 2007 during the course of drinking session as mentioned herein before, when the defendant had gone to bring some namkeen etc. The defendant called the plaintiff as well as his brother and confronted them about the said rumors as well as missing documents when firstly they agreed to return the original documents but subsequently started making false allegations and demands about return of some many, allegedly owed to the plaintiff by the defendant, which is/was a false allegation. It is further stated that both the plaintiff and his said brother are powerful property dealer in the area and are involved in land grabbing deals apart from having anti-social connections also. Thus, the suit is an outcome of sheer fraud, gross malafide and ulterior motives on the part of the plaintiff and his accomplice brother as no valid/legal agreement to sell, etc. has been ever executed by the defendants. Thus, the purported documents are void and do not bestow any right or interest on the plaintiff and some are void and cannot be enforced. Moreover, specific performance on relief of equity which is clearly

unavailable to the plaintiff in the facts and circumstances aforementioned.
The suit merits dismissal.”(underlining is mine)

5. In this preliminary objection by means of the said amendment application, the petitioner/defendant wants to substitute certain lines as under:-

“It is stated that the purported documents namely Agreement to Sell dated 30.03.2007 and Receipt dated 30.03.2007 (containing part thumb impression on the face of revenue stamp) are fabricated and forged and same have been got fraudulently signed from the defendant by the plaintiff in the last week of April, 2007 by intoxicating the defendant with alcohol. Better particulars and details of the said fraud, forgery, fabrication and manipulations in the purported documents are pleaded in the subsequent paras of the written statement.”

(underlining is mine)

6. The court below in the impugned order has observed that object of bringing in this amendment is to withdraw admissions of the signatures on the documents dated 30.3.2007 being of the petitioner/defendant because in the para sought to be brought in by amendment the documents are averred to be forged and fabricated . I completely agree. If the amendment as prayed for is allowed, then deliberately confusion will be allowed to be created with respect to the documentation dated 30.3.2007 by allowing the petitioner/defendant to repeatedly state that the documentation dated 30.3.2007 was got signed under the influence of liquor but simultaneously it

will also be allowed to be pleaded that documents are forged and fabricated i.e simultaneously of the documents not having been signed by the petitioner/defendant. The court below has also referred to the fact that even earlier an endeavour was made to get the documents dated 30.3.2007 sent to the CFSL but since the signatures on the same were admitted, that application was dismissed. This is mentioned by the trial court in para 11 of the impugned judgment and which reads as under:-

“11. Admittedly, the defendant moved an application u/s 45 of the Evidence Act and prayed that affidavit dated 09.04.2007 and receipt dated 30.03.2007 be sent to CFSL, New Delhi to ascertain whether the same bear his signatures. Vide order dated 01.02.2012, the said application was dismissed on the following grounds:

“5. It is the specific case of the plaintiff that the agreement to sell & receipt both dated 30.03.2007 and affidavit dated 09.04.2007 were executed by the defendant. In preliminary objection no. 6 of the written statement, the defendant admitted his signatures on the said documents but pleaded that the same were fraudulently obtained by the plaintiff by intoxicating him. In the present case, statement of the defendant was recorded by the police wherein he stated that he executed GPA in respect of the suit property in the name of the plaintiff and the same bears his thumb impression, signature and photograph. Even in the legal notice dated 27.06.2007, the defendant has not denied his signatures on the aforementioned documents. As such, all through the defendant has admitted his signatures on the aforementioned documents and execution of the same.”

(underlining added)

7. The detailed chronological facts and events have been stated by the trial court in para 9 of the impugned order and the same reads as under:-

“9. Brief facts leading to filing of the present application are as follows:-

(i) On 20.07.2007, the plaintiff instituted the present suit.

(ii) On 03.10.2007, the defendant filed the written statement and also made the counter claim seeking decree of declaration.

(iii) On 24.04.2008, the issues were framed by the Ld. Predecessor of this court and the matter was fixed for the plaintiff's evidence.

(iv) On 08.04.2010, the defendant moved the application u/s 45 of the Evidence Act and order 14 Rule 5 of CPC.

