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

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+ **CM(M) 376/2019 & CM APPL. 10077/2019**

Date of Decision: 08.03.2019

ARVINDER KAUR SETHI

..... Petitioner

Through: Mr. G.S. Raghav, Advocate.

versus

DILKHUSH INDUSTRIAL ESTATE WELFARE

ASSOCIATION (REG) & ORS

.. Respondents

Through: Mr. Kamal Mehta, Mr. B.S.
Tiwari & Mr. Sanchit Jain,
Advocates.

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

CAV 220/2019

Learned counsel for the caveator is present and has been heard. The caveat thus, stands discharged.

CM(M) 376/2019

1. Vide the present petition, the petitioner assails the impugned order dated 21.01.2019 of the learned Trial Court of the Court of the ADJ-02 (North) Rohini Courts in CS (DJ) No.59737/2016, vide which an application under Order VII

Rule 11 of the CPC filed on behalf of the defendant no.6 to the said suit arrayed as the petitioner to the present petition was declined. Through the submissions that have been made on behalf of the petitioner and the respondent no.1 i.e. the caveator i.e. the plaintiff of the said suit, it is brought forth as also through the impugned order that the contention sought to be raised on behalf of the petitioner herein was to the effect that the said suit i.e. CS (DJ) No.59737/2016 was barred by law in terms of Order II Rule 2 of the CPC in as much as by institution of a suit bearing number CS (DJ) No.57719/2016 bearing original No.2212/2007 that had been filed by the plaintiff thereof i.e. the respondent no.1 to the present petition, was one for permanent injunction that had been filed with the prayer clauses to the effect:-

“PRAYER:

In view of the above, it is therefore most respectfully prayed that this Hon'ble Court may be pleased to:-

a) Pass a decree of permanent injunction in favour of the members of plaintiff and against the Defendant No.1 thereby restraining the Defendant No.1, her family members, associates, representatives, attorneys, agents, employees or anybody else acting through her and/or on her behalf from any manner whatsoever:

1) not to encroach upon the "suit property" i.e. Industrial/Commercial Complex popularly known as "Dilkhush Industrial Estate", comprising of three built

up blocks namely A, B & C, built on the lands, admeasuring 8 Bighas 12 Biswas i.e. 1.8 acres or 8712 Sq. yds., in the revenue estate Malikpur Chhawni bearing Khasra No.387, 388 and 389 min. on G.T. Kamal Road, Industrial Area, Azad Purj Delhi, as shown in the red in the site plan attached; and/or

2) not to obstruct and interfere in the peaceful possession and enjoyment of the "suit property" by the members of the plaintiff, as shown red in site plan attached; and/or

3) not to obstruct and interfere in the egress and ingress of the members of the Plaintiff in/of the "suit property"; and/or

4) not to give effect to her letters dated 11-8-2007, 11-9-2007 against the members of the plaintiff; and/or

5) not to deploy any of the security guards in the suit property; and/or

6) not to install CCTV on the "suit property"; and/or

b) send the copy of the directions of this Hon'ble Court to the defendant No.2 to preserve the "suit property" and ensure its compliance; and/or

c) costs of the suit may please be allowed in favour of the Plaintiff and against the Defendant No.1; and/or

d) pass such other or further order which this Hon'ble Court may deem fit and proper in the facts & circumstances of the case.”,

there was an application annexed to the same i.e. IA No.12856/07, an application under Order 2 Rule 2 of the CPC vide which the plaintiff of the said suit i.e. the respondent no.1 herein had sought to the effect:-

“Prayer

Therefore, it is most respectfully and humbly prayed that this Hon'ble Court may be pleased to:-

- a. Grant the leave & liberty to the plaintiff and/or its members to institute independent legal proceedings and/or to include the same in the present suit, against the alleged claims of the defendant no.1, of having acquired ownership of the suit property including all other consequential reliefs, as well as specific performance by the defendants, jointly/severally of their all agreed terms and conditions of the purchase of each respective member of the respective portion of the suit property.***
- b. Any such other relief(s) and/or orders, which this Hon'ble Court may deem and proper under the circumstances of the present case, be also allowed to the plaintiff bank and against the defendant.”***

2. It has been submitted on behalf of the petitioner that inasmuch in the suit CS(OS)2212/07 initially instituted before this Court before transfer of the same to the District Court on change of pecuniary jurisdiction, the plaintiff of the said suit having not prayed for the relief that could have been sought on the same cause of action in relation to declaration and specific performance of the Flat Buyers' Agreement, the institution of

the subsequent suit now pending before the District Courts bearing CS No. 59737/16 in which the impugned order has been made, could not have been instituted. It has been submitted further on behalf of the petitioner that the said IA No.12856/07 which had been filed on behalf of the plaintiff in the suit no. CS(OS)2212/07 had been disposed of with observations to the effect:-

“I.A. No.12854/2007 & I.A. No.12856/2007

Allowed subject to all just exceptions.

