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

+ **RFA(OS) 65/2009**

ORIENT CARPET GALLERY PVT LTD. Appellant
 Represented by: Mr.Amit Sibal, Sr.Advocate
 instructed by Mr.Vikas Mehta,
 Mr.Narhari Singh, Advs.

versus

SURESH JAIN Respondent
 Represented by: Mr.S.K.Mishra, Adv.

+ **CS(OS) 136/2007**

M/S SILVER OAK INFRASTRUCTURE PVT LTD..... Plaintiff
 Represented by: Mr.Amit Sibal, Sr.Advocate
 instructed by Mr.Vikas Mehta,
 Mr.Narhari Singh, Advs.

versus

SHRI SURESH JAIN & ORS. Defendant
 Represented by: Mr.S.K.Mishra, Adv.

+ **CS(OS) 287/2007**

SHRI SURESH JAIN Plaintiff
 Represented by: Mr.S.K.Mishra, Adv.

versus

ORIENT CARPET GALLERY PVT LTD Defendant
 Represented by: Mr.Amit Sibal, Sr.Advocate
 instructed by Mr.Vikas Mehta,
 Mr.Narhari Singh, Advs.

CORAM:
HON'BLE MR. JUSTICE PRADEEP NANDRAJOG
HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER
31.07.2015

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1. The appellant is aggrieved by a decree being passed on admission allowing IA 2094/2008 filed by the respondent. It is apparent that Order XII Rule 6 of the Code of Civil Procedure was brought into aid.
2. Suit filed by the respondent sought specific performance of an agreement dated December 09, 2005. Permanent injunction to restrain the appellant from alienating, transferring or encumbering suit property in favour of third party was also prayed for. In the alternative damages were prayed for.
3. The decree passed is directing specific performance of the agreement dated December 09, 2005. The permanent injunction sought for has also been granted. The respondent has been held entitled to costs.
4. The defence of the appellant, apart from a defence concerning the admissibility of the agreement in question on account of it not being allegedly drawn on adequate stamp paper nor registered as per Section 17 of the Registration Act, was that a sister concern of the appellant named M/s. Silver Oak Infrastructure Pvt.Ltd. and the respondent had entered into another agreement of even date concerning another property and there was a distinct oral agreement that the two agreements concerning the two properties would be simultaneously executed, being reciprocal in nature.

5. Parties were referred to mediation. We are informed that the parties have settled their disputes concerning the two agreements: the first which was the foundation of the cause on which the respondent sued the appellant and the second which was the cause on which the sister concern of the appellant sued the respondent.

6. Concerning the litigation between the respondent and the sister concern of the appellant CS(OS) 136/2007 is pending adjudication on the Original Side of this Court.

7. The parties have settled the disputes. Parties we mean appellant and the respondent and his two sons Sumit Jain and Vinit Jain having joint liability; as also the sister concern of the appellant i.e. M/s.Silver Oak Infrastructure Pvt.Ltd. as well as the respondent.

8. Terms of the settlement are:

(i) *Mr.Suresh Jain and one of his sons Sumit Jain will demolish the existing building erected at 11 MG Road, New Delhi.*

(ii) *On an area of approximate 100 sq.yds. at 11 MG Road, New Delhi a building constructed is in possession of Vistar. Rights of Vistar would be acquired for which consideration to be paid would be equally shared by Suresh Jain and M/s. Silver Oak Infrastructure Pvt.Ltd. Thereafter the construction in question (currently in possession of Vistar) would be demolished by Mr. Suresh Jain and his son.*

(iii) *Remainder building on aforesaid plot at 11 MG Road would be demolished by Mr.Suresh Jain and his son.*

(iv) *M/s.Silver Oak Infrastructure Pvt.Ltd. will pay ₹4.5 crores in full and final settlement of all claims of Mr.Suresh Jain and his two sons Mr.Sumit Jain and Vinit Jain before December 31, 2015, over and above the amount which has already been paid by M/s.Silver Oak to Suresh Jain and his two sons. The amount would be paid to Mr.Suresh Jain.*

