

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

% *Judgment Reserved on : May 02, 2014*
Judgment Pronounced on : May 16, 2014

+ **FAO(OS) 592/2013**

JANAK DATWANI Appellant
Represented by: Mr.Sanjeev Sindhvani, Sr.Adv.
with Mr.Ayush Agrawal, Adv.

Versus

JAMNA DATWANI & ORS. Respondents
Represented by: Ms.Tara V.Ganju with Ms.Preeti
Gupta, Advs for Jamna Datwani.
Ms. Diya Kapur, Advocate for
Nitya Bharany.
Mr. Akhil Sachar (proxy counsel)
for Mr. Vivek Sharma, Advocate
for Kishan Datwani.
Mr.Suresh Singh for Anand
Datwani

FAO(OS) 593/2013

IN EXPORTS PVT LTD Appellant
Represented by: Mr.Abhimanyu Mahajan, Adv.
with Mr.Milan Deep Singh, Adv.

Versus

JAMNA DATWANI & ORS. Respondents
Represented by: Ms.Tara V.Ganju with Ms.Preeti
Gupta, Advs for Jamna Datwani.
Ms. Diya Kapur, Advocate for
Nitya Bharaney.
Mr. Akhil Sachar (proxy counsel)
for Mr. Vivek Sharma, Advocate
for Kishan Datwani.

Mr.Suresh Singh for Anand
Datwani

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

PRADEEP NANDRAJOG, J.

1. The above captioned appeals lay a challenge to a common order dated December 16, 2013 whereunder by way of an interim arrangement which was to last till the next date of hearing before the learned Single Judge, 12 directions were issued in paragraph 24 of the decision.
2. After hearing learned counsel for the parties at length and also hearing Anand Datwani and Janak Datwani, with persuasion, noting a consent emerging between Jamna Datwani and Janak Datwani, the two parties directly impacted by the impugned order, on May 02, 2014, we had passed an order as under:-

1. The two captioned appeals challenge a common order dated December 16, 2013 whereunder as an interim arrangement, which was to last till the next date of hearing before the learned Single Judge, in Paragraph 24, twelve directions have been issued.

2. Directions from Sl.Nos.1 to 6 concern a portion of the property bearing Municipal No.6, Friends Colony (West), New Delhi. Concededly, the portion of the property qua which the six directions have been issued is the property of a company called I N Exports Pvt. Ltd., 99% shares whereof are controlled directly or through holding or subsidiary companies controlled by Janak Datwani, the appellant of FAO(OS) No.592/2013.

3. As regards the said aspect of the matter, a consent has emerged in the Court between Janak Datwani and his mother Jamna Datwani, the two parties which are concerned with directions issued vide serial Nos. 1 to 6. It has been agreed

that Ms.Jamna Datwani would have a right of exclusive residence in a room highlighted in red slanting lines in the site plan which forms part of the present order. Mr.Janak Datwani would have a right of exclusive residence in a room highlighted in blue slanting lines in the site plan which forms part of the present order.

4. The area bounded in yellow lines has two portions : (i) a kitchen area, and (ii) a pantry area.

5. It is agreed that as one enters from the passage to the area bounded in the yellow lines, the first room would be exclusively used by Ms.Jamna Datwani as her kitchen and the room behind would be used exclusively as a kitchen by Janak Datwani. We have described the two rooms as above because whereas Janak Datwani states that the first room as one enters through the passage is a pantry and the other is a kitchen, Ms.Jamna Datwani asserts to the contrary.

6. The area highlighted in green slanting lines is a passage but of such dimensions that it can be used as a dining area. Janak Datwani is using the same as a dining area. It is agreed that through said passage Ms.Jamna Datwani would have a right of way to enter the kitchen-cum-pantry area bounded in yellow lines.

7. Be that as it may, the position is that the first room entered into from the passage would be used as a kitchen exclusively by Jamna Datwani and the next room would be used exclusively by Janak Datwani as a kitchen. It is further agreed by the parties that since access to the room to be used exclusively as a kitchen by Janak Datwani would require him to pass through the room which would be used as a kitchen by Janak Datwani, he and his family members as well as his servants would have access to the kitchen through the kitchen of Jamna Datwani. It is further agreed that a CCTV camera would be installed at the gate affixed at the boundary abutting the main road, meaning thereby that the CCTV camera would focus at the gate through which access is made from the main road to an open area of the plot before the built up portion.

