* IN THE HIGH COURT OF DELHI AT NEW DELHI

\+ **RFA Nos.262/2018 & 266/2018**

% **Reserved on: 16th March, 2018**
Pronounced on: 20th March, 2018

1. **RFA No.262/2018**

BEENA MAHAJAN & ANR. ..... Appellants
Through: Mr. B.K. Pal, Advocate with Mr. Natansh Kumar Pal, Advocate.

versus

SMRITI SANGEETA ..... Respondent

2. **RFA No.266/2018**

MOHIT MAHAJAN ..... Appellant
Through: Mr. B.K. Pal, Advocate with Mr. Natansh Kumar Pal, Advocate.

versus

SMRITI SANGEETA & ANR. ……Respondents

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

C.M. No.10013/2018 (for condonation of delay) in RFA No. 262/2018

1. For the reasons stated in the application, delay of 26 days in filing the appeal is condoned.

C.M. stands disposed of.

C.M. No.10196/2018 (exemption) in RFA No.266/2018

2. Exemption allowed subject to just exceptions.

C.M. stands disposed of.

C.M. No.10195/2018 (condonation of delay) in RFA No. 266/2018

3. For the reasons stated in the application, delay of 27 days in filing the appeal is condoned.

C.M. stands disposed of.

RFA No.262/2018 and C.M. No.10012/2018 (stay)
RFA No.266/2018 and C.M. Nos.10194/2018 (stay) & 10197/2018 (under Order XX Rule 6A(2) CPC)

4. These two Regular First Appeals under Section 96 of the Code of Civil Procedure, 1908 (CPC) have been filed against the impugned judgment of the trial court dated 30.10.2017. By the impugned judgment trial court has decided two suits. One suit is the suit filed by Smt. Smriti Sangeeta the respondent in RFA No.262/2018 and who is also respondent no.1 in RFA No.266/2018. This was a suit filed for possession, *mesne* profits etc pleading ownership of suit property in view of documentation executed in her favour by late Sh. Sudershan Kumar Mahajan. In this suit there were two defendants being Smt. Beena Mahajan wife of late Sh. Sudershan Kumar Mahajan

as defendant no.1 and Sh. Mohit Mahajan son of late Sh. Sudershan Kumar Mahajan as the defendant no.2. Both these defendants are appellants in RFA No.262/2018. The second suit was the suit filed by Sh. Mohit Mahajan and who is the appellant in RFA No.266/2018. In this suit there were two defendants with defendant no.1 being Smt. Smriti Sangeeta daughter of Sh. Umesh Chandra. The second defendant in this suit filed by Sh. Mohit Mahajan was Sh. Umesh Chandra, the father of Smt. Smriti Sangeeta. By this suit, Sh. Mohit Mahajan prayed for a decree of declaration and also sought reliefs of injunctions to the effect that the documentation by which his father Sh. Sudershan Kumar Mahajan had executed for transferring rights in the suit property to Smt. Smriti Sangeeta were illegal and void and that Sh. Sudershan Kumar Mahajan continued to remain the owner of the suit property. The suit property is flat no. 93, 1st Floor, CAT-II, Gulmohar Enclave, Yusuf Sarai, New Delhi.

5.(i) For the sake of convenience, reference is made to the facts of RFA No.262/2018 and which is the appeal filed by Smt. Beena Mahajan and Sh. Mohit Mahajan against Smt. Smriti Sangeeta. It is noted that pleadings of both the suits and appeals are identical because the sum and substance of the case of Smt. Smriti Sangeeta is that she is the owner of the suit property and the case of Smt. Beena Mahajan and Sh. Mohit Mahajan is that Sh. Sudershan Kumar Mahajan (husband of Smt. Beena Mahajan and father of Sh. Mohit Mahajan) had executed the documentation in favour of Smt. Smriti Sangeeta under the influence of liquor, and therefore, such transfer documents were void and therefore Sh. Sudershan Kumar Mahajan continued to remain the owner of the suit property.