(v) Vide separate orders both dated 01.12.2012, both the above mentioned applications were dismissed.

(vi) Being aggrieved by dismissal of the application u/o 14 Rule 5 of CPC, the defendant preferred CM (M) no. 527/2012 before Hon'ble Delhi High Court and the same was dismissed as withdrawn on 02.05.2012.

(vii) Being aggrieved by dismissal of the application u/o 45 of Evidence Act, the defendant preferred CM (M) no. 525/2012 before Hon'ble Delhi High Court and the same was dismissed on merits on 03.10.2013. Thereafter, the defendant moved an application for clarification of the said order before the Hon'ble Delhi High Court which was also dismissed on 25.11.2013. There is nothing on record to suggest that the defendant challenged the said order before the competent court. As such, both the orders dated 01.02.2012 passed by this court have attained finality.

(viii) On 27.08.2012, the plaintiff tendered his affidavit in evidence and was partly cross examined by counsel for the defendant. At that stage, the defendant moved the present application.”

8. Learned counsel for the petitioner sought to draw the attention of this Court to the order dated 25.11.2013 passed by a learned Single Judge

of this Court in C.M.(M) No.525/2012 filed by the present petitioner against the order dismissing the application for sending the documents to CFSL, and as stated in para 11 of the impugned order of the trial court which has been referred above, and it is argued on the basis of this order dated 25.11.2013 that the petitioner has correctly moved the application for amendment. The order dated 25.11.2013 reads as under:-

“C.M. No.18643/2013

Exemption allowed, subject to all just exceptions.

The application is disposed of.

CM No.18642/2013

This is an application filed by the petitioner for clarification of order dated 3rd October, 2013. In view of the orders passed, no clarification is required. However, it is reiterated that the stand taken by the petitioner in the written statement shall be considered in accordance with law after leading the evidence of the parties and without influence with the order passed by this Court.

The application stands disposed of.”

9. I fail to appreciate the argument urged on behalf of the petitioner. The order of the learned Single Judge of this Court dated 25.11.2013 only states the obvious that if certain things are already stated in the written statement by the petitioner obviously that aspect will have to be considered by the court, but observing in the order dated 25.11.2013 cannot mean that in the guise of the language of the order dated 25.11.2013 the

C.M.(M) No.637/2014 *Page 8 of 10*

petitioner can seek amendment of the written statement and withdraw the admissions. In fact, I would like to observe that if there are already averments in the existing written statement which the petitioner/defendant states exist, differentiating the set of documents dated 30.3.2007 with an affidavit dated 9.4.2007, then, there is no need of amendment because that plea is already there in the written statement. The petitioner is trying to be clever by half. Obviously the real reason for seeking to amend para 6 of the preliminary objections is to take benefit of certain statements made in the written statement with regard to the affidavit dated 9.4.2007, and using that different aspect as a basis, withdraw the admissions made as regards the other set of documents dated 30.3.2007. Obviously the new stand is only a clever tactic to merge the pleas with respect to two separate documentation, with respect to which two separate pleas have been taken in the existing written statement.

10. In view of the above, this petition is quite clearly misconceived, and the same is an endeavour to delay the disposal of the suit of the respondent/plaintiff in the trial court, and in which suit there is, if I can say so, a slightly and prima facie unbelievable stand of the documents having

been executed under the influence of liquor. Of course, I am not saying one way or the other on the merits of the matter.

11. Accordingly, this petition is dismissed with costs of Rs.50,000/- and which costs shall be paid by the present petitioner/defendant to the respondent/plaintiff as a condition precedent to pursue his defence in the court below. I may note that the Supreme Court in the judgment in the case of *Ramrameshwari Devi & Ors. Vs Nirmala Devi & Ors. (2011) 8 SCC 249* has held that it is high time that in frivolous litigations, exemplary costs be imposed. I am empowered to impose costs in terms of *Volume V* of the *Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15*.

JULY 16, 2014
Ne

VALMIKI J. MEHTA, J.