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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 880/2018, CAV 701/2018 & CM APPL. 31004-
31005/2018

Date of decision: 03.08.2018

M/S HIMANGNI ENTERPRISES

..... Petitioner

Through Mr. Harish Malhotra, Sr. Adv.
with Mr. Vikas Arora, Ms.
Radhika Arora, Adv.

versus

KAMALJEET SINGH AHLUWALIA

..... Respondent

Through Mr. Anil Sapla, Sr. Adv. with
Mr. Preetpal Singh, Mr. Sameer
Choudhary, Mr. Sarthak Katyal,
Adv.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER (ORAL)

% **03.08.2018**

ANU MALHOTRA, J.

CM APPL. 31004/2018 (exemption)

1. Exemption allowed subject to all just exceptions.
2. Application is disposed of.

CM(M) 880/2018

3. Vide the present petition, the petitioner assails the impugned order dated 19.07.2018 of the learned Additional District Judge-07,

South East District, Saket Courts, New Delhi in case titled as Kamaljeet Singh Ahluwalia Vs. M/s. Himangi Enterprises in the Suit No. 208176/16, vide application under Order VI Rule 17 r/w Section 151 CPC filed on behalf of the defendant to the said suit i.e. M/s. Himangi Enterprises was disallowed vide which application the defendant sought to incorporate : -

"That it is submitted that the defendant is a partnership concern consisting of Sh Rajesh Arora and Mrs Samit Arora as its partner. The said firm is carrying on business of real estate consultants. Apart from the business of real estate being carried on in the name of the defendant firm, the business is also being carried under the name of Arora and Associates Realty Ltd and M/s Innovating Thermal Coatings Pvt Ltd, now known as ARC Arora Project Pvt Ltd as well. The aforesaid companies are carrying on business of real estate consultants, and Shri Rajesh Arora was the major shareholder and managing director in the aforesaid companies. Mr Rajesh Arora was competent to take all necessary, business and financial decisions on behalf of defendant as well as his other companies.

That it is submitted that the plaintiff had been carrying on the business of sale and purchase of various properties in. and around Delhi and for that purpose, he had been availing the services of Arora and Associates Realty Ltd and ARC Arora Project Pvt Ltd through Mr Rajesh Arora and accordingly, on the basis of identification of the property which were accepted, by the plaintiff deals were struck and accordingly prescribed service charges were liable to be paid by the plaintiff to these companies.

That since the plaintiff was not making payment in time and was irregular therefore a sum of Rs.22,98,98,996/- (Rupees Twenty Two Crores Ninety Eight Lakhs, Ninety

Eingh Thousand Nine Hundred Ninety Six) became due from the plaintiff and his. wife Mrs Manjula Ahluwalia payable to the companies namely Arora and Associates Realty Ltd and ARC Arora Project Pvt Ltd. Mr Rajesh Arora and his team had been following up the matter with the plaintiff for realisation of the outstanding amounts payable by plaintiff to the two companies of Mr. Rajesh Arora. After much follow up, on 12.10.2015 a settlement was arrived at between the plaintiff and Shri Rajesh Arora representing his above named two companies, wherein the entire outstanding amount was settled between the parties and it was agreed, that the plaintiff would pay a lump sum amount of Rs. 20,00,00,000/- (Rupees Twenty Crores) plus service tax to Shri Rajesh Arora, towards the settlement of all the claims of his two companies against the plaintiff as well as his wife Mrs Manjula Ahluwalia and till such time the aforesaid amount of Rs. 20 Crores plus service tax is paid, Shri Rajesh Arora was allowed to retain the possession of the second floor and ground floor units of Omaxe Plaza at Jasola which is the property in dispute. The said settlement was reduced to writing in the shape of Memorandum of Understanding on 12.10.2015 and was duly signed by the plaintiff and Shri Rajesh Arora. Copy of the MoU is annexed herewith as Annexure D-13A.

That it is submitted that despite having agreed to make immediate payment of Rs. 20 Crores plus service tax, the plaintiff had not paid any amount to any of the companies of Sh Rajesh Arora so far, as a result of which the plaintiff has also incurred liability of interest @ 15 % per annum upon the settled amount. Since the MoU also incorporates that the plaintiff cannot, seek possession of the suit property until 'he' makes the payment of Rs. 20 Crores plus service tax to Mr Rajesh Arora towards the service charges as such the entire suit itself is not maintainable.”

4. The suit that has been filed by the plaintiff Kamaljeet Singh Ahluwalia is one for ejectment, possession, recovery of arrears and permanent injunction against M/s. Himangi Enterprises in relation to a commercial space / shop bearing Shop No. SF-28, admeasuring 474.86 square feet (super) on second floor, in a Commercial Complex known as “OMAXE SQUARE” situated on Plot No. 14, Non-Hierarchal Commercial Centre, District Centre Jasola, New Delhi – 110025 on the ground of the termination of the tenancy of the defendant vide notice dated 21.07.2015 whereby the defendant has been called upon to vacate and surrender the peaceful and vacant possession of the said premises after restoring the same to its original condition and had been called upon to pay arrears of outstanding rent / damages, which notice as per the averments in para 12 was stated to have been served on 22.07.2015 to the defendant through email I.D. himangnienterprises@rediffmail.com and rajesh@aroraandassociates.com.

