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

+ TR.P.(C) 9/2016

M/S. R.K. BUILDERS & ORS.

..... Petitioners

Through Mr. Hemant Malhotra and Mr. Pankaj
Malhotra, Advocates.

versus

NISHA GUPTA

..... Respondent

Through Mr. Vinay Sabharwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

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05.08.2016

1. By the present petition, the petitioners seek transfer of CS(OS) 480/2012 titled as “**Smt. Nisha Gupta vs. M/s. R.K.Builders & Ors.**” from the court of Sh.Ajay Singh Shekhawat, SCJ, Saket Court and its consolidation with Civil suit No. 84/2015 titled as “**M/s.R.K.Builders & Ors. vs. Smt. Nisha Gupta**” which is pending before the court of Sh.S.S.Rathi, ADJ, Patiala House Courts, New Delhi for the purpose of trial and adjudication.

2. The brief facts which led to the filing of the two suits are that the petitioner No.1 is said to be a partnership concern engaged in the business of builders and developers. The respondent purchased a shop at Vasant Plaza Building at Aruna Asif Ali Marg, Village Kishan Garh, Vasant Kunj, New Delhi in 1992. It is contended by the petitioners that the petitioners agreed to sell the shop No. G-9 for a sale consideration of Rs.2,50,000/-. The

possession of the shop was handed over on 04.09.1992 and only a sum of Rs.21,000/- in cash was paid against the receipt. The balance agreed sale consideration of Rs.2,29,000/- was agreed to be paid by the respondent in instalments

3. The respondent, however, claims that an agreement to sell was entered into on 04.09.1992. It is admitted that Rs.21,000/- was paid initially. However, further payments were made from 04.09.1992 to February 1993. It was agreed that the petitioners would handover possession of the shop against security of Rs.1,50,000/- by way of two undated cheques. The respondent claims that the petitioners issued a receipt of Rs.1,60,000/- on 24.07.1994. The balance amount was Rs.90,000/-. Subsequently, disputes have arisen. There is also some controversy regarding the cheques which have been raised by the respondent.

4. A perusal of the two complaints filed shows that in the suit which has been filed by the respondent in 2012, which is prior in time, the respondent has claimed (a) decree of declaration declaring the agreement to sell as subsisting; (b) decree of permanent injunction restraining the defendants from dispossessing the plaintiff; (c) decree of specific performance of the agreement to sell and (d) in alternative, payment of damages. The petitioners by the suit filed in 2015 sought the relief of decree of possession and a decree of Rs.1,90,000/- towards use and occupation charges.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioners has submitted that in the written statement filed by the respondent in the suit of the petitioners, a preliminary objection has been taken that the suit filed by the petitioners is in the nature of a counter claim in respect of the same property and that both the suits are

liable to be tried together. He submits that as this is the stand of the respondent, the present transfer petition is liable to be allowed.

7. Learned counsel appearing for the respondent has however objected to the present petition stating that his suit is pending before the SCJ and if it is heard along with the suit of the petitioners which is pending in the court of ADJ, the respondent will lose her right of first appeal to the district judge. It is also stated that the present suit is nothing but a counter blast to an application filed under Section 10 CPC which is pending before the Trial court.

8. There is no dispute that the parties are common. Issues of facts which have been raised by the parties are substantially common. Common questions of law and fact are likely to arise in the matter. Common oral and documentary evidence would be filed by the parties. No purpose would be served by duplication of recording of evidence if separate trials are held. It would be in the interest of justice that the two suits are tried together and the parties lead common evidence.

9. Reference in this context may be had to the judgment of the Supreme Court in the case of ***Chitivalasa Jute Mills vs. Jaypee Rewa Cement*** wherein the court while directing consolidation of the two suits noted as follows:-

“9. On the facts averred in the two complaints filed by the two parties before two different courts, it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a Division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions, i.e., the supply of jute bags between the period 07.01.1992 and

31.12.1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record finding inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.”

10. There is no merit in the contention of the respondent that the respondent will lose the right of first appeal to the district judge. In my opinion, no purpose would be served by dragging the parties to two trials.

11. Accordingly, the present petition is allowed. CS(OS) 480/2012 titled as “**Smt. Nisha Gupta vs. M/s. R.K.Builders & Ors.**” pending in the court of Sh.Ajay Singh Shekhawat, SCJ, Saket Court is transferred to the court of Sh.S.S.Rathi, ADJ, Patiala House Courts, New Delhi to heard along with Civil suit No.84/2015 titled as “**M/s.R.K.Builders & Ors. vs. Smt. Nisha Gupta**”.

12. The suit filed by the respondent titled as “**Smt. Nisha Gupta vs. M/s. R.K.Builders & Ors.**” may be treated as lead suit and the parties may lead evidence in the said suit which will be common for both the suits.

13. The present petition is accordingly disposed off.

JAYANT NATH, J

AUGUST 05, 2016
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