(ii) Smt. Smriti Sangeeta filed the subject suit for possession and *mesne* profits etc pleading that late Sh. Sudershan Kumar Mahajan had transferred rights in the suit property in her favour in terms of the registered agreement to sell dated 10.12.2004/Ex.P-1. Sh. Sudershan Kumar Mahajan also executed a General Power of Attorney dated 13.12.2004/Ex.P-2 in favour of Smt. Smriti Sangeeta with respect to the suit property. A possession letter was also executed in favour of Smt. Smriti Sangeeta giving possession of the suit property to Smt. Smriti Sangeeta (hereinafter for the sake of convenience referred to as 'respondent/plaintiff'). The respondent/plaintiff in her suit further pleaded that by a rent agreement dated 21.8.2006, on the request of

Sh. Sudershan Kumar Mahajan, the suit property was leased out to Sh. Sudershan Kumar Mahajan at Rs.15,000/- per month. The respondent/plaintiff thereafter pleads that she got converted the suit property from lease hold to free hold and Conveyance Deed dated 4.2.2011/Ex.P-3 was thus executed in her favour by Delhi Development Authority (DDA). Sh. Sudershan Kumar Mahajan expired in the month of May, 2012 leaving behind his legal heirs being the widow Smt. Beena Mahajan and son Sh. Mohit Mahajan. Since these legal heirs illegally started claiming rights over the suit property although Sh. Sudershan Kumar Mahajan had during his lifetime transferred ownership rights in the suit property in favour of respondent/plaintiff, therefore the subject suit for possession and *mesne* profits was filed against Smt. Beena Mahajan and Sh. Mohit Mahajan (hereinafter referred to as "appellants/defendants") after serving a legal notice dated 24.1.2013 terminating the tenancy.

6. The case of the appellants/defendants as per their pleadings was that Sh. Sudershan Kumar Mahajan was the absolute owner of the suit property and not the respondent/plaintiff. It was pleaded that Sh. Umesh Chandra father of the respondent/plaintiff in

collusion with two persons, namely Sh. Atul Jain and Sh. Alok Rattan illegally got transferred the suit property from Sh. Sudershan Kumar Mahajan because all of them used to enjoy liquor together. The appellants/defendants therefore disputed the transfer of the suit property in favour of the respondent/plaintiff and also disputed the transfer by DDA in favour of the respondent/plaintiff by execution of the Conveyance Deed dated 4.2.2011. Sh. Mohit Mahajan in his plaint pleaded that he came to know about the documents of transfer being executed in favour of the respondent/plaintiff for the first time only in February, 2013. It was therefore the case of the appellants/defendants that Sh. Sudershan Kumar Mahajan never transferred ownership rights in the suit property to the respondent/plaintiff and the documents executed in favour of the respondent/plaintiff are void and that Sh. Sudershan Kumar Mahajan was never the tenant of the respondent/plaintiff. Suit of the respondent/plaintiff was therefore prayed to be dismissed and the suit filed by Sh. Mohit Mahajan was prayed to be decreed for declaration as illegal the documentation executed by late Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff.

7. Both the suits were consolidated for trial and the following issues were framed in the suit:-

> "1. Whether the defendants are trying to create third party interest in respect of suit property bearing no.93, 1st Floor, CAT-II, Gulmohar Enclave, Yusuf Sarai, New Delhi and they are liable to be restrained from doing so by way of a decree of perpetual injunction? OPP
> 2. Whether the plaintiff has got the suit property transferred in her name illegally and under the influence of liquor from Sudharshan Kumar Mahajan? OPD
> 3. Whether the documents executed by Sudharshan Kumar Mahajan in favour of Ms. Samriti Sangeeta are liable to be declared as null and void? OPD
> 4. Whether the plaintiff is under an obligation to restore the electricity supply to the suit premises by installing an electricity meter and she is liable to be directed to do so by way of a decree of Mandatory Injunction? OPD
> 5. Whether the plaintiff has tried to dispossess the defendant Mohit Mahajan from the suit property or caused hindrance in the peaceful and enjoyment of the suit property and she is liable to be restrained by doing so by way of a decree for perpetual injunction? OPD
> 6. Relief."

8. The only issue which was argued on behalf of the appellants/defendants before this Court was that the documentation executed by late Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff were illegal because the documents were executed under the influence of liquor. It was also argued that Sh. Sudershan Kumar Mahajan was never a tenant of the suit property in terms of the rent agreement because the respondent/plaintiff has not proved payment of any rent by Sh. Sudershan Kumar Mahajan to her including by issuing of any rent receipts. It was also further argued by

the appellants/defendants that the documentation executed by Sh. Sudershan Kumar Mahajan could not have been executed in favour of the respondent/plaintiff who was just 19 years old at the time of execution of the documents in her favour and Sh. Mohit Mahajan had filed the suit for cancellation of the documents because he came to know of the documentation only in February, 2013.

