

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision:11.11.2016

CR 6752 of 2016 (O&M)

M/s KLJ Developers Pvt Limited

..... *Petitioner*

Versus

M/s Countrywide Promoters Pvt Limited and others.....Respondents

CR 6892 of 2016 (O&M)

M/s KLJ Developers Pvt Limited

..... *Petitioner*

Versus

M/s Countrywide Promoters Pvt Limited and others.....Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

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Present: Mr. Adarsh Jain, Advocate
 for the petitioner

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Rekha Mittal, J.

This order will dispose of the aforesaid petitions as identical questions of law and fact are involved for adjudication.

However, for the sake of convenience, facts are taken from CR No. 6752 of 2016.

Counsel for the petitioner has submitted that M/s Countrywide Promoters Pvt. Limited-respondent No. 1 filed a suit for possession by way of specific performance of agreement to sell with consequential relief of permanent injunction against Rajpal son of Khem Chand alias Khimmanand-respondent No. 2. In the said suit, M/s Lubhawani Estate

Private Limited through Shri Ajay Singh Pundir/authorized representative was arrayed as defendant No. 2. The suit was instituted in the year 2011 and during pendency of the suit, M/s Lubhawani Estate Private Limited merged with M/s KLJ Developers Private Limited under the order passed by the Delhi High Court. The respondent No. 1/plaintiff filed an application under Order 1 Rule 10 read with Order XXII Rule 10 of the Code of Civil Procedure for impleading M/s KLJ Developers Private Limited as a necessary party in place of defendant No. 2 and application was dismissed by the trial Court vide order dated 05.08.2016 challenged in Civil Revision No. 6892 of 2016. It is further argued that M/s Lubhawani Estate Private Limited was proceeded against ex parte vide order dated 30.08.2014 and the instant application was filed by the petitioner for setting aside the ex parte proceedings against defendants No. 2 but the same has been wrongly and illegally dismissed by the trial Court. It is argued with vehemence that as the respondent/plaintiff impleaded M/s Lubhawani Estate Private Limited as a defendant and said company has merged into the petitioner under order passed by the Delhi High Court, the petitioner is entitled to get the ex parte proceedings set aside, file the written statement and contest the suit. It is further submitted that mentioning of M/s Lubhawani Estate Private Limited as pro forma defendant in the plaint appears to be the result of some bona fide error or typographical mistake and that should not be allowed to stand in the way of the petitioner to seek setting aside of the ex parte proceedings. In support of his contention, he has referred to judgment of Hon'ble Supreme Court of India ***Raj Kumar v. Sardari Lal and others 2004(2)JT 196***. Further reference has been made to judgment of this Court ***Usha Rani***

and another v. Naresh and others 2010 (4) R.C.R. (Civil) 532.

I have heard counsel for the petitioner and perused the paper book particularly the order impugned.

Before advertng to the submissions made by counsel for the petitioner, a relevant extract from the impugned order needs to be noted, reads thus:-

“Perusal of the case file indicate that defendant No. 2 was proceeded against ex parte on 13.08.2014. Admittedly, Shri N K Gupta Advocate for defendant No. 2 appeared on behalf of defendant No. 2 along with one of the employee of defendant No. 2 namely Shri Arun Somata which clearly indicate that defendant No. 2 has notice, knowledge of the pendency of the case. However, till the filing of the present application in the Court on 0.09.2016 i.e. till lapse of around two years, no efforts is made by defendant No. 2 to join proceedings. No explanation worth the name is coming on the Court file to explain as to why defendant No. 2 did not appear in the Court earlier, filed written statement or moved application for setting aside ex parte order dated 13.08.2014. As per settled preposition of law, the remedy in law is for the one who is vigilant about his right and not for the one who is sleeping over them. For the past two years the defendant No. 2 did not take any step to appear in the court and now when the case is listed for evidence of the plaintiff, has all of a sudden arouse from his deep slumber and moved application challenging the order dated 13.08.2014. Even otherwise, the application in hand is not moved by defendant No. 2. Though allegedly the applicant's company merged with the company of defendant NO. 2 but appropriate remedy with the applicant company was