Applications stand disposed of.”

3. It has thus been submitted on behalf of the petitioner that the said order was not a speaking order and it had not made any observations on the aspect of the prayers made vide the I.A.12856/2007 filed by the plaintiff and thus did not thus permit the plaintiff to institute any fresh suit in relation to the reliefs qua which the plaintiff had sought permission to institute a fresh suit.

4. Reliance is thus placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in “***VIRGO INDUSTRIES (ENG.) PRIVATE LIMITED VS. VENTURETECH SOLUTIONS PRIVATE LIMITED***” (2013) 1 SCC 625 with specific reliance on the observations in Para 9 & 10 of the said verdict, which read to the effect:-

“9. Order II Rule 1 requires every suit to include the whole of the claim to which the plaintiff is entitled in respect of any particular cause of action. However, the plaintiff has an option to relinquish any part of his claim if he chooses to do so. Order II Rule 2 contemplates a situation where a plaintiff omits to sue or intentionally relinquishes any portion of the claim which he is entitled to make. If the plaintiff so acts, Order II Rule 2 of CPC makes it clear that he shall not, afterwards, sue for the part or portion of the claim that has been omitted or relinquished. It must be noticed that Order II Rule 2 (2) does not contemplate omission or relinquishment of any portion of the plaintiff’s claim with the leave of the court so as to entitle him to come back later to seek what has been omitted or relinquished. Such leave of the Court is contemplated by Order II Rule 2(3) in situations where a plaintiff being entitled to more than one relief on a particular cause of action, omits to sue for all such reliefs. In such a situation, the plaintiff is precluded from bringing a subsequent suit to claim the relief earlier omitted except in a situation where leave of the Court had been obtained. It is, therefore, clear from a conjoint reading of the provisions of Order II Rule 2 (2) and (3) of the CPC that the aforesaid two sub-rules of Order II Rule 2 contemplate two different situations, namely, where a plaintiff omits or relinquishes a part of a claim which he is entitled to make and, secondly, where the plaintiff omits or relinquishes one out of the several reliefs that he could have claimed in the suit. It is only in the latter situations where the plaintiff can file a subsequent suit seeking the relief omitted in the earlier suit proved that at the time of omission to claim the particular relief he had obtained leave of the Court in the first suit.

10. The object behind enactment of Order II Rule 2 (2) and (3) of the CPC is not far to seek. The Rule engrafts a laudable principle that

discourages/prohibits vexing the defendant again and again by multiple suits except in a situation where one of the several reliefs, though available to a plaintiff, may not have been claimed for a good reason. A later suit for such relief is contemplated only with the leave of the Court which leave, naturally, will be granted upon due satisfaction and for good and sufficient reasons. The situations where the bar under Order II Rules 2 (2) and (3) will be attracted have been enumerated in a long line of decisions spread over a century now. Though each of the aforesaid decisions contain a clear and precise narration of the principles of law arrived at after a detailed analysis, the principles laid down in the judgment of the Constitution Bench of this Court in [Gurbux Singh v. Bhooralal](#)[2] may be usefully recalled below:

“In order that a plea of a bar under O. 2. r. 2(3), Civil Procedure Code should succeed the defendant who raises the plea must make out (1) that the second suit was in respect of the same cause of action as that on which the previous suit was based, (2) that in respect of that cause of action the plaintiff was entitled to more than one relief, (3) that being thus entitled to more than one relief the plaintiff, without leave obtained from the Court, omitted to sue for the relief for which the second suit had been filed. From this analysis it would be seen that the defendant would have to establish primarily and to start with, the precise cause of action upon which the previous suit was filed, for unless there is identity between the cause of action on which the earlier suit was filed and that on which the claim in the later suit is based there would be no scope for the application of the bar.” The above principles have been reiterated in several later judgments of this Court. Reference by way of

illustration may be made to the judgments Deva Ram & Anr. v. Ishwar Chand & Anr.[3] and M/s. Bengal Waterproof Ltd. v. M/s Bombay Waterproof Manufacturing Co.”