5. It was further submitted through the plaint that the defendant despite the service of the said notice failed to comply with the same and even did not bother to send any reply and that upon the termination of the tenancy, the defendant failed to vacate and handover the peaceful and vacant possession of the suit premises and that it was submitted that after termination of the lease with Wipro Ltd., the possession of the suit premises alongwith other premises had been handed over by Wipro Ltd. to the defendant on 18.03.2015 under the order passed by this Court on 19.02.2015 in CS(OS) No.

3273/2014 through the Local Commissioner appointed by the High Court but the defendant had refused to hand over back the possession to the plaintiff and that the defendant had taken back the possession without disclosing complete and correct facts to the Court and that the defendant had not paid the rent due as well.

6. *Inter alia*, the defendant through its Written Statement, copy of which is on record, has submitted that there were unenforceable terms of the agreement as per clause 9.5 thereof and that the predecessor in interest of the plaintiff and other owners had appointed the defendant as their agent so that a combined tenancy be created between the defendant and M/s. Wipro Ltd. and that the defendant may collect rent and distribute the same amongst the individual owners. *Inter alia*, the defendant i.e. the present petitioner contended that the suit was bad for non-joinder of parties i.e. M/s. Omaxe Pvt. Ltd. who had been in occupation of the suit premises till 18.03.2015 and that there was litigation pending between the defendant i.e. the present petitioner and M/s. Omaxe Pvt. Ltd. and the plaintiff had filed an application for impleadment therein qua which it has been submitted on behalf of the respondent to the present petitioner i.e. the plaintiff of the suit before the Trial Court that such impleadment had not been allowed as the said suit CS(OS) No. 3273/14 was held to be between Himangni Enterprises Vs. M/s. Wipro Ltd. and they are made the respondents herein.

7. Copy of this order in CS(OS) No. 3273/14 dated 21.07.2016 has now been submitted on behalf of the respondent, it having been observed in the said proceedings that the application of the present

respondent to the present petition and plaintiff of the suit in question of the application under order VI Rule 17 CPC had been declined and was disposed of with liberty granted to the said tenant to take remedy available.

8. Through application under Order VI Rule 17 CPC, the defendant to the said suit, sought to assert that the defendant i.e. the present petitioner herein was a partnership concern comprising of Rajesh Arora and Mrs. Samita Arora as its partners carrying on a business of real estate consultants and apart from the business of real estate being carried on in the name of the defendant firm, the business was also being carried out under the name of Arora and Associates Realty Ltd. and M/s. Innovating Thermal Coatings Pvt. Ltd. also known as ARC Arora Project Pvt. Ltd. as well and the said companies were carrying on the business of real estate consultants and Rajesh Arora was the major shareholder and Managing Director in the aforesaid companies and that the plaintiff i.e. the present respondent to the present petition had been carrying on the business of sale and purchase of various properties in and around Delhi and for that purpose, he had been availing the services of Arora and Associates Realty Ltd. and ARC Arora Project Pvt. Ltd. through Rajesh Arora and accordingly on the basis of identification of the property which had been accepted by the plaintiff, deals were struck and accordingly prescribed service charges were liable to be paid by the plaintiff to these companies run by the partner of the present petitioner i.e. the defendant to the suit. It has been submitted further that the plaintiff i.e. the respondent to the present petition was not making payment in time

and was irregular, therefore, a sum of Rs.22,98,98,996/- had become overdue from the plaintiff and his wife Mrs. Manjula Ahluwalia payable to the companies namely Arora and Associates Realty Ltd. and ARC Arora Project Pvt. Ltd. and his team had been following up the matter with the plaintiff for realization of the outstanding amounts payable by the plaintiff to the two companies of Rajesh Arora being one of the partners and after much follow up on 12.10.2015, a settlement was arrived at between the plaintiff and Rajesh Arora wherein the entire outstanding amount was settled between the parties and it was agreed that the plaintiff would pay a lump sum amount of Rs.20 Crores plus service tax to Rajesh Arora towards the settlement of all the claims of his two companies against the plaintiff as well as his wife Mrs. Manjula Ahluwalia and till such time the aforesaid amount of Rs.20 Crores plus service tax is paid, Rajesh Arora was allowed to retain the possession of the second floor and ground floor units of Omaxe Square at Jasola, which is the property in dispute. The said settlement is stated to have been reduced in writing in the shape of Memorandum of Understanding on 12.10.2015 stated to have been signed by the plaintiff i.e. the respondent to the present petition and Rajesh Arora, partner of the present petitioner being the partner of the defendant though not specifically averred in the plaint in the proceedings before the Trial Court nor in the written statement filed by the defendant i.e. the present petitioner during it was submitted through the course of the present proceedings that the notice had also been served upon Rajesh Arora through email concerned. It has been submitted on behalf of the petitioner that the MOU dated 12.10.2015