In my opinion, the arguments urged on behalf of the appellants/defendants have no substance and are liable to be rejected. The appeals are therefore liable to be dismissed for the reasons stated hereinafter.

9. Firstly, it is required to be noted that documentation executed by late Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff are of December, 2004 and Sh. Sudershan Kumar Mahajan expired around 8 years later in May, 2012. During this period of 8 years after execution of the registered documents by Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff, no steps were ever taken by Sh. Sudershan Kumar Mahajan to get the documentation, that too registered, executed in favour of the respondent/plaintiff cancelled or declared to be void. An important

aspect is that it is not disputed on behalf of the appellants/defendants that a sum of Rs.14,97,000/- was paid by the respondent/plaintiff to Sh. Sudershan Kumar Mahajan under a demand draft no. 204599 dated 1.12.2004 issued by HSBC and which amount was credited in the bank account of Sh. Sudershan Kumar Mahajan. Obviously, therefore Sh. Sudershan Kumar Mahajan had received consideration for transfer of the suit property to the respondent/plaintiff and it cannot be argued that the registered documents were executed in favour of the respondent/plaintiff under the influence of liquor because surely "influence of liquor" if existed at best would thereafter have lasted only for few hours and surely Sh. Sudershan Kumar Mahajan would have known as to the amount of Rs.14,97,000/- which was credited to his bank account and that it is obviously for this reason for 8 years after execution of the documents Sh. Sudershan Kumar Mahajan never questioned the documents during his lifetime. It may be noted that besides the amount of Rs.14,97,000/- being paid by means of a demand draft in favour of Sh. Sudershan Kumar Mahajan, a further sum of Rs.3,000/- was paid by means of cheque bearing no.207860 dated 10.12.2004 of Bank of Baroda, Shalimar Bagh, Delhi-110088 and a sum of Rs.15,800/- was paid in cash, totaling to the total sale consideration amount of Rs.15,15,800/- and these details of payments of sale consideration by means of demand draft, cheque and cash are specifically stated in page 4 of the registered agreement to sell dated 10.12.2004 executed by Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff. Para 2 of this agreement to sell also refers to the vacant and peaceful physical possession of the suit property being delivered by Sh. Sudershan Kumar Mahajan to the respondent/plaintiff. In my opinion therefore trial court was for these aforesaid reasons justified in holding that the respondent/plaintiff had become owner of the suit property in terms of the aforesaid documentation and which documentation were never questioned by Sh. Sudershan Kumar Mahajan in his lifetime. In law it makes no difference if Smt. Smriti Sangeeta was of 19 years when documents were executed in her favour as it is noted that her father, defendant no.2 in the suit filed by Sh. Mohit Mahajan, and Sh. Sudershan Kumar Mahajan were quite well known to each other and used to have liquor together even as per the case of the appellants/defendants themselves. Trial court was therefore justified in holding that since respondent/plaintiff became owner of the suit property, Sh. Sudershan Kumar Mahajan thereafter was a tenant in the suit property in terms of the rent agreement dated 21.8.2006.

10. No doubt, counsel for the appellants/defendants is correct in arguing that no rent receipts have been filed, however, in the facts of the present case, question of rent receipts for proving tenancy was not required once it was shown that suit property was transferred by means of registered documentation in favour of the respondent/plaintiff with the fact that a demand draft and a cheque for Rs.14,97,000/- and Rs.3,000/- respectively were credited to the bank account of late Sh. Sudershan Kumar Mahajan and the rent agreement executed in favour of the respondent/plaintiff was sufficient.

