

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

% *Judgment pronounced on: January 03, 2014*

+ **CM(M) NO.1127/2013 & C.M. No.16606/2013**

KAMLESH KUMARI & ANR ..... Petitioners  
Through Mr.Ankit Jain, Adv.

versus

ROHTAS GOYAL & ORS ..... Respondents  
Through Mr.Dinesh Kumar Gupta, Adv. with  
Mr.Vikas Mishra, Adv. for R-1.  
Mr.Prateek Kumar, Adv. with  
Mr.Suryajyoti Singh Paul, Adv. for  
R-2.

**CORAM:**  
**HON'BLE MR. JUSTICE MANMOHAN SINGH**

**MANMOHAN SINGH, J.**

1. By way of the present petition under Article 227 of the Constitution of India, the petitioners have assailed order dated 19<sup>th</sup> August, 2013 passed by the learned ARC/ACJ/CCJ, North East, Karkardooma Court, Delhi in Suit No.154/2012.
2. Brief facts of the case are that the petitioners herein filed a suit bearing No.154/2012, titled as “Smt.Kamlesh Kumari and another vs. Sh.Rohtas Goyal”, inter alia, seeking mandatory injunction to hand over the contents of locker bearing No.614 of ING Vysya Bank to them.
3. The respondent No.1 had filed its written statement in the said suit. The petitioners had filed their replication in the said suit. In view of the admissions made by the respondent No.1 in the written statement, the

petitioners herein filed an application under Order XII Rule 6 CPC seeking judgment of admission.

4. The respondent No.1 had filed reply to the said application. In the meanwhile, the petitioners filed certain suits before the court seeking specific performance of certain agreement to sell. The original agreement to sell in that regard were lying in the locker in question. In view thereof, this Court granted time to the petitioners to approach the court for the purpose of obtaining of the said agreement to sell. Accordingly, the petitioners filed application under Section 151 CPC seeking directions to provide copies of the documents. The respondent No.1 had also filed reply to the application.

5. After the arguments of the aforesaid application have been completed, the matter has been fixed for the order, the respondent No.1 filed application seeking to implead the respondents No.2 and 3 in the said suit. The petitioners had filed a detailed reply to the said application, raising various factual and legal issues in opposition to the said application.

6. On the aforesaid application, the learned trial court issued notices to both the respondents No.2 and 3. They filed respective replies to the said application under Order I Rule 10 CPC. A bare perusal of the reply filed by the respondent No.2 clearly shows that even the respondent No.2 had opposed her impleadment in the said suit. It was the specific case of the respondent No.2 that she has no interest in being impleaded as a party in the said suit.

7. After hearing the arguments of both the parties, the learned trial court by impugned order allowed the application filed by the respondent No.1. Therefore, the present petition has been filed by the petitioners.

8. Originally the petitioner No.1 Smt. Kamlesh Kumar, who is wife of late Sh. Shyam Sunder Goyal and petitioner No.2 Pramod Goyal, who is son of petitioner No.1, filed a suit for permanent injunction and mandatory injunction against the respondent i.e. Rohtas Goyal, who is brother of late Sh. Shyam Sunder Goyal who expired on 18<sup>th</sup> December, 2011. He was having one locker bearing No.614 in ING Vysya Bank, C-1/19-A, Yamuna Vihar, Delhi, in which late Sh.Shyam Sunder Goyal had kept various documents relating to his properties etc. The complete list of documents contained in the locker was filed along with the plaint.

9. Late Sh.Shyam Sunder Goyal had appointed the respondent No.1 i.e. his younger brother Rohtas Goyal as his nominee in the said locker as he was residing in the house adjoining to the concerned bank. The petitioners are the only class one legal heirs of late Sh.Shyam Sunder Goyal and have requested to the respondent No.1 several times to discharge his duties towards his deceased brother and his wife and son by handing over the documents contained in the locker to the petitioners who are the only persons entitled to receive the said documents. The respondent No.1 as a nominee must discharge his legal and moral obligation in that respect. However, the respondent No.1 has refused to hand over the documents belonging to the petitioners herein mentioned in the list of the documents.