8. *It is further agreed that a garage in the servant quarters block would be used by the servants of Jamna Datwani, but would access the same through a common passage to be used along with other inhabitants of the servant quarters-cum-garage block. The junk/unused goods lying in the garage would be removed by Janak Datwani within four days. The garage would be cleaned and whitewashed. The possession would be handed over to Jamna Datwani within four days from today.*

9. *The guard present in the premises will continue and shall be paid for by Janak Datwani. A new lock will be purchased for the gate and the keys thereof will be with Ms.Jamna Datwani and Mr.Janak Datwani.*

10. *While a maid shall be permitted to reside with Ms.Jamna Datwani in the room exclusive to her, the cook to be employed by her will reside in the garage portion of the servant quarters. The cook will share the bathroom and toilet with other residents of the servant quarter block which is nearest to the garage.*

11. *Ms.Jamna Datwani will be permitted to install inverters/power back-up and have a telephone connection in the premises at her own expense. She can also install, at her own expense, any kitchen and other essential equipment for her own use.*

12. *Neither party would effect any permanent structural alterations.*

13. *An interim arrangement worked out by the learned Single Judge concerns financial help to the mother is reflected in the remainder directions issued in the impugned order.*

14. *Whereas counsel for Janak Datwani, Anand Datwani and Ms.Nitya Bharaney agree that Janak and Anand would with effect from the month of May, 2014 pay ₹35,000/- (Rupees Thirty Five Thousand only) each to Jamna Datwani and Nitya Bharaney would pay ₹15,000/- (Rupees Fifteen Thousand only) per month, learned counsel for Kishan Datwani does not give*

any consent for Kishan to pay any penny to his mother.

15. The impugned order has directed the four siblings i.e. Janak, Kishan, Anand and Nitya to pay ₹5,00,000/- (Rupees Five Lakhs only) each to the mother out of which the mother Jamna Datwani has been permitted to immediately utilize ₹2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) and thereafter ₹1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) every month beginning March, 2014. The ethos of the order is that the mother should have for her monthly expenses, keeping in view the status of the family, at least, ₹1,25,000/- (Rupees One Lakh Twenty Five Thousand only) per month. Kishan Datwani has not challenged the impugned order and thus as per the impugned order his liability would be to pay ₹31,250/- (Rupees Thirty One Thousand Two Hundred and Fifty Only) per month to his mother.

16. Thus, noting the agreement between Janak, Kishan and Nitya and the fact that Kishan has not challenged the impugned order we direct that the three sons, viz., Janak Datwani, Kishan Datwani and Anand Datwani shall, with effect from the month of May, 2014, pay a sum of ₹35,000/- (Rupees Thirty Five Thousand only) per month to Jamna Datwani. The amount would be paid by way of RTGS/ECS transfer to the account of Ms.Jamna Datwani : SB A/c No.0349101071631, Canara Bank, Maharani Bagh, New Delhi. The daughter Nitya Bharaney shall pay an amount of ₹15,000/- (Rupees Fifteen Thousand only) to the account of the mother per month commencing from the month of May, 2014.

17. It may be true that after utilizing the money made available to her by the learned Single Judge i.e. ₹20,00,000/- (Rupees Two Lakhs only), after consuming ₹2,50,000/- (Rupees Two Lakhs and Fifty Thousand only) as per the impugned order and further sum of ₹1,25,000/- (Rupees One Lakh and Twenty Five Thousand only) in the months of March and April, 2014, Ms.Jamna Datwani would be having ₹15,00,000/- (Rupees Fifteen Lakhs only) with her, but we let her retain the said amount should she need emergency medical treatment to be given to her. We are doing so for the reason the past history of litigation would reveal that the inter-se fight between Janak and

Anand has tormented the mother enough and God forbid she suffers any calamity, we are of the opinion that she should not be at the mercy of any son.

18. There is a direction in the impugned order for the four siblings to pay, as a onetime measure, ₹1,50,000/- (Rupees One Lakh and Fifty Thousand only) each to the mother, to enable her to buy a car. Whereas Anand Datwani and Nitya Bharaney have paid the said amount to the mother, the other two sons have not paid any money.

19. Learned counsel for Janak Datwani says that his client has not paid the money because he apprehends that the mother would not purchase any car and would use the money to litigate against Janak. Learned counsel for Janak Datwani states that Anand Datwani is manipulating the mother and thus Janak Datwani apprehends that it would be Anand who would use the said money to litigate with Janak.

20. We therefore direct that on the name of vendor of the car being intimated, Janak Datwani and Kishan Datwani shall pay by a demand draft drawn in the name of vendor ₹1,50,000/- (Rupees One Lakh and Fifty Thousand only) each within four days of the receipt of the communication by Jamna Datwani of the name of the vendor through whom Jamna Datwani would be purchasing a car.