11. In my opinion an additional reason for holding that the trial court rightly dismissed the suit is because the suit filed by Sh. Mohit Mahajan to challenge the documentation of December, 2004 executed by Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff was barred by time in view of Articles 58 and 59 of the Limitation Act, 1963 which provide that no suit for cancellation of a document will lie after a period of three years of execution of the

document. It may be noted that documentation in favour of the respondent/plaintiff are registered documents and therefore by virtue of Section 3 of the Transfer of Property Act, 1882 there is a deemed knowledge not only to Sh. Sudershan Kumar Mahajan but also to Sh. Mohit Mahajan. In any case there is no pleading or necessary proof/evidence led by the appellants/defendants that Sh. Sudershan Kumar Mahajan in his lifetime never knew about the existence of documentation of December, 2004 executed by him in favour of the respondent/plaintiff. All that is stated by the appellants/defendants is that documentation in favour of the respondent/plaintiff were got done illegally and under the influence of liquor. This Court is entitled to *suo moto* take notice of limitation in view of Section 3 of the Limitation Act. The suit filed by Sh. Mohit Mahajan was therefore clearly barred by limitation in view of Articles 58 and 59 of the Limitation Act and once there can be no valid challenge to the documentation of December, 2004 executed by late Sh. Sudershan Kumar Mahajan in favour of the respondent/plaintiff, then the suit of the respondent/plaintiff for possession and *mesne* profits had necessarily to be decreed against the appellants/defendants.

12. Some of the relevant observations of the trial court for decreeing the suit of the respondent/plaintiff and dismissing the suit filed by Sh. Mohit Mahajan read as under:-

> "7.10. In order to rebut the evidence of the plaintiff, the defendant no. 2 Sh. Mohit Mahajan appeared as DW1 and tendered his evidence as DW1/A where he reiterated the pleas as maintained by him in written statement as well as in his plaint of suit no. 6637/16. <u>According to him, his father expired on 21.05.2012 and till his death, his father remained in possession of the suit property. According to him, he came in India in the month of June 2012 and came to know in first week of August 2012 that the plaintiff and her father in collusion with Sh. Atul Jain somehow by adopting illegal means got transferred the suit property in the name of Ms. Smriti Sangeeta and he was told by his neighbour that father of the plaintiff and Sh. Atul Jain used to visit frequently and used to enjoy liquor together and he has got apprehension that Sh. Umesh Chandra had somehow managed to get property transferred in the name of his daughter illegally and under the influence of liquor</u>. According to him since his electricity connection got disconnected, he filed a civil suit and he was supplied on 14.02.2013 with the document by the plaintiff alongwith the written statement which they filed in that suit viz Agreement to sell and purchase, GPA, possession letter, Conveyance deed and only then he came to know that the plaintiff got executed illegally from his father by adopting illegal methods in collusion with his father and one Atul Jain. According to him, all these documents are null and void and liable to be declared so. According to him, he is in possession of diary of his father in which entries revealed that Sh. Umesh Chandra, father of the plaintiff indebted to his father to the tune of Rs.90 Lacs. According to him, he lodged a complaint in police station Ex.DW1/5 and since the plaintiff and her father threatening him to vacate the suit property and on 16.11.2012 at about 12.30 PM, official of BSES and the plaintiff and her father came to suit property and removed the electricity meter and on 17.12.2012 at about 4.30 PM, the plaintiff alongwith her father came and threatened him asking him to hand over the suit property. As per his contention, he alongwith his mother and his brother become the owner of the suit property being legal heirs of Sh. Sudarshan Mahajan, now deceased. <u>He exhibited the site plan Ex.DW1/1 and also tendered the copies of documents viz agreement to sell, possession letter etc. Ex.DW1/2 (colly), Copy of electricity bill Ex.DW1/3, Copy of receipt issued by Gulmohar Enclave Residential Association Ex.DW1/4</u>, photocopy of passport of his father as Mark A and copy of police compliant as Mark B. <u>In his cross-examination he stated to be resided in USA since year 1998, he admitted</u>

that his father died on 21.05.2012. He also admitted that he did not attend the funeral and last rites of his father as he came in June 2012. According to him, nobody communicated at any point of time that his father transferred the suit property in favour of the plaintiff. He by stating that he admits that he came to know in the first week of 2012 that the property has been transferred by his father in collusion with Sh. Atul Jain and Sh. Umesh Chandra. He stated that he was told by his next door neighbour about these persons used to visit his late father and used to take liquor. According to him, his father was addicted to liquor but stated that he is not aware of his sitting with Umesh Chandra and Sh. Atul Jain. He himself contradictory his earlier version, stating that he came to know these documents purportedly executed by his father in favour of the plaintiff in the year February 2013. He admitted that leaves of diary bearing entries Ex.DW1/P-1 do not bear signatures of his father. He showed his inability to tell as what transaction took place by his father and further stated that he has got no knowledge if there exist any co-relation between the transactions in the year 2004 and entries which had come in year 2005 onwards. He admitted that his father did receive sum of Rs.14,97,000/- by pay order no. 204599 dated 01.12.2004 issued by HSBC bank. He next stated that since his father was habitual of taking liquor so there is strong suspicion that he never intended to any transaction with anyone with regard to suit property and that had been done under the influence of liquor and thus it is a sham transaction. The defendant also examined Sunny Pandey as DW2. He proved the agreement of fixture and fitting date 22.11.2004 as DW2/1 receipt dated 13.12.2004 as Ex.DW2/3 and receipt dated NIL as Ex.DW2/4 and in his cross- examination he stated that he was not personally aware controversy in the present suit.

