

\$~3&11

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
CS(COMM) 524/2016 & IA No.17684/2014 (u/O XXVI R-9 CPC)
RAKESH MEDIRATTA Plaintiff
Through: Mr. Yogesh K. Jagia & Mr. Amit
Sood, Advs.
Versus
TODAY HOMES & INFRASTRUCTURE
PVT LTD & ANR Defendants
Through: Ms. Pooja M. Saigal & Mr. Jitender
Ratta, Advs.
AND
+ CS(OS) 1817/2012 & IA No.10378/2014 (u/O XXVI R-9 CPC)
ANJALA EXHIBITORS PVT LTD Plaintiff
Through: Mr. Yogesh K. Jagia & Mr. Amit
Sood, Advs.
Versus
TODAY HOMES & INFRASTRUCTURE
PVT LTD & ANR Defendants
Through: Ms. Pooja M. Saigal & Mr. Jitender
Ratta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **23.03.2017**

1. The counsel for the plaintiffs states that the defendants have not even handed over the portion which on 7th February, 2017 was agreed to be handed over in part satisfaction of the claim in CS(OS) No.1817/2012.
2. The counsel for the defendants states that part of the area of which possession was agreed to be handed over is in possession of a third party and though the defendants had expected to get the said area vacated from the third party but the said third party on coming to know of the settlement

between the plaintiff and the defendants in CS(OS) No.1817/2012 is now demanding exorbitant amount for vacating the same.

3. The counsel for the plaintiff states that the conduct of the defendants is highly *mala fide*; the defendants have thereby wasted time since 16th November, 2016; he states that a decree be passed in favour of the plaintiff and against the defendants in CS(OS) No.1817/2012 in terms of the compromise arrived at on 7th February, 2017.

4. However, it being not known to the Court which portion was agreed to be handed over, I have enquired from the counsel for the plaintiff as to how a decree can be passed.

5. After some hearing, the counsel for the plaintiff states that the plaintiff in CS(OS) No.1817/2012, for the sake of expediency, is willing to accept out of the portion which was agreed to be handed over, the portion regarding which there is no dispute, reserving his right to make a claim also for the area possession of which will not be delivered.

6. The counsel for the defendants under instructions of Mr. Pradeep Malhotra, Additional General Manager (AGM) of the defendant no.1 present in Court states that according to the defendants, the plaintiff is already in constructive possession of the said portion and the defendants, subject to their said plea, have no objection to a decree in terms thereof being passed.

7. The counsels have today in Court handed over a site plan duly signed by Mr. Rakesh Mediratta, Director of the plaintiff in CS(OS) No.1817/2012 also present in the Court and Mr. Pradeep Malhotra, AGM of the defendant no.1 and on which Ex.C1 is put.

8. The counsels state that the entire area which on 7th February, 2017 was agreed to be handed over by the defendants to the plaintiff without prejudice to their plea aforesaid is delineated in the site plan Ex. C-1 with the letters A,E,F,B; that according to the defendants, the plaintiff in CS(OS) No.1817/2012 is already in constructive possession of the portion delineated with the letters A,C,D,B; that though the defendants on 7th February, 2017 had also expected to hand over possession of portion delineated with letters C,E,F,D but are now unable to.

9. A decree is passed in favour of the plaintiff and against the defendants in CS(OS) No.1817/2012 directing the defendants to, without prejudice to their plea of having already handed over possession of portion delineated with letters A,C,D,B in Ex.C-1 to the plaintiff, deliver vacant, peaceful and physical possession of the portion delineating with letters A,C,D,B in Ex.C1 to the plaintiff latest by tomorrow i.e. 24th March, 2017.

10. Mr. Rakesh Mediratta, Director of the plaintiff in CS(OS) No.1817/2012 to visit the subject mall at 1230 hours tomorrow i.e. 24th March, 2017 for so taking over possession.

11. It is made clear that if the possession is not so handed over, besides the decree being executed, Mr. Pradeep Malhotra, Additional General Manager (AGM) of the defendant no.1 shall also be liable for violation of the order of this Court.

12. Decree sheet be prepared; Ex.C-1 to form part of the decree sheet.

13. The counsel for the plaintiff states that he will after tomorrow make an application for amending the plaint in CS(OS) No. 1817/2012, as

informed on 7th February, 2017, including with respect to portion marked as C,E,F,D of which possession is not being delivered.

14. It is further made clear that No Objection Certificate (NOC) referred to in the order dated 31st January, 2017 shall apply with respect to portion of which possession has been decreed today.

15. List on 27th April, 2017.

RAJIV SAHAI ENDLAW, J

MARCH 23, 2017

‘gsr’..