21. We direct Janak Datwani and Kishan Datwani to within two weeks transfer through RTGS/ECS ₹5,00,000/- (Rupees Five Lakhs only) each to the account of the mother as directed by the learned Single Judge, noting that Anand and Nitya have paid their share as directed.

22. In spite the fact that as regards the subject matter of the two appeals, a consent has emerged we are reserving the matter for judgment on account of the fact that during arguments, it transpired that there is multifarious litigation between the parties. As many as 32 proceedings, original as well as in appeal and contempt have been litigated or are still pending between the parties. Some of them need to be stayed and some need to be clubbed. We shall be passing an

appropriate order in said regards.”

3. It is apparent that the impugned order has stood modified as per the order dated May 02, 2014, and as recorded in the said order we were to pass orders concerning various suits pending inter-se the parties or concerning CNA Exports Pvt. Ltd.

4. A Court of Record would be obliged to ensure that its processes are not abused and such measures can be put into place which would be consistent with the Rule of Law and would give a party a right to access justice and at the same time prevent abuse of the legal process.

5. The cries of the poor of being left with no time in Courts because the rich and the mighty can engage the best of lawyers who have the ability to spin simple threads into complex webs, are echoed in opinions expressed by members of the civil society in various articles concerning access to justice by the poor and one simply needs to access the website to gain information of said unfortunate facet of the working of the judicial system all over the world. Ten suits, two of which have been dismissed and the other are pending, have given birth to twelve appeals against interim orders and six contempt proceedings besides a criminal revision petition and two review petitions in this Court. Eighty three interim applications have been filed. The files of the suits, the appeals and the contempt proceedings would evidence that if not more, at least 2000 hours have been consumed by the parties and the stage of the pending suits is that issues have not been settled. Court sitting time in the Delhi High Court is five hours a day. Dividing 2000 by 5 we get the figure 400 days. Court sitting days being 210 in a calendar year, it is apparent that the Datwanis have kept one Judge of the Delhi High Court busy for nearly two years.

6. The Datwanis cannot litigate at pleasure. It is time to guillotine the time for the Datwanis. But it has to be ensured that while they are prevented from abusing the process of the law, such processes of law which would be necessary to secure justice to the Datwanis are followed.

7. The fight is over a company CNA Exports Pvt. Ltd. which owns two immovable properties : (i) 6, Friends Colony West, New Delhi, and (ii) Plot No.4, Sector-18, Gurgaon. Whereas the property at Friends Colony has a residential house thereon, the property at Gurgaon is an industrial plot. Through the holding of CNA Exports Pvt. Ltd., the members of the Datwani family would ultimately be staking a share in the immovable properties for the reason the company is conducting no business. The two immovable properties are the only assets which the company has. The dissolution of the company could either be by liquidating its assets and distributing the money to the shareholders in proportion to the shares held in the company or by any other equitable method which could include applying the principles of partnership for the reason the company is a private limited company shares whereof are held within the family. In the property at Friends Colony, 38% ownership is held by CNA Exports Pvt. Ltd., 38% by Jaskirat Datwani the ex-wife of Janak Datwani and 24% by a company called IN Exports Pvt. Ltd., 99% shares whereof are admittedly held by Janak Datwani.

8. We have to go back to the year 1975 when the family patriarch, Late Mr. Jamna Dass Daya Ram Datwani, pioneered the incorporation of CNA Exports Pvt. Ltd. A day after independence day i.e. on August 16, 1975 CNA Exports Pvt. Ltd. was incorporated. At the time of its incorporation the shareholding in the company was as under:-

<i>Smt. Jamna Datwani</i>	– 22.7%
<i>Kishin Datwani</i>	– 13.33%

<i>Janak Datwani</i>	– 13.33%
<i>Nitya Bharaney</i>	– 22.21%
<i>Anand Datwani</i>	– 13.33%
<i>Sushma Ravidass</i>	– 13.33%
<i>Tikamdass Moolchandani</i>	– 1.73%
<i>J.B.Overseas (Sales Pvt.) Ltd.</i>	– 0.04%