(v) Simultaneously, Suresh Jain and his sons would execute a sale deed transferring their entire right, title and interest in 11 MG Road, New Delhi which would then be a vacant plot of land admeasuring 1000 sq.yds. in favour of M/s.Silver Oak. (Though the sale deed would be for 1000 sq.yds. but actual vacant possession handed over would be of 700 sq.yds. clarifying that the remainder has been acquired for road widening)

(vi) The appellant shall execute a sale deed transferring right, title and interest of the company in favour of Suresh Jain in commercial space No. CG-07 (approx. super area 1695 sq.ft. on the ground floor of a building popularly known as Ansal Plaza, Hudco Place, Andrews Ganj, New Delhi in short the commercial space at Ansal Plaza)

(vii) Shri Satish Kumar Gupta, Director of M/s. Orient Carpet Gallery Pvt.Ltd. who was appointed as receiver in respect of the commercial space at Ansal Plaza vide the order of this Court dated March 05, 2012 will hand over vacant physical possession of the commercial space at Ansal Plaza within two days.

(viii) On handing over the vacant physical possession of the commercial space at Ansal Plaza, to Shri Suresh Jain, Shri Satish Kumar Gupta would be discharged as the receiver of the said property.

(ix) The Bank Guarantee furnished by Shri Suresh Jain while withdrawing the amount pursuant to the order of this Court dated February 15, 2010 is discharged.

(x) The maintenance expenses of the commercial space at Ansal Plaza as noted above for the time period when M/s Supreme Trade Link Pvt.Ltd. was the tenant will be borne by Shri Suresh Jain however, the expenses of the maintenance of the said commercial space from the day M/s Supreme Trade Link Pvt.Ltd. vacated the premises till the handing over of the same to Shri Suresh Jain will be borne by M/s Orient Carpet Gallery Pvt.Ltd..

(xi) If there are any arrears of rent, Mr. Suresh Jain would be

authorized to recover.

(xii) The amount lying in the Court in respect of the commercial space at Ansal Plaza will be released in favour of Shri Suresh Jain.

9. In view of the settlement between the parties the judgment dated July 24, 2009 and the consequent decree in CS(OS)287/2007 is set aside. CS(OS) No.287/2007 titled as '*Suresh Jain Vs. M/s Orient Carpet Gallery Pvt.Ltd*'. and CS(OS) No.136/2007 titled as '*M/s Silver Oak Infrastructure Pvt.Ltd. vs. Shri Suresh Jain and others*' are taken on Board and the present RFA being RFA(OS) No.65/2009 titled as '*M/s Orient Carpet Gallery Pvt.Ltd. vs. Suresh Jain*' along with all pending applications in the suits are disposed of in terms of the settlement as noted above. A decree in terms of settlement be passed in CS (OS) No.136/2007 and CS (OS) No.287/2007.

10. Since the suits have been disposed off as settled pursuant to mediation, parties will be entitled to refund of Court fees in terms of Section 16 of the Court Fees Act in the two suits i.e. CS(OS) No.287/2007 and CS(OS) No.136/2007 and RFA(OS) No.65/2009. Registry is directed to issue certificates to the respective parties.

11. The parties i.e. Satish Kumar Gupta being the Director of M/s Orient Carpet Gallery Pvt.Ltd and M/s Silver Oak Infrastructure Pvt. Ltd. on behalf of two companies and Shri Suresh Jain and his son Sumit Jain have signed the order sheet in acknowledgment of the settlement as noted above. Mr.Vinit Jain, S/o Shri Suresh Jain who is not present in Delhi will sign the order sheet on August 03, 2015.

12. The present RFA(OS) be listed only for the said purpose on August 03, 2015.

13. Copy of the order be also placed in CS (OS) No.136/2007 and CS (OS) No.287/2007.


PRADEEP NANDRAJOG, J.


MUKTA GUPTA, J.

JULY 31, 2015
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