10. As of now the relations between the petitioners and the respondent No.1 are not on good terms though the respondent No.1 is brother-in-law/Devar of petitioner No.1 and Chacha/paternal uncle of the petitioner No.2. The respondent No.1 as a nominee in the locker is at the most a trustee of the documents contained in the locker and is bound to hand over the same to the petitioner. The petitioners are having strong apprehension at

this that if the respondent No.1 is not restrained from handing over the documents to anyone else/misusing the same in any manner, then irreparable loss and injury can be caused to the plaintiff.

11. The petitioners approached the ING Vysya Bank Yamuna Vihar, Delhi, but the concerned officials told the petitioners that as per their policy, only the nominee can have access to the locker.

12. The petitioners have been left with no other efficacious remedy except to file the said suit.

13. The application filed by the respondent No.1 was opposed by the petitioners herein as well as respondents No.2 and 3 i.e. Ms.Sandhya Devi and ING Vysya Bank. The learned trial court allowed the application mainly on the reason that since Ms.Sandhya Devi has been claiming rights adverse to the petitioners and having the keys of the locker and bank in which the locker is in existence, therefore, the presence of respondents No.2 and 3 is necessary to adjudicate upon all the controversies involved in the present case though no relief has been claimed against the bank in particular.

14. The application of the respondent No.1 was allowed and direction was issued for filing the amended memo of parties, amended plaint, the written statement by the newly impleaded parties.

15. It is the admitted position that the respondent No.2 i.e. Ms.Sandhya Devi had earlier filed a suit in respect of locker in question, being Suit No.6/2012. However, the same was withdrawn by her on 21<sup>st</sup> April, 2012. It is also pertinent to mention that the respondent No.1 herein in his written statement filed in the said suit had mentioned that the respondent No.2 was not wife of late Sh.Shyam Sunder Goyal and had no relation with him

whatsoever and respondent No.2 had in fact stolen the keys of the locker. The respondent No.1 in the said written statement admitted in fact the petitioners herein were the widow and son of late Sh.Shyam Sunder Goyal.

16. The learned trial court failed to appreciate that after withdrawal of her suit by respondent No.2, it was not open for her to be impleaded in the suit in question. The learned trial court also failed to consider that a divorce petition filed by late Sh.Shyam Sunder Goyal against the petitioner No.1 was dismissed on merits which order has become final. These circumstances clearly indicate that the petitioner No.1 is the legally wedded wife of late Sh.Shyam Sunder Goyal.

17. The learned trial court did not appreciate the fact that the respondent No.2 herself in her reply had opposed the application and has stated that he has no interest in the suit proceedings. Similar is the position of respondent No.3 who informed the Court during the course of hearing that respondent No.3 has no interest to become a party in the present suit. It is therefore wrongly held by the learned trial court that the suit between the petitioners and respondent No.1 Rohtas Goyal cannot be disposed of without the presence of respondent No.2. In fact as per the conduct of the respondent No.2 in the earlier proceedings and the statement made in the reply, it is not necessary to implead respondent No.2 as a party in a suit which is filed by the petitioners for mandatory injunction. If the impugned order would be affirmed, the suit for mandatory injunction would be converted into title dispute between the petitioners and respondent No.2 which is not permissible in law even otherwise.

18. The impugned order is not sustainable which has been passed against the law. Both respondents No.2 and 3 are not necessary parties to the suit.

The application filed by respondent No.1 was totally misconceived which was filed with malafide intention.

19. Considering the overall facts and circumstances of the present case, the present petition is allowed. The impugned order dated 19<sup>th</sup> August, 2013 is set aside. The application filed by the respondent No.1 shall be treated as dismissed.

20. No costs.

**(MANMOHAN SINGH)**  
**JUDGE**

**JANUARY 03, 2014**