9. As regards the property at 6, Friends Colony West, New Delhi in CS (OS) No.698/2003 filed by Jaskirat Datwani pursuant to a final decree of partition dated April 17, 2007 the same has been partitioned. Proportionate to her 38% share, she has been put into possession of a part of the property. Proportionate to 24% share in the property of IN Exports Pvt. Ltd., the said company through Janak Datwani has been put to into possession of the part of the property. With respect to the 38% share of the CNA Exports Pvt. Ltd. who would obtain possession thereof became the subject matter of an issue when Anand Datwani alleging to be holding 99% shares in the company filed IA No.7048/2007 seeking possession of the portion of the property assigned to CNA Exports Pvt. Ltd. which was dismissed by the learned Single Judge on February 01, 2008 against which Anand Datwani filed FAO (OS) No.152/2008. A receiver was appointed to take possession of the part of the property assigned to CNA Exports Pvt. Ltd. A room in possession of IN Exports Pvt. Ltd. with respect to its 24% share in the property was permitted to be used by Jamna Datwani. Currently issue awaits adjudication before the Supreme Court wherein the decision dated July 26, 2010 passed by the Division Bench is challenged. Jamna Datwani had to file a Contempt Case No.555/2010 alleging violation of the decision dated July 26, 2010 passed by the Division Bench which was dismissed.

10. But much before that, in the year 1991, M/s. Nitya SARAL a company incorporated in France in which 24% shareholding is vested in

Janak Datwani filed CS (OS) No.4061/1991 seeking a decree in US\$312,793.25 against CNA Exports Pvt. Ltd. together with pendente lite and future interest. The suit is pending. CP No.35/1991 seeking winding up of CNA Exports Pvt. Ltd. was also filed. The same has been dismissed.

11. Concerning CNA Exports Pvt. Ltd. six suits registered as CS (OS) No.118/2007, CS (OS) No.1113/2007, CS (OS) No.556/2008, CS (OS) No.1791/2011, CS (OS) No.244/2013 and CS (OS) No.1461/2013 have been filed. Five of the six suits are pending and regrettably even issues have not been settled in the suit. One suit has been dismissed. But a first appeal is pending.

12. In CS (OS) No.118/2007 as many as sixteen applications praying for interim orders, amendment of the plaint, impleadment/transposition of parties, perjury and filing additional documents were filed. Twelve of which have been disposed of. Four still remain.

13. In CS(OS) No.1113/2007 as many as sixteen applications were filed seeking interim reliefs, vacation of interim orders, production of documents etc. Nine of which have been disposed of. Seven still remain.

14. In CS (OS) No.556/2008 as many as forty two applications were filed seeking interim injunctions, reference to CFSL for examination of signatures, vacation of interim orders, perjury, filing of additional documents, compromise, transposition, withdrawal of suit, deletion from array of parties etc. Thirty four of which have been disposed of. Eight still remain.

15. In CS (OS) No.1798/2011 as many as six applications were filed seeking interim orders, exemption, and deletion from array of parties. None of which have been disposed of. All are pending.

16. In CS (OS) No.244/2013 as many as three applications were filed seeking interim orders, amendment of plaint and exemption. Two of which have been disposed of. One still remains.

17. CS (OS) No.118/2007 has been filed by one Dayal Shahdadpuri, a relative of the Datwani family. He claims to be an original allottee of 22.21% shares of CNA Exports Pvt. Ltd. In said suit Anand Datwani claimed 99% shareholding to be his on the plea that his mother Jamna Datwani, brothers Kishin Datwani and Janak Datwani as also his sister Nitya Bharaney has transferred/gifted their shareholding to him. He further claimed that Sushma Ravidass and Tikimdass Moolchandani had likewise transferred/gifted their shareholding to him. In said suit Dayal Shahdadpuri filed IA No.8812/2011 seeking to amend the plaint by pleading that he was not the original allottee of any share and that he was in fact claiming a right to the shares of Nitya, alleging she transferred the same to him. He sought to amend the plaint to plead that he gifted the shares to Janak and sought to amend the plaint to plead that Janak should be declared the holder of 22.21% shares.

18. CS (OS) No.1113/2007 has been filed by Janak Datwani in retaliation to the purported claim of Anand Datwani as per the written statement filed by him in CS (OS) No.118/2007 that he owns 99% shares of CNA Exports Pvt. Ltd. Janak Datwani inter-alia claims a declaration that he owns 13.33% shares of the company and that the purported transfer of his shareholding in favour of Anand Datwani be declared null and void. Issue concerning the property at Gurgaon has resulted in various interim applications being filed in the said suit giving birth to two appellate proceedings before the Division Bench. In the said suit various applications concerning the property in Friends Colony have given birth

to appellate proceedings as well. Two contempt proceedings have emanated in the said suit.

19. CS (OS) No.556/2008 was filed by Jamna Datwani inter-alia seeking a declaration that hers, Kishin's, Janak's, Nitya's and Sushma's and Tikimdass's shareholding totaling 86% in favour of Anand Datwani is illegal and void. Various interim applications filed in the suit gave birth to interim orders and further appellate proceedings.

