

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

% Order delivered on: 15th December, 2014

+ **CS(OS) No.1585/2008**

YOGENDRA KUMAR MODI Plaintiff

Through Mr.Darpan Wadhwa, Adv. with
Ms.Shruti Verma & Ms.Aditi
Mohan, Advs.

versus

M.K. MODI & ANOTHER Defendants

Through Mr.Saurabh Kripal, Adv. with
Mr.Ashish Jha, Mr.Nilesh Kumar &
Mr.A.Siddhartha, Advs. for D-2.

**CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

**O.A. No.71/2012 (Chamber Appeal against the order dated 25th
April, 2012, by plaintiff)**

1. By this order, I propose to decide the abovementioned Chamber Appeal filed by the plaintiff challenging the order dated 25th April, 2012 passed by the Registrar (O) wherein the Registrar (O) accepted the security furnished by defendant No.2.
2. Brief facts of the case are that the appellant/plaintiff had filed a summary suit under Order XXXVII CPC for recovery of Rs.3,43,15,780/- along with *pendente lite* and future interest. By order dated 1st October, 2010, the application for leave to defend filed by defendant No.2 was allowed. Feeling aggrieved by the said order,

the plaintiff filed an appeal before the Division Bench. By order dated 7th April, 2011, the Division Bench of this Court disposed of the appeal, with the following directions:-

“1. By consent of learned counsel for the parties i.e. appellant and respondent No.2, the appeal stands disposed of recording that leave to defend granted to respondent No.2 would be subject to the condition of said respondent furnishing security of an immovable property to the satisfaction of the Registrar of this Court; security to be furnished of an immovable property either belonging to respondent No.2 or any other person (including juristic) on behalf of respondent No.2. The security would be furnished within a period of 4 months from today.

2. It is clarified that if the security furnished would be of an immovable property registered in the name of a company, Board Resolution authorizing the property to be furnished as a security would be filed.

3. Appeal stands disposed of.”

3. Pursuant to the order of the Division Bench, the Registrar (O) by order dated 25th April, 2012 accepted the surety bond furnished by defendant No.2. The operative portion of the said order reads as under:-

“Pursuant to Hon’ble Division Bench order dated 07.04.2011 in FAO (OS) No.147-148/2011 and order dated 19.01.2012 passed by Hon’ble Single Judge in CS (OS) No. 1585/2008, Mr. Shashi Kumar Nair, Director has furnished requisite Surety Bond supported by the title documents of an immovable property. His statement has been recorded separately.

Having regard to the statement made by Mr. Shashi Kumar Nair, Director and keeping in view the documents

placed on record, the Surety Bond furnished is hereby accepted.

A communication be sent to Tehsildar, Modinagar intimating him that property bearing No. "Khata S. No. 00806 Khasra No. 5 Raqbayi 0.2660 hectare, Khasra No.7 Raqbayi 0.4550 hectare, Khasara No.11 Raqbayi 0.1560 hectare, Khasra No. 12 Raqbayi 0.1170 Hectare, Khasra No.15/1 Raqbayi 0.5060 hectare vide Khatauni 1412-1417 Fasli situated at Village Begamabad, Budana, Distt. Modinagar, known "as land near cowshed" has been tendered as security in CS (OS) NO. 1585/2008 on behalf of M/s Haryana Distillery Limited and the same shall not be permitted to be tendered as security or appropriated, sold, transferred, alienated in any manner without prior permission from the Hon'ble Court."

4. The plaintiff has challenged the said order passed by the Registrar (O), mainly, on the grounds that defendant No.2 has furnished the surety without depositing the title documents. Therefore, the Registrar ought to have sent back the matter to the Court to examine the issue rather to accept the surety furnished by defendant No.2.

5. The contention of Mr.Darpan Wadhwa, learned counsel for the plaintiff is that without depositing the title in order to furnish the surety bond, the Registrar had erred in accepting the statement of Mr.Shashi Kumar Nair. The same is not in compliance with the order passed by the Division Bench. Since defendant No.2 has failed to deposit the title of the said property which is not even shown to the Court, the impugned order ought not to have been passed. Though it is not denied by the learned counsel for the plaintiff that it might be possible that defendant No.2 is the owner of the property on the basis

of which the surety was furnished. It is stated by him that the apprehension of the plaintiff is that in the absence of the documents, defendant No.2 may mortgage the said property without the knowledge of the plaintiff. It is also stated that his client is not prepared to accept the statement of defendant No.2 which was recorded by the Registrar that defendant No.2 would not sell, transfer or alienate in any manner the said property without the permission of the Court. His submission is that it will create further litigation in case ultimately the said order passed by the Registrar is violated by defendant No.2. In nut-shell, his contention is that the order passed by the Registrar is contrary to the Delhi High Court (Original Side) Rules, 1967 and the law settled on the subject.

6. On the other hand, the contention of Mr.Saurabh Kripal, learned counsel for defendant No.2 is that the plaintiff cannot dispute the fact that defendant No.2 is the owner of the said property. He submits that in view of the undertaking furnished by defendant No.2, the Registrar has rightly accepted the surety of defendant No.2. It is stated that in support of the statement, defendant No.2 has furnished copy of the judgment and various other documents in order to show that defendant No.2 is the owner of the said property and once the statement is made on behalf of defendant No.2 that the defendant No.2 would not sell, alienate or transfer the said property in any manner without the permission of the Court, the plaintiff should not have any doubt about the veracity of defendant No.2.