to move the application for substitution in place of defendant No. 2 promptly after its merger with defendant No. 2. However, no such application is ever filed on the record. Even otherwise, no effective relief has been claimed by the plaintiff from defendant No. 2. As per own case of the plaintiff, defendant No. 2 has already assigned all his legal right and interest in the suit property in favour of plaintiff company vide assignment deed dated 30.08.2006. After alleged assignment or such rights in the year 2006, the defendant No. 2 company is left with no right and title in the suit property. Thus, no fruitful purpose would be served by allowing the application in hand. Rather, it appears to be futile attempt on the part of the plaintiff and defendant No. 2 to bye-pass the order of the Court dated 05.08.2016 which is not permissible. Hence, finding no merit in the application in hand, same is declined.”

It is undisputed position of the case that the respondent/plaintiff filed an application under Order 1 Rule 10 read with Order XXII Rule 10 CPC for substitution of M/s KLJ Developers Private Limited and the application was dismissed by the trial Court vide order dated 05.08.2016 on the premise that as per case of the plaintiff, defendant No. 2 had assigned its legal right, title and interest in the suit property in favour of the plaintiff company vide assignment deed dated 30.08.2006. After alleged assignment of said rights in the year 2006, defendant No. 2 Company was left with no right or title in the suit property. Thus, subsequent merger of defendant No. 2 with M/s KLJ Developers Private Limited does not affect merits of the present case. No right and title of the plaintiff in the suit property merged with M/s KLJ Developers Private Limited in the year 2012 as it had already assigned its legal right and title in the suit property to plaintiff in the year

2006. When defendant No. 2 had no right and title in the suit property, its subsequent merger with M/s KLJ Developers Private Limited creates no right and title in favour of M/s KLJ Developers Private Limited. Accordingly, M/s KLJ Developers Private Limited is not a necessary party and there is no requirement of substituting it in place of defendant No. 2.

The order passed by the trial Court disallowing application of the plaintiff for substituting M/s KLJ Developers Private Limited has not been challenged by the respondent/plaintiff and thus, has attained finality between the plaintiff and defendant No. 1. Counsel for the petitioner has not made any submission in order to assail the factual findings recorded by the trial Court in order dated 05.08.2016 whereby it has been held that after alleged assignment of rights by defendant No. 2 in favour of the plaintiff in the year 2006, defendant No. 2 was left with no right or title in the suit property. Contention of the petitioner that describing defendant No. 2 as pro forma is the result of typographic error is misconceived and merits outright rejection for the reason that no such plea was ever raised by the plaintiff who is master of the case being *dominus litis*. This apart, if the petitioner has any right to enforce against defendant No. 1, admittedly owner of the suit property, he may take recourse to remedy under law, if so advised. In this view of the matter, as M/s KLJ Developers Private Limited could not be held entitled to substitution in place of M/s Lubhawani Estate Private Limited, there was no occasion for the trial Court to permit the petitioner to get the ex parte proceedings set aside and thereafter to file the written statement and defend the case. It further appears to the Court that as the respondent/plaintiff failed in its attempt to implead M/s KLJ Developer Private Limited as a party, the present application for setting aside the ex

parte proceedings is another attempt to sneak into the proceedings by M/s KLJ Developers Private Limited for some undisclosed reasons.

This brings the Court to the judgments referred to by counsel for the petitioner. Both these judgments deal with rights of a transferee pendente lite, to be impleaded as a party. In the case at hand, the petitioner does not claim to be transferee pendente lite, therefore, it cannot derive any advantage to its contention from the judgments cited at bar.

For the foregoing reasons, the petitions fail and are accordingly dismissed *in limine*.

Xerox copy of this order be placed on the file of connected case.

(Rekha Mittal)
Judge

11.11.2016
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No