thus, submitting to the effect that in view of there having been no analysis qua the said I.A. in relation to the prayer granted therein, the institution of the suit as pending before the learned Trial Court out of which the impugned order arises is barred by law. Reliance is also placed on behalf of the petitioner on the verdict of the Hon'ble Supreme Court in “*Union of India Vs. Ibrahim Uddin and Another*” (2012) 8 SCC 148 with specific reference to Para 44 of the said verdict which reads to the effect:-

“44. It is a settled legal proposition that not only administrative order, but also judicial order must be supported by reasons, recorded in it. Thus, while deciding an issue, the Court is bound to give reasons for its conclusion. It is the duty and obligation on the part of the Court to record reasons while disposing of the case. The hallmark of order and exercise of judicial power by a judicial forum is for the forum to disclose its reasons by itself and giving of reasons has always been insisted upon as one of the fundamentals of sound administration of the justice – delivery system, to make it known that there had been proper and due application of mind to the issue before the Court and also as an essential requisite of the principles of natural justice. The reason is the heartbeat of every conclusion. It introduces clarity in an order and without the same, the order becomes lifeless. Reasons

substitute subjectivity with objectivity. The absence of reasons renders an order indefensible/unsustainable particularly when the order is subject to further challenge before a higher forum. Recording of reasons is principle of natural justice and every judicial order must be supported by reasons recorded in writing. It ensures transparency and fairness in decision making. The person who is adversely affected must know why his application has been rejected. (Vide: State of Orissa v. Dhaniram Luhar, AIR 2004 SC 1794; State of Uttaranchal & Anr. v. Sunil Kumar Singh Negi, AIR 2008 SC 2026; The Secretary & Curator, Victoria Memorial Hall v. Howrah Ganatantrik Nagrik Samity & Ors., AIR 2010 SC 1285; and Sant Lal Gupta & Ors. v. Modern Cooperative Group Housing Society Limited”

to submit and contend that clarity in any order is required and the absence of reasons renders the order unsustainable. Reliance is also placed on behalf of the petitioner on the verdict of the Hon’ble Supreme Court in **“GURBUX SINGH VS. BHOORALAL” 1964 AIR 1810** to contend that the subsequent suit instituted by the plaintiff i.e. respondent no.1 herein was barred by law in terms of Order II Rule 2 of the CPC.

5. Reliance is placed on behalf of the respondent no.1 on the verdict of this Court in **“Indianhawks Wealth Creators Pvt. Ltd. Versus Shri Anil Gupta & Anr.” 2018(249) DLT 417** with specific reference in para 7 of the said verdict to contend to similar effect which reads to the effect:-

“7. The plea of the plaintiff in the plaint is that the plaintiff, after the ex parte ad interim order in the earlier suit having accessed the premises and having been dispossessed thereafter. If the defendants prove delivery of possession prior thereto, then the plaintiff will not be entitled to recovery of possession or damages and the question of Order 2 Rule 2 of the CPC will also not arise. However, if the defendants fail to prove the same, it cannot be said that the present suit is barred by Order 2 Rule 2 of the CPC. Moreover Supreme Court in Rathnavathi v. Kavita Ganashamdas, MANU/SC/0966/2014 : IX (2014) SLT 698 : (2015) 5 SCC 223 and Sucha Singh Sodhi v. Baldev Raj Walia, MANU/SC/0376/2018, has held that cause of action for a relief of permanent injunction and for a relief of specific performance is different and Order 2 Rule 2 of the CPC does not apply. On the same ratio, cause of action for present suit and earlier suit are different and Order 2 Rule 2 of the CPC will not apply. For this reason also, the plea of Order 2 Rule 2 is not a substantial plea and it has been held in (i) Ashoka Estate Pvt. Ltd. v. Dewan Chand Builders Pvt. Ltd., MANU/DE/1320/2009 : 159 (2009) DLT 233 : III (2009) BC 272 : 2009 (113) DRJ 93; (ii) P.S. Jain Co. Ltd. v. Atma Ram Properties (P) Ltd., MANU/DE/4697/2013 : 205 (2013) DLT 302; (iii) Precision Steels v. Reeta Salwan, MANU/DE/4436/2013 : 205 (2013) DLT 695; (iv) Kawal Sachdeva v. Madhu Bala Rana, MANU/DE/1050/2013; and, (v) Adarsh Kumar Puniyani v. Lajwanti Piplani, MANU/DE/4289/2015, that the issues are not to be framed on every plea taken in the pleadings and have to be framed only on Substantial pleas which in the event of proving have a chance succeeding. It is found that

allowing an issue to be framed would waste time and not influence the outcome of the suit, such an issue need not be framed.”

