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

+ **CS(OS) 1974/2008 & Counterclaim No.53/2009**

ARTI ARORA Plaintiff

Through: Mr. Jagjit Singh, Mr. Preet Singh, Mr.
Sukh Dev Singh & Ms. Kiran
Kaushik, Advs.

Versus

ARNOLD JAYASURYA HARVEY Defendant

Through: Defendant in person.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **21.04.2017**

1. The plaintiff Arti Arora instituted this suit in the year 2008 seeking a declaration that the plaintiff is the sole allottee of a flat situated in a multistoried building constructed by the defendant no.1 Kajaria Infrastructure and for a direction to the defendant no.1 to cancel / remove the name of the defendant no.2 Mr. Arnold Jayasurya Harvey from the allotment letter issued by the defendant no.1 of the said flat. A decree for permanent injunction was also claimed to restrain the defendants from creating third party rights in the aforesaid flat. Alternatively, a decree was sought for recovery of Rs.18,60,625/- claimed to have been deposited by the plaintiff with the defendant no.1 for the flat together with interest at 24% per annum.
2. The suit was entertained.
3. The defendant no.1 Kajaria Infrastructure has since deposited a sum of Rs.24,94,375/- in this Court and has been deleted from the array of parties.

4. However the order sheet continues to reflect the title of the suit as “Arti Arora Vs. Kajaria Infrastructure & Anr.” Since defendant no.1 Kajaria Infrastructure has been deleted, the suit be shown as “Arti Arora Vs. Arnold Jayasurya Harvey” and the necessary correction in the cause list and on the file covers be also made.
5. Now the dispute remains only between the plaintiff and the defendant Arnold Jayasurya Harvey, as to who is entitled to the said money.
6. Though an application filed by the plaintiff for amendment of the plaint to accordingly amend the plaint in terms of above was allowed on 2nd September, 2015 and the plaintiff directed to file amended plaint but the amended plaint is still not on record.
7. The counsel for the plaintiff states that he has filed the amended plaint with advance copy to the counsel for the defendant but the same has not come on record.
8. The defendant along with his written statement has filed a counterclaim i) for rendition of accounts against the plaintiff and for recovery of money found due; and, ii) for permanent injunction restraining the plaintiff from using the name “HARVEY” in any manner in any of her business activities.
9. The plaintiff has filed an application being IA No.8085/2009 under Order VII Rule 11 of the CPC for rejection of the said counterclaim on the ground that though on the counterclaim court fees of Rs.25,000/- only has been paid but the counterclaim in para no.14 thereof claims an amount of Rs.2,88,54,531/- to be due to the defendant from the plaintiff on account

being taken. The said application was also considered on 2nd September, 2015 when this Court observed that there were no pleas in the counterclaim disclosing an accounting relationship between the plaintiff and the defendant and if the defendant sought recovery of Rs.2,88,54,531/- from the plaintiff, he will have to pay the advalorem court fees thereon.

10. Without noticing the order dated 2nd September, 2015 *supra*, on 18th December, 2015, the Joint Registrar on the statements of the counsels that the jurisdictional value of the suit and the counterclaim was below the enhanced minimum pecuniary jurisdiction of this Court, transferred the suit to the District Judge, South-East, Saket Court, Delhi.

11. The District Judge, South-East however vide order dated 14th October, 2016, in view of the statement in the counterclaim of a sum of Rs.2,88,54,531/- being due to the defendant on accounts being taken, has returned the suit and the counterclaim to this Court.

12. The counsel for the defendant states that the amount pleaded by the defendant in para no.23 of the counter-claim to be due from the plaintiff on accounts being taken is Rs.20,00,500/- only. On specific query, he states that defendant is not stating that on accounts being taken, a sum of Rs.2,88,54,531/- would be due to the plaintiff.

13. Though there is inconsistency in para no.14 and para no.23 of the counterclaim but in view of the statement of the counsel for the defendant made today upon being categorically quizzed in this regard, binding the defendant thereto, it is ordered that the statement in para no.23 of the counterclaim will prevail over the statement in para no.14 thereof.

14. That leaves the other aspect raised in the order dated 2nd September, 2015 i.e. of the pleadings in the counterclaim not disclosing any accounting relationship.

15. The case of the defendant in the counterclaim *inter alia* is i) that the plaintiff and the defendant had a live-in relationship and out of which relationship two daughters were also born; ii) that the monies earned by the defendant from his furniture business were received by cheques / pay orders in the name of “The Professionals” and which were deposited in the bank account of “The Professionals”; and, iii) that the plaintiff was the sole proprietor of “The Professionals”.

16. Since the claim of the defendant is of the entire monies deposited in the account being his and the plaintiff having no share and the monies having been so deposited owing to the live-in relationship between the plaintiff and the defendant no.2, no case of any accounting relationship between the plaintiff and the defendant no.2 is made out.

17. The counsel for the defendant states that his counterclaim be considered as for Recovery of Rs.20,00,500/- from the plaintiff.

18. However the counterclaim as filed does not claim the relief of recovery of money and only seeks the relief of accounts.

19. The defendant inspite of being cautioned in this respect as far back as on 2nd September, 2015 has not taken any remedial steps.

20. It is evident that the counterclaim is only to make a claim for the monies deposited by the erstwhile defendant no.1 Kalaria Infrastructure in this Court.

21. With respect to the said monies, the counsel for the defendant on enquiry states that the monies were deposited with the erstwhile defendant no.1 by the plaintiff from her bank account. However it is again the case of the defendant that it was the defendant's monies which were deposited in the bank account of the plaintiff.

22. Be that as it may, in view of what is recorded hereinabove, the suit as well as the counterclaim will have to be relegated again to the District Judge.

23. At this stage, the counsel for the defendant states that the suit as well as the counterclaim can be disposed of if the plaintiff is willing that the amounts lying deposited in this Court together with interest accrued thereon are divided equally between the plaintiff and the defendant.

24. The counsel for the plaintiff Arti Arora states that in other proceedings, orders against the defendant Arnold Jayasurya Harvey for payment of maintenance to the daughters of the parties have been passed and the defendant has not complied with the same; he states that subject to liberty being given to the plaintiff to attach the monies which may be released to the defendant in pursuance to this proposal, the plaintiff, for the sake of expediency and without prejudice to her pleas in other proceedings, has no objection to the said proposal.

25. At this stage, it is discovered that the counsel referred to hereinabove as the defendant is the defendant in person.

26. The defendant controverts that any monies are due from him under any orders.

27. This Court is not concerned with the said aspect.

28. As per compromise arrived at between the plaintiff Arti Arora through counsel and the defendant Arnold Jayasurya Harvey in person, the suit as well as the counterclaim are disposed of by directing that the monies deposited by the erstwhile defendant no.1 Kajaria Infrastructure in this Court together with interest earned thereon be released in equal share to the plaintiff Arti Arora and the defendant Arnold Jayasurya Harvey. However the share of the defendant Arnold Jayasurya Harvey be not released till 30th May, 2017 to enable the plaintiff, if entitled, to obtain orders of attachment of the said amount.

29. The parties are left to bear their own costs.

30. Decree sheet in suit as well as counterclaim be prepared.

RAJIV SAHAI ENDLAW, J

APRIL 21, 2017

‘gsr’..