

\$~6 to 9

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

+ **FAO(OS) 106/2015 & CM No.4169/2015**

GUNJA INTERNATIONAL LTD & ANR Appellant

Represented by: **Mr.Jagdeep Kishore, Adv.**

versus

USHA DUA & ORS

..... Respondents

Represented by: **Mr.Ashish Mohan, Mr.Dhruv Madan and Mr.Akshay Malik, Adv. for R-1.**

None for R-2.

Mr.J.P.Sengh, Sr.Adv.

instructed by Mr.Akhilesh

Arora, Adv. for R-3 & 4.

AND

+ **FAO(OS) 115/2015 & CM No.4422/2015**

RAKSHVIR APARTMENTS PVT LTD & ANR Appellants

Represented by: **Mr.J.P.Sengh, Sr.Adv.**

instructed by Mr.Akhilesh

Arora, Adv.

versus

USHA DUA & ORS

..... Respondents

Represented by: **Mr.Ashish Mohan, Mr.Dhruv Madan and Mr.Akshay Malik, Adv. for R-1.**

Mr.Jagdeep Kishore, Adv. for R-2 & 3

None for R-4, 5 & 6.

AND

+ : FAO(OS) 107/2015 & CM No.4172/2015

GUNJA INTERNATIONAL LTD AND ANR Appellants

Represented by: Mr.Jagdeep Kishore, Adv.

versus

NARINDER KUMAR DUA AND ORS Respondents

Represented by: Mr.Ashish Mohan, Mr.Dhruv
Madan and Mr.Akshay Malik,
Advs. for R-1.
None for R-2
Mr.J.P.Sengh, Sr.Adv.
instructed by Mr.Akhilesh
Arora, Adv. for R-3 & 4

AND

+ : FAO(OS) 119/2015 & CM No.4550/2015

RAKSHVIR APARTMENTS PVT LTD & ANR Appellants

Represented by: Mr.J.P.Sengh, Sr.Adv.
instructed by Mr.Akhilesh
Arora, Adv.

versus

NARINDER KUMAR DUA & ORS Respondents

Represented by: Mr.Ashish Mohan, Mr.Dhruv
Madan and Mr.Akshay Malik,
Advs. for R-1.
Mr.Jagdeep Kishore, Adv. for
R-2 & 3
None for R-4

CORAM:

HON'BLE MR. JUSTICE PRADEEP NANDRAJOG

HON'BLE MS. JUSTICE MUKTA GUPTA

ORDER

%

19.01.2016

1. Though the appeals are being disposed of with consent of learned counsel for the parties in the appeals we need to pen a few lines before recording the consent.
2. Usha Dua, the first respondent in FAO (OS) No.115/2015 and FAO (OS) No.106/2015 owned the first floor of property bearing Municipal No.W-111A, Greater Kailash, Part I, New Delhi. Her husband Narender Kumar Dua, the respondent No.1 in the other two captioned appeals owned the ground floor and the first floor thereof.
3. The two filed independent suits number CS (OS) No.2114/2003 and CS (OS) No.2151/2003 respectively, pleading identical facts and praying for by M/s.Gunja International Ltd. and M/s.Gunja Investment and Trading Ltd. Both impleaded the Municipal Corporation of Delhi as a defendant No.3. Stating that the Directors of Gunja International Ltd. to whom they had to sell the respective floor owned by them tendered cheques drawn on the account of M/s.Gunja Investment and Trading Ltd. and that the sale consideration failed because the cheques were dishonoured, first prayer made was for the sale deeds to be cancelled and possession of the floors returned to them. Alternatively it was prayed that a money decree be passed with interest so that the sale consideration was received by them.
4. In the year 2006 both filed applications to amend the plaint praying that Ravinder Rastogi and Ali Jamal Kidwai be impleaded as defendants. Both wanted to incorporate further pleadings concerning individual acts by Ravinder Rastogi and Ali Jamal Kidwai. Both wanted to amend the reliefs. In the year 2012 both filed identically worded applications praying for

further amendments in the pleadings and the prayers.

5. Vide impugned order dated January 12, 2015, which appears to have been passed post haste, only considering IA No.3774/2006 filed by Usha Dua in CS (OS) No.2114/2003, both applications filed by Usha Dua have been allowed. Regretfully, the order shows that it is a composite order in the two suits filed by the husband and wife. Regretfully, the order does not deal with the applications filed by the husband seeking amendment of the plaint instituted by him. We further note that the properties have been purchased by Rakshver Apartments Pvt Ltd. & Anr., of which Sushant Aggarwal is a Director.

6. The consent given for disposal of the appeals is by the appellants of FAO (OS) No.115/2015 and FAO (OS) No.119/2015, Usha Dua and Narender Kumar Dua and we note that it is irrelevant whether Municipal Corporation of Delhi does or does not give consent because said body has been unnecessarily impleaded as a defendant by Usha Dua and Narender Kumar Dua in the two suits filed by them.

7. As regards Ravinder Rastogi and Ali Jamal Kidwai, the suit qua them would be deemed to be instituted when the amendments qua them were prayed for and they would have all defences open to them.

8. We dispose of the appeals with consent modifying the impugned order dated January 12, 2015 by recording consent that IA No.3774/2006 and IA No.16276/2012 in CS(OS) No.2114/2003 filed by Usha Dua in the suit seeking amendment of the plaint are disposed of disallowing the amendment sought to the prayer clause in the original plaint. However, amendment sought in the pleadings are allowed.

9. As we have noted above that the impugned order has been passed

recording that it has been passed in CS(OS) No.2114/2003 and CS(OS) No.2151/2003. However, the two applications under Order 6 Rule 17 which have been disposed of have been filed only in CS(OS) No.2114/2003 and, therefore, under strength of the impugned order there would be no question of allowing any amendment to CS(OS) No.2151/2003.

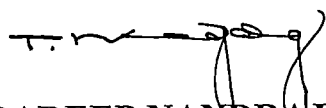
10. If applications seeking amendment of the plaint in CS(OS) No.2151/2003 are pending, the same shall be decided as per law by learned Single Judge.

11. We note that as a result of the amendments allowed two persons named Ravinder Rastogi and Ali Jamal Kidwai would require to be impleaded as defendants. Upon the amended plaint being filed in CS(OS) No.2114/2003 the learned Single Judge would proceed to issue summons to such two persons as well.

12. Amended plaint be filed by the plaintiff of the suit in terms of the two amendments allowed by consent today within four weeks.

13. Replication thereto may be filed by the existing defendants within another four weeks thereafter.

14. No costs.


PRADEEP NANDRAJOG, J.


MUKTA GUPTA, J.

JANUARY 19, 2016
rb