6. Reliance is also placed on behalf of the respondent no.1 on the verdict of the Hon’ble Supreme Court in **“Ratnavathi & Another Vesus Kavita Ganashamdas” 2015 (5) SCC 223** with specific reference to paras 30 to 33 of the said verdict which read to the effect:-

“30. In our considered opinion, both the suits were, therefore, founded on different causes of action and hence could be filed simultaneously. Indeed even the ingredients to file the suit for permanent injunction are different than that of the suit for specific performance of agreement

31. In case of former, plaintiff is required to make out the existence of prima facie case, balance of convenience and irreparable loss likely to be suffered by the plaintiff on facts with reference to the suit property as provided in [Section 38](#) of the Specific Relief Act, 1963 (in short “the Act”) read with Order 39 Rule 1 & 2 of CPC. Whereas, in case of the later, plaintiff is required to plead and prove her continuous readiness and willingness to perform her part of agreement and to further prove that defendant failed to perform her part of the agreement as contained in [Section 16](#) of The Act.

32. One of the basic requirements for successfully invoking the plea of Order II Rule 2 of CPC is that the defendant of the second suit must be able to show that the second suit was also in respect of the same cause of action as that on which the previous suit was based.

33. As mentioned supra, since in the case on hand, this basic requirement in relation to cause of action is not made out, the defendants (appellants herein) are not entitled to raise a plea of bar contained in Order II Rule 2 of CPC to successfully non suit the plaintiff from prosecuting her suit for specific performance of the agreement against the defendants.”,

to contend that where the cause of action is different, the embargo of Order II Rule 2 of the CPC would not apply. On behalf of the respondent no.1 i.e. the plaintiff of the suit in question, reliance is also placed on the verdict of the Hon’ble Supreme Court in ***“SUCHA SINGH SODHI (D) THR. LRS. VERSUS BALDEV RAJ WALIA & ANR.” 2018 AIR (SC) 2241*** with specific reliance in para 30, 31, 32 & 33 of the said verdict which read to the effect:-

“30) Our answer to the aforementioned question is in favour of the plaintiffs (appellants) and against the defendants(respondents). In other words, our answer to the aforementioned question is that the plaintiff could not claim the relief of specific performance of agreement against the defendants along with the relief of permanent injunction in the previous suit for the following reasons.

31) First, the cause of action to claim a relief of permanent injunction and the cause of action to claim a relief of specific performance of agreement are independent and one cannot include the other and vice versa.

32) In other words, a plaintiff cannot claim a relief of specific performance of agreement against the defendant

on a cause of action on which he has claimed a relief of permanent injunction.

33) Second, the cause of action to claim temporary/permanent injunction against the defendants from interfering in plaintiff's possession over the suit premises accrues when defendant No.1 threatens the plaintiff to dispossess him from the suit premises or otherwise cause injury to the plaintiff in relation to the suit premises. It is governed by Order 39 Rule 1 (c) of the Code which deals with the grant of injunction. The limitation to file such suit is three years from the date of obstruction caused by the defendant to the plaintiff (See – Part VII Articles 85, 86 and 87 of the [Limitation Act](#)).”

7. It is submitted on behalf of the petitioner that there is a distinction in the facts of the case in “**SUCHA SINGH SODHI (D) THR. LRS. VERSUS BALDEV RAJ WALIA & ANR**” (supra) that has been relied upon on behalf of the respondent no.1 to the effect that:-

S.No.	Present Case	Sucha Singh Sodhi Case
1.	Cause of action for all the reliefs claimed in present suit were existing on the date of filing first suit on 03.11.2007.	At the time of filing first suit there was only one cause of action for permanent injunction thus not entitled to claim the relief Specific Performance Plaintiff at the time of filing his first suit was not aware that R-1 had already created third party interest in the suit

		property in favour of R-2.
2.	All the Defendants were party in the first suit as well.	Subsequent purchaser R-2 was not the party to the first suit.
3.	Plaintiffs consciously omitted to sue qua the reliefs of Declaration qua their ownership & Specific Performance of Flat Buyer Agreements and omitted to sue qua declaration of the three orders passed by the High Court as null and void in first suit thus filed an application under Order 2 Rule 2 CPC for leave of the Court which in fact, was not prosecuted and without obtaining leave filed the second present suit.	No relief was relinquished or omitted in the first suit & First suit was withdrawn with the liberty to file a fresh suit and the Hon'ble Supreme Court held that withdrawal amounted to grant of liberty to file a second suit.
4.	No change in circumstances as existing on the date of filing the first suit on 03.11.2007 and filing of the present / second suit on 01.09.2009.	New facts emerged from filed written statement of R-1 and application filed under Order 1 Rule 10 CPC by the purchaser gave rise to separate & new cause of action to claim the relief of specific performance.
5.	First suit filed on	First suit was filed on