7. As far as the ownership of defendant No.2 on the basis of the documents produced by him is concerned, this Court is satisfied that

on the particular date, defendant No.2 was the owner of the said property. However, this Court has to examine this issue as to whether legally without deposit of title documents, the surety furnished by defendant No.2 is strictly in compliance with the order passed by the Division Bench and as per the Delhi High Court (Original Side) Rules, 1967.

8. This Court is not agreeable with the submission of the learned counsel for defendant No.2 that merely on the basis of the statement made on behalf of defendant No.2 or the ownership of defendant No.2 in the property for which the surety was furnished, the same will satisfy the directions issued by the Division Bench. One must understand that the surety is to be furnished before the High Court as per the Rules maintained by the Court. The rules for furnishing of surety in some other proceedings and before the High Court are distinct in view of the Rules maintained on the original side. Similar issue had arisen before this Court earlier in the case of ***M/s Label Art Press and another vs. M/s Indo European Machinery Co. (P.) Ltd.***, reported in AIR 1974 Delhi 136 where the Court while applying the Rules did not accept the contention of the party who had furnished the surety without filing the title documents. Paras 19, 21, 22 & 23 of the same read as under:-

“19. The next question for consideration is the deposit of title-deeds. The High Court of Delhi was established with effect from October, 1966 and it was given original jurisdiction to try suits of a certain valuation. Under Section 7 of the High Court Act, the High Court framed rules, Chapter 20 of which deals with the procedure for furnishing security and Rule 2 thereof prescribes that

every person offering himself as surety shall produce before the Court or officer concerned, his title deeds and vouchers and may be examined by him on oath or solemn affirmation, touching the value of his property, and the debts and liabilities to which it is subject; after being examined and allowed, he shall sign the site bond and shall deposit his title deeds and vouchers.

20. x x x x x

21. Rule 6 prescribes that papers and records relating to the taking of security, including securities and security bonds, shall be kept by the Registrar in safe custody in his safe in the strong room after making an appropriate entry in a register to be maintained by him for the purpose. The provision, therefore, requires the deposit of title-deeds in respect of bonds for more than Rs. 5000/-.

22. This practice has uniformly been adopted on the original side and has been working satisfactorily. The rules of the Court on the appellate side do not contain any such requirement for deposit of title-deeds. Nor do I find in them any prohibition in this behalf. I am of the view that it is a very salutary practice to obtain deposit of title-deeds from the sureties. It avoids the danger of fraud alluded to in the case of Chettyar Firm, AIR 1935 Rang 168. Under Sections 58 and 59 of the Transfer of Property Act, a mortgage by deposit of title-deeds can be effected orally by delivery of documents of title. So a subsequent transferee of interest in the property for value would, not finding the title-deeds with his transferor, be put to enquiry and notice of the charge created by deposit of title-deeds under the security bond even in the absence of registration. This fortifies the legal results flowing from the furnishing of the security to the Court and minimises chances of fraud. I, therefore, hold that on the appellate side also the principles behind the original side rule mentioned above should be followed and in respect of security bonds of the value of Rs. 5,000 or more, the title-

deeds relating to the charged property must be deposited with the Registrar of the Court.

23. Arguments addressed at the bar invited my attention to one or two difficulties in the matter, for example if a party was unable to deposit the title-deeds on account of security being a second charge (if it was already subject to a mortgage) or a title-deed consisting of a renewal of an expired lease had not been obtained or the surety being entitled to only a share in undivided property, were bona fide not in a position to deposit the original title-deeds. In my opinion, ordinarily the Registrar would insist upon furnishing of clear security where documents of title could be deposited. If for any reason, this cannot be one, I hold that the party may apply to the Court for such directions as it may deem fit to give and on such motion, the Court may order the surety to be executed and register a regular mortgage-deed on proper stamp duty under Article 40 of the Stamp Act in favour of the Registrar or other officer of the Court, or it may, if so consented to by the surety, order the attachment of the immovable property of the surety in question in accordance with the provisions of Order 38, Rules 5 and 6 read with Section 145 of the Code, in order to bring about the result mentioned in Section 64 of the Code. Lastly, the Court may pass such other or further orders according to law as it may deem fit.”

9. In view of the above said facts and circumstances, I am of the considered view that defendant No.2 ought to have either deposited the title deeds of the said property before this Court or at least the said title documents ought to have been produced before the Registrar General of this Court for verification who would have made the endorsement on the said documents that in the subject matter of the property, the surety has to be furnished by defendant No.2. In the absence of the same, I am of the considered view that there is no

valid compliance of the order passed by the Division Bench on the part of defendant No.2. The impugned order passed by the Registrar is, therefore, set-aside. One final opportunity is granted to defendant No.2 to either produce the original title documents before the Registrar General of this Court on or before the next date, i.e. 21st January, 2015, or alternatively, he should furnish fresh security on the said date. On failure to do so, the application filed by defendant No.2 for leave to defend would be considered as dismissed due to non-compliance of the order passed by the Division Bench.

10. The Chamber Appeal is accordingly disposed of.

O.A. No.49/2013 (Chamber Appeal against the order dated 1st February, 2013) & I.A. No.4853/2013 (u/s 151 CPC), by D-2

In view of the order passed in O.A. No.71/2012, re-notify this Chamber Appeal and the pending application on 26th February, 2015.

**(MANMOHAN SINGH)
JUDGE**

DECEMBER 15, 2014