7.11. Thus, on judicial scanning of the statement of Sh. Mohit Mahajan, the defendant/plaintiff in other suit reveals that he has disclaimed the documents relating to transfer of suit property by his father in favour of the plaintiff only on the basis of suspicion. He did not examine Sh. Anil Dhir, his neighbour, who apprised him about frequent visits of Sh. Umesh Chandra and Sh. Atul Jain to his late father and giving him the company in enjoying the liquor. There is no other proof of authenticating the suspicious or apprehensive version of Sh. Mohit Mahajan. It is on record that Sh. Sudershan Mahajan used to remain alone in the suit property, therefore, without any further proof, his solitary statement can not take the place of proof. Mere suspicion on apprehension of the defendants that the plaintiff got executed the document from Sh. Sudershan Mahajan under the influence of liquor cannot raise the presumption of document being a sham transaction. The defendants were required to prove by leading cogent and convincing evidence which the defendants failed to prove. The solitary statement of the Mohit Mahajan is not sufficient to outweigh the oral and documentary evidence led by the plaintiff Ms. Smriti Sangeeta. The fact of installing fixtures and fittings in the premises in question as disclosed by DW2 Sh. Sunny Pandey is not sufficient to dislodge the claim of the plaintiff as such no suggestion was put to the plaintiff Ms. Smriti Sangeeta when she appeared as PW2. Further the receipt of DW2/3 dated 13.12.2014, further belies the contention of the defendants as from the contents of said receipts, it transpires that Sh. Sudarshan Mahajan issued the said receipt to the plaintiff in lieu of receipt of part payment for sale of his flat bearing no. 93, SFS DDA Flats, Yusuf Sarai, New Delhi. It does not depict that the said receipt was issued by him to the plaintiff on the account of any work done by the plaintiff on account of improvements of flat.

7.12 Thus, the entire discussion made above leads to irresistible conclusion that Sh. Sudarshan Mahajan (now deceased) did transfer his property which is devolved on to the plaintiff by executing documents viz. Agreement to sell, GPA, Conveyance Deed etc and it is also evident that during the lifetime of Sh. Sudarshan Mahajan, the plaintiff applied for conversion of her property as freehold and on payment of requisite fee and also got the conveyance deed and the said property too stood mutated in her name in Municipal Revenue Records. It has also come on record that Sh. Sudarshan Mahajan used to reside alone and his wife and both the sons were residing abroad. It has come on record that Sh. Sudarshan Mahajan took on lease the suit property by executing the rent deed at 21.08.2006. Though, the rent deed is for 3 years and required to be registered still as evident from the record that Sh. Sudarshan Kumar Mahajan remained in possession till his death, but at the same time, the defendants, the legal heirs cannot claim retaining of the possession of suit property as his legal heirs as tenancy came to an end on the death of Sh. Sudarshan Kumar Mahajan who remained in possession as tenant of the plaintiff.

7.13. Thus, the contention of the defendants that the plaintiff Ms. Smriti Sangeeta herein got the suit property transferred in her name illegally and under the influence of liquor from Sh. Sudarshan Kumar Mahajan and documents executed by him are liable to be declared as null and void does not stand substantiated. So, both these issues are decided against the defendants namely Smt. Beena Mahajan and Sh. Mohit Mahajan and in favour of the plaintif namely Ms. Smriti Sangeeta." (underlining is mine)

13. In view of the aforesaid discussion, I do not find any merit in the appeals, and which are therefore dismissed, leaving the parties to bear their own costs.

MARCH 20, 2018 **VALMIKI J. MEHTA, J**

Ne