	03.11.2007 was still pending when the second suit was filed on 01.09.2009.	11.10.1996 and it was allowed to be withdrawn on 27.11.1998 on basis of statement of the Plaintiff and Court granted liberty to file a fresh suit.
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and it has thus, been submitted on behalf of the petitioner that the reliance placed on behalf of the respondent no.1 on the verdict relied upon is wholly misplaced.

8. The prayers in the initial suit that had been filed by the plaintiff have been adverted to hereinabove. The subsequent suit **CS(OS)1562/2009** which was instituted before this Court and now has been transferred to the District Court bearing CS No.59737/16 is a suit for specific performance, declaration and injunction and other consequential reliefs with the prayers therein to the effect:-

“PRAYER

In view of the above, it is therefore, most respectfully prayed that this Hon'ble Court may be pleased to pass:-

a) Several decree(s) or joint decree, as the case may be, in favour of the Plaintiffs and other members of the Plaintiff No.1, and against the defendant(s), jointly and/or severally, of declaration that the plaintiffs and other members of the Plaintiff No. 1 as owners of the suit property, and/or alternatively directing the defendant(s) jointly and/or severally for specific

performance of their part of contract under said respective "title document/Flats Buyer Agreement" as stated in terms of (Para 21 &22 herein above read with agreement dated 1978 and GPA 1979 and in terms of provisions of Delhi Apartment Ownership Act), by way of execution and registration of the Sale Deeds/ Conveyance Deeds/ Deeds of Apartments, in favour of the Plaintiffs, and other members of the Plaintiff No. 1, jointly and/or severally, as the case may be, with respect to the "Suit Property".

However, in case the Defendant(s) jointly and/or severally fail/s to perform their part of obligation, and/or as directed, as aforesaid, then the same may be ordered to be performed, & execution in favour of the Plaintiffs and other members of the plaintiff No. 1, jointly and/or severally, as the case may be, with respect the "Suit property" through an officer of the Hon'ble Court, to be appointed by this Hon'ble Court, for this purpose.

b) Joint and/or several decree of declaration in favour of the plaintiffs and other members of the Plaintiff No.1 and against the Defendant(s) jointly and severally, and/or any other person deriving authority and title through the defendants, that impugned sale deeds, in favour of Defendant No.6 as

stated in terms of Para 30 herein above, read with Annexure-I (Colly), bearing No.9131, Vol.1354, Pages 185-191, dated 1.8.07 and 9132, Vol. 1355, pages 1-24 dated 1.8.08 with respect of the "Suit Property" are bad, null and void and not binding on the plaintiffs herein and other members of the Plaintiff No. 1 as well as on the suit property;

c) A decree of declaration in favour of the plaintiffs and other members of the Plaintiff No.1, and against the Defendant(s) and in particular defendant No.7 herein declaring that judgement(s) and decree(s) passed in the Suits as are stated in terms of Para 59 herein above read with Annexure-J (Colly), are nullity with respect to the Suit property and/or are not executable against the suit property of the Plaintiffs herein and other members of the Plaintiff No. 1;

d) The Defendant(s) and/or any third party herein jointly and/or severally, be restrained by way of decree for permanent injunction from creating any third party interest and/or interfering in any manner, in the suit property in any manner whatsoever and;

e) To award the cost in favour of the Plaintiffs herein and against the defendants herein;

Pass such other or further order which this Hon'ble Court may deem fit and proper in the facts & circumstances of the case.”