20. In said suit a CFSL Report that Nitya's signatures on the purported gift deed and share transfer forms were forged resulted in Jamna and Anand entering into a compromise, which is labeled as collusive by Janak Datwani. Jamna Datwani filed an application to be permitted to withdraw the suit. Janak and Kishin have prayed to be transposed as plaintiffs. Transposition being allowed Anand has taken resort to appellate proceedings.

21. CS (OS) No.1798/2011 was filed by Janak Datwani inter-alia challenging Anand Datwani acting on behalf of the company and entering into a Joint Development Agreement for the Gurgaon property on the strength of Anand Datwani claiming 99% shareholding in the company CNA Exports Pvt. Ltd. as being his.

22. Janak Datwani filed CS (OS) No.244/2013 challenging Anand Datwani's claim that Sushma's 13.33% shareholding in CNA Exports Pvt. Ltd. was transferred to him.

23. Kishan filed CS (OS) No.1461/2013 questioning Janak Datwani's and Anand Datwani's respective claim that they (each one) are the transferee of Kishan's 13.33% shareholding in CNA Exports Pvt. Ltd. The suit was dismissed. Issue awaits adjudication in RFA (OS) No.130/2013.

24. Jamna Datwani has initiated proceedings under the Domestic Violence Act, 2005 against Janak Datwani concerning 6, Friends Colony West.

25. Various contempt proceedings concerning orders passed in the proceedings initiated under the Domestic Violence Act, 2005 are pending.

26. Parties have filed applications under Section 340 Cr.P.C., 1973 against each other.

27. From the above narratives it is clear that CS (OS) No.118/2007, CS (OS) No.1113/2007, CS (OS) No.556/2008, CS (OS) No.1791/2011, CS (OS) No.244/2013 and CS (OS) No.1461/2013 all relate to the shareholding in the company CNA Exports Pvt. Ltd. Whereas CS (OS) No.1461/2013 has been dismissed the others are pending.

28. We see no reason why the said five suit i.e. CS (OS) No.118/2007, CS (OS) No.1113/2007, CS (OS) No.556/2008, CS (OS) No.1791/2011 and CS (OS) No.244/2013 be not consolidated and common evidence led. The necessity to consolidate the suits arises not only on account of the fact that common questions of law and fact arise for consideration, if not wholly, in substantial measure in the said five suits but also for the reason the parties have shown a litigious behavior evidenced by the fact that in the suits filed by them eighty three interim applications have been filed out of which twenty six are still pending and God knows how many more would be filed.

29. We therefore direct that CS (OS) No.118/2007, CS (OS) No.1113/2007, CS (OS) No.556/2008, CS (OS) No.1791/2011 and CS (OS) No.244/2013 shall stand consolidated. Evidence would be led in CS (OS) No.118/2007. Since issues have yet to be settled in the said five suits, we would request the learned Single Judge to settle the issues on the

next date of hearing. We request the learned Judge Incharge of the Original Side to list all the suits before one Hon'ble Judge on the Original Side. We direct that trial in the suits which are consolidated shall commence as expeditiously as possible and that decisions may be taken in interim applications as per the calendar of the Court, but pendency of the applications should not come in the way of the consolidated suits proceeding to trial.

30. In this regards we would like to pen that in suits the pendency of interim applications should not come in the way for the suits to be tried. For example, applications concerning interim measures and receiver being appointed have no concern with the onward march of the suit. Distinct and separate orders can always be passed in interim applications with separate dates of listing of interim applications, and as regards the suit, distinct and separate orders passed with separate dates can be fixed.

31. In view of the fact that with consent of Jamna Datwani and Janak Datwani we have resolved the issue pertaining to possessory rights by way of interim measures in the property at 6, Friends Colony West. We stay the proceedings under the Domestic Violence Act, 2005 initiated by Jamna Datwani against Janak Datwani.

32. We bring the curtains down by reiterating that the subject matter of the two appeals stood resolved when we had passed the order on May 02, 2014. The order passed today has been passed in exercise of the inherent power which a Court of Justice must possess to prevent misuse of its procedures in relation to action(s) initiation whereof may apparently be not inconsistent with the literal application of the law but otherwise would be manifestly unjust and unfair to any party. Indeed, it would be a scandal to the administration of justice where on an issue concerning shareholding in a company cross claims would be adjudicated in separate

suits and the litigious parties flood the Courts with applications nearing a century.

33. The appeals are disposed of without any order as to costs.

(PRADEEP NANDRAJOG)
JUDGE

(CHIEF JUSTICE)

MAY 16, 2014
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