

\$~54.

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

+ CM(M) No.858/2017 & CM No.28490/2017 (for stay).

PAL PROPERTIES (INDIA) PVT LTD Petitioner

Through: Mr. Sanjeev Sindhwani, Sr. Adv. with
Mr. Shiv Sapra, Mr. Rajan Raj, Ms.
Natasha Sood and Ms. P. Banmala
Jha, Advs.

versus

ATMA RAM PROPERTIES (P) LTD & ORS Respondents

Through: Mr. Rishabh Sahu and Mr. Sameer
Sharma, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

09.08.2017

CM No.28491/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The application stands disposed of.

CM(M) No.858/2017 & CM No.28490/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order (dated 28th April, 2017 in Suit No.7550/16 of the Court of Additional Senior Civil Judge (West), Delhi) on the application of the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. under Order XIV Rule 5 of the Code of Civil Procedure, 1908 (CPC) and on the application of the petitioner / defendant under Order VI Rule 17 of the CPC.
4. The senior counsel for the petitioner / defendant has been heard.

5. The suit from which this petition arises was instituted, according to the senior counsel for the petitioner / defendant, on 7th March, 1994. Notwithstanding twenty three years having lapsed the suit is still pending.

6. The suit was instituted by one Arya Dharma Sewa Sangh against the petitioner / defendant and respondents no.2&3 claiming that respondent no.3 Pal Properties was a tenant under the said Arya Dharma Sewa Sangh in an immovable property and as per the agreement between the said Arya Dharma Sewa Sangh and the respondent no.3 / tenant all penalties, levies, demands and actions of the concerned authorities like the respondent no.2 / defendant Union of India (UOI) were payable by the respondent no.3 / tenant and on account of dealing with tenancy premises by the respondent no.3 / tenant the respondent no.2 / defendant UOI (Land & Development Office) had levied some charges on the property. Relief of mandatory injunction directing the petitioner / defendant and the respondent no.3 / tenant to restore the premises to their original condition and to get the past misuse regularised from the respondent no.2 / defendant UOI and of permanent injunction restraining the respondent no.2 / defendant UOI from cancelling the lease of the property on account of the dealing thereof by the petitioner and respondent no.3 / defendants were claimed in the suit.

7. During the pendency of the suit, the respondent no.1 Atma Ram Properties (P) Ltd. applied for substitution in place of Arya Dharma Sewa Sangh claiming to have purchased the property.

8. The said substitution was allowed.

9. It appears that the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. instituted another suit for ejectment of the petitioner and respondent no.3 / defendants and in which suit the petitioner and respondent no.3 / defendants challenged the Sale Deed by Arya Dharma Sewa Sangh in favour of respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. and the said suit has been dismissed holding the Sale Deed to be bad and invalid.

10. The petitioner / defendant applied for amendment of its written statement in the subject suit to set-up the plea of Sale Deed, on the basis of which the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. claimed to have acquired title to the property, having been held to be bad.

11. The learned Additional Senior Civil Judge, by the impugned order, has declined the said amendment reasoning that since in the RFA preferred against the judgment holding the Sale Deed in favour of the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. to be bad, stay had been granted of the finding of the Sale Deed being invalid “therefore, at this stage, it cannot be said that the sale deed in question does not confer any right or interest on the substituted plaintiff to file the present suit”.

12. I have enquired from the senior counsel for the petitioner / defendant, whether the issue of invalidity of the Sale Deed can be put to trial again between the petitioner / defendant and the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. in the subject suit.

13. The senior counsel for the petitioner / defendant fairly states that it having been subject matter of the other suit which though instituted

subsequent to the filing of the subject suit but having been decided earlier, cannot be so put to trial again in the said suit.

14. Once that is so, I fail to see the purpose which the amendment sought would serve. If at all the finding of the Sale Deed being invalid attains finality, the petitioner / defendant, at any stage of the subject suit, even in an appeal, can cite the judgment to the said effect which attains finality and which would be considered. The learned Additional Senior Civil Judge, in the impugned order also, has been conscious to reason that “at this stage” it cannot be said that the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. has no title under the Sale Deed inasmuch as the Appellate Court has granted stay of operation of the said finding.

15. Though the senior counsel for the petitioner / defendant has sought to argue the reasons for which the stay was granted i.e. of the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. having contended that the said finding if not stayed would affect the rights of the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. qua other tenants in the property also but once there is a absolute stay without saying that it would not operate against the petitioner / defendant, the said order has to be given full effect.

16. No error is thus found in the order of the learned Additional Senior Civil Judge of declining the amendment.

17. The senior counsel for the petitioner / defendant has also contended that the learned Additional District Judge, if had not re-framed issue no.2 as done by the impugned order on the application of the respondent no.1 / plaintiff Atma Ram Properties (P) Ltd. under Order XIV Rule 5 of the CPC,

the same would have given opportunity to the petitioner / defendant to bring the said fact on record.

18. I have already hereinabove observed that the plea of invalidity of the Sale Deed cannot be put to trial again and the petitioner / defendant can at any stage cite the judgment, on the validity / invalidity of the Sale Deed, which attains finality.

19. Thus no error is found in the order on the application under Order XIV Rule 5 of the CPC also.

20. Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 09, 2017

‘pp’..