could not be filed earlier due to the different advice given by the previous counsel having considered it not relevant in the proceedings nor the same was mentioned and placed on record, which are important documents for the adjudication of the suit as well in as much as Clause-2 of the MOU dated 12.10.2015 provided that the plaintiff and Shri Rajesh Arora represented his above named two companies, wherein the entire outstanding amount was settled between the parties and it was agreed, that the plaintiff would pay a lump sum amount of Rs. 20,00,00,000/- (Rupees Twenty Crores) plus service tax to Shri Rajesh Arora, towards the settlement of all the claims of his two companies against the plaintiff as well as his wife Mrs Manjula Ahluwalia and till such time, the aforesaid amount of Rs. 20 Crores plus service tax is paid, Shri Rajesh Arora was allowed to retain the possession of the second floor and ground floor units of Omaxe Plaza at Jasola which is the property in dispute.

9. It has been submitted on behalf of the petitioner that the said amendments are necessary for effective adjudication of the suit that the suit is still at its initial stage and only the written statement has been filed and the matter was at the stage of adjudication of the application under Order VI Rule 17 CPC.

10. On behalf of the respondent i.e. the plaintiff of the said suit, it has been submitted that the application under Order VI Rule 17 CPC had thus been filed at the stage when the matter was fixed for pronouncement of the order on the application under Order 12 Rule 6 of the CPC, 1908 filed by the plaintiff. It has also been submitted on behalf of the respondent that the specifications of the list prepared are

not prescribed in the MOU dated 12.10.2015. Furthermore the respondent submits that the said MOU dated 12.10.2015 has not been signed and contends that even if it so signed the plaintiff has signed under duress. *Inter alia*, it has been submitted on behalf of the respondent to the present petition i.e. the plaintiff of the suit to the effect that even if the said averment in relation to the execution of the MOU is assumed to be correct, the same are not issues involved in the instant case and that the defendant i.e. the present petitioner is not a part of the said purported agreement and that the suit filed by the plaintiff is between the landlord and tenant, since the alleged document relates to Rajesh Arora and thus the alleged rights of third parties cannot be adjudicated in the proceedings and that furthermore, the defendant i.e. the present petitioner through its written statement had not averred any independent right of possession of Rajesh Arora in the suit property and had rather claimed that the defendant i.e. the present petitioner was in possession of the suit property. It has further been submitted on behalf of the respondent to the present petition as submitted through the reply of the application Order VII Rule 17 r/w Section 151 CPC before the learned Trial Court to the effect that the alleged amendment sought was on the basis of the said alleged transactions dealings between Rajesh Arora and Associates Realty Ltd and M/s. ARC Arora Project Pvt Ltd previously known as M/s Innovating Thermal Coatings Pvt Ltd and were in no way connected with the proceedings in the '*lis*' and that the defendant i.e. the present petitioner was trying to change the nature of the suit and cannot be allowed to do so in view of the issues framed in the instant case.

11. Vide the impugned order, it has categorically been observed to the effect that the written statement filed by the petitioner herein contains no reference to the two companies referred through the course of the application under Order VII Rule 17 r/w Section 151 CPC and that the MOU had not been mentioned in the written statement nor was any reference of the dispute between the parties and that the companies i.e. Rajesh Arora and Associates Realty Ltd. and M/s. ARC Arora Project Pvt. Ltd. previously known as M/s Innovating Thermal Coatings Pvt. Ltd. are distinct legal entities separate from its shareholders / directors and that this MOU is between the plaintiff and Rajesh Arora and is not even accompanied by a board resolution in favour of Mr. Rajesh Arora to act on behalf of the company and that the Court itself cannot take into consideration this MOU including the settlement in respect of the case i.e. suit titled as Kamaljeet Ahluwalia Vs. Himangi Enterprises of the plaintiff that the respondent to the present petition was not related to the defendant firm i.e. to the present petitioner and that the subject matter of the suit was completely different.

12. On a consideration of the rival submissions made on behalf of either side and on a consideration of the provisions of Order VII Rule 17 CPC which prescribe that the amendment may be allowed to be made when necessary for the purposes of determining the real controversy between the parties, taking into account the submissions that have been made in the plaint and in the written statement on record in relation to the suit in question, the application under Order VII Rule 17 r/w Section 151 CPC filed by the petitioner undoubtedly

seeks to bring on record the issues dehors the 'lis'. There is no merit in the prayer made by the petitioner, which is thus declined and the accompanying applications are also declined.

ANU MALHOTRA, J

AUGUST 03, 2018/MK

