

\$~14

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

%

Date of decision: 02.01.2017

+ TR.P.(C.) 137/2016 and CM Nos.41328/2016, 48049/2016 &
48091/2016

USHAK KAAL COMMUNICATIONS LIMITED..... Petitioner
Through Mr.Ravikesh K. Sinha, Advocate.

Versus

RAJESH SACHDEVA Respondent
Through Mr. Bhagat Singh, Advocate.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

JAYANT NATH, J. (ORAL)

1. Today CM No.48049/2016 is only listed. I have heard the arguments on merits of the petition and hence, dispose off the petition.
2. The present transfer petition is filed seeking transfer of CS(OS) 10295/2016 titled as “Rajesh Sachdeva vs. Ushak Kaal Communications Limited” pending in the court of ADJ Saket to this court to be heard along with CS(OS) 2461/2007 titled as “Bharat Buildtech Pvt. Ltd. vs. Rajesh Sachdeva” and CS(OS) 788/2008 titled as “Ushak Kaal Communications Ltd. Vs. Rajesh Sachdeva”.
3. The brief facts are that the petitioner entered into an agreement to sell

with the respondent for purchase of plot No. 8/1, Plot D, Okhla Industrial Area, New Delhi on 23.04.2005. The petitioner paid a sum of Rs. 10 lacs as earnest money/part consideration of the agreed total sale consideration of Rs.1,46,50,000/-. The petitioner also entered into a lease deed dated 23.04.2005 with the respondent whereby the possession of the suit property was handed over to the petitioner.

4. Two suits have now been filed. The petitioner filed CS(OS) 788/2008 seeking a decree of specific performance of the agreement to sell dated 23.04.2005. The respondent filed a suit which is now pending before ADJ Saket for eviction and mesne profits. The third suit which was filed by Bharat Buildtech Pvt. Ltd. also related to specific performance. It may however be noted that the third suit filed by Bharat Buildtech Pvt. Ltd. stands disposed of by order dated 02.09.2016.

5. The suits were being tried together. However, after enforcement of The Delhi High Court (Amendment) Act, 2015 the suit filed by the respondent regarding eviction and mesne profits stands transferred to district court while the suit for specific performance filed by the petitioner continues to be tried by Delhi High Court.

6. The grievance of the petitioner is that as per the orders dated 17.07.2012, 30.07.2012 and 22.07.2013, there had to be a joint trial of the two suits and evidence was to be recorded in common in both the suits. Hence, learned counsel for the petitioner stresses that in view of the said orders of this court, the present transfer petition should be allowed and the suit filed by the respondent pending before ADJ, Saket should be transferred and heard along with the suit of the petitioner which is pending before this court.

7. Learned counsel for the respondent has vehemently opposed the present petition. He has pointed out that the suit filed by the respondent is now at the final stage, final arguments have also been heard and the trial court has to merely pass a final decree. He submits that the present petition has been filed to delay the proceedings.

8. A perusal of the orders dated 17.07.2012 and 30.07.2012 would show that they merely directed that the three suits be listed together. It was on 22.07.2013 when this court was dealing with the application under Order 15A CPC of respondent that a direction was passed that there shall be a joint trial in the two suits and evidence would be recorded in common in both the suits.

9. The problem with the submission of the petitioner is that after passing of orders dated 17.07.2012, 30.07.2012 and 22.07.2013, much progress has been made in the suit filed by the respondent. At no stage, the petitioner has earlier protested that this recording of evidence is contrary to the orders passed by this court for a joint trial. Further factually events have intervened that make it onerous on the respondent to have the suits tried together.

10. Firstly the intervening facts may be noted. In the suit filed by the respondent on 22.07.2013 this court had allowed an application under Order 15A CPC directing the petitioner to pay *ad hoc* payment of Rs. 50,000/- per month w.e.f. August 2005 in view of the fact that despite having occupied the suit property since June, 2005 no rents were being paid by the petitioner. Admittedly, the petitioner failed to comply with the order dated 22.07.2013. The defence of the petitioner was struck off by order dated 21.10.2013. Thereafter on 14.10.2014, the petitioner agreed to hand over vacant physical possession of the suit property to the respondent. The possession has

admittedly now been handover to the respondent. Hence, what survives for consideration in the suit filed by the respondent is only the issue of mesne profit and damages.

11. On 06.07.2015 before the Joint Registrar, the suit filed by the respondent was fixed for cross-examination of PW-1/plaintiff. As despite several opportunities cross-examination was not carried out, the right of the petitioner to cross-examine PW-1 was closed. It was at this stage, on 28.01.2016 in view of the notification No. 27187/DHC/Orgl. dated 24.11.2015, the suit was transferred by an order of the Joint Registrar to the district court. On 19.09.2016, part arguments have been heard before the trial court.

12. It may be noticed that at none of these stages, when the evidence of the respondent was being recorded, the petitioner objected to the same pointing out to the court that in view of the orders dated 17.07.2012, 30.07.2012 and 22.07.2013, it was not possible for the court to record evidence only in the suit filed by the respondent independent of the suit filed by the petitioner. Similarly when the case was listed for transfer before the Joint Registrar on 28.01.2016, none appeared for the petitioner to point out that the suit should not be transferred in view of the fact that the matter has to be heard together with the suit filed by the petitioner.

13. It is clear that the petitioner are guilty of delay and laches. Further, they have themselves given a go by to the orders dated 17.07.2012, 30.07.2012 and 22.07.2013 where joint trial had been ordered for the two suits. The present factual scenario is that the evidence in the suit filed by the respondent is complete and the matter is pending at the stage of final adjudication. Further the suit filed by the respondent stands partly decreed

i.e. a decree for possession was passed. In my opinion, by its conduct, the petitioner have given a go by to the orders and the respondent cannot be made to suffer at this stage when the suit filed by the respondent is at final stage of arguments.

14. Even otherwise, there is a foundational change in the situation after the order of this court dated 22.07.2013 directing that evidence be recorded in common in both the suits. The defence of the petitioner was struck off in the suit filed by the respondent by order dated 21.10.2013. Further in the said suit on 06.07.2015, the Joint Registrar permitted the evidence to be led and closed the right of cross-examination of the petitioner. The evidence is hence over in that suit. In my opinion, in view of this changed scenario, evidence cannot be recorded in the two suits together. The evidence in the suit filed by the respondent is already over.

15. I may refer to section 151 CPC. The Supreme Court in ***K.K.Velusamy v. N.Palanisamy, (2011) 11 SCC 275***, held that section 151 CPC recognises the discretionary power inherent in every court as a necessary corollary for rendering justice in accordance with law, to do what is right and undo what is “wrong”, that is, to do all things necessary to secure the ends of justice and prevent abuse of its process.

16. In the light of the above legal position and keeping in account the fact that the evidence of the parties in the suit filed by the respondent is already completed, in my opinion, two matters in the changed circumstances cannot be heard together. It would be unfair to hold back the judgment in the suit filed by the respondent to await the completion of evidence in the suit filed by petitioner. I am told that the case of the petitioner is pending at the stage of plaintiff's evidence only.

17. The present petition has no merit and is accordingly dismissed.
18. All pending applications also stand dismissed.

JAYANT NATH, J.

JANUARY 02, 2017/rb