9. Apparently, as rightly observed by the learned Trial Court vide the impugned order, the causes of action in the two suits are different as observed vide para 20 of the said impugned order, which reads to the effect:-

“20. To dispose of this application, it is also necessary to appreciate what reliefs were sought in the first suit bearing no.57719/2016/2007. In this suit the plaintiff had sought the relief of permanent injunction against the defendant no.1 for restraining the defendant no.1, his

family members, associates etc., not to encroach upon the suit property, not to obstruct and interfere in the peaceful possession and enjoyment of the suit property, it was also prayed that the defendants be restrained from obstructing, interfering egress and ingress of the members of the plaintiff in the suit property as well as not to deploy any security guard and CCTV in the suit property. These reliefs are clearly emanating from para-19, 24, 27, 30, 32 and 40. While on the other hand, the reliefs in the present suit relate to declaration and specific performance of the contract. It is also prayed in the present suit that the defendants be restrained from creating any third party interest in the suit property. The basis of rights prayed in the present suit are completely different from the earlier suit. The causes of action related to both the cases are diametrically different. As discussed above, the different Courts have categorically upheld that whenever there are different causes of action, the plaintiff need to club them into one suit. He is at liberty either to file one suit with regard to different causes of action or to file separate suit in this regard. While in the earlier suit, the cause of action is arising out of the imminent danger to the plaintiff from being ousted from the suit property by the defendants, while in the present suit the cause of action relates to the contract itself. So the arguments that the plaintiff must have sought of specific performance and declaration in the earlier suit of permanent injunction is not tenable. Even if the plaintiff had filed one application bearing IA No.12856/2007 which was subsequently decided in his favour vide order dated 13.08.2014, the plaintiff cannot be denied benefit of statute. If the law permits the plaintiff either to file one composite suit for different causes of action or to file separate suits, his making earlier

application does not nullify his present suit. Even if order dated 13.08.2014 was ambiguous and the present suit has been filed prior to making of the aforementioned application, the present suit cannot be dismissed merely on this ground. Even the order dated 13.08.2014 was given in favour of the plaintiff and the contentions of the Ld counsel for the defendants that the plaintiff concealed these facts before the Hon'ble Court is not sufficient to reject his present suit outrightly on this ground itself. Though, in case, the plaintiff concealed this fact, the defendant can seek other remedies.”

10. As regards the other aspect and that has been contended on behalf of the petitioner that the order dated 31.08.2014 being not speaking, inasmuch as the subsequent suit was barred by law, reliance has been placed on behalf of the respondent no.1 on the verdict of this Court in “***Hari Bhagwan Sharma Versus Badri Bhagat Jhandewalan Temple Society***” 1985 RLR 18(N) with specific reference to para 6 of the said verdict, which reads to the effect:-

“(6) While I am in absolute agreement with the contention of the learned counsel for the defendants that the leave of the Court as contemplated in Section 92 must not be provisional or interim, I do not think that the leave granted by my learned brother Khanna, J. in this case suffers from any such infirmity. Surely, the addition of the words "subject to just exceptions" cannot be interpreted as implying that the leave is conditional or it is vitiated by any reservation which may render the leave provisional or interim in nature. These words, to my mind, have been added to the order ex abundanti

cauatela (i.e. by way of abundant (caution) to specifically reserve the rights of the defendants to contest the suit on any valid and legal ground available to them. It is true that even without the use of this expression it was open to the defendants to contest the suit and raise any legal or actual plea which would non-suit the plaintiffs. They could also show that the suit as constituted was not maintainable. Notwithstanding this legal position, the addition of these words has simply served to expressly reserve the rights of the defendants in-fact to contest the suit on any ground available to them. Certainly it does not make any dent in, nor does it qualify the leave to institute the suit which is absolute and final. As said by the Supreme Court in Chairman Madappa v. M.N. Mahanthadevaru and others, :

"The main purpose of section 92(1) is to give protection to public trusts of a charitable or religious nature from being subjected to harassment by suits being filed against them. That is why it provides that suits under that section can only be filed either by the Advocate General or two or more persons having an interest in the trust with the consent in writing of the Advocate General. The object is that before the Advocate General files a suit or gives his consent for filing a suit, he would satisfy himself that there is a prima face case either of breach of trust or of the necessity for obtaining directions of the Court.",

to contend thus, that the addition of words ***“subject to just exception”*** cannot be interpreted as implying that the leave is conditional or it is vitiated by any reservation which may render the leave provisional or interim in nature and thus, it could not

be contended as sought to be contended on behalf of the petitioner that the institution of the second suit by the respondent no.1 was not maintainable.

11. It is essential to observe that the I.A. No.12856/2007 that had been filed by the plaintiff which has been adverted to hereinabove, vide para 4, 5, 6 & 7 thereof read to the effect:-

“4. That the Defendant No. 1, she claims to have acquired rights in the suit property on the basis of the alleged sale title deeds. The Plaintiff and its members did/do not accept and admit and strongly refute any of the alleged rights, title and interest of the Defendant No.1 in the "suit property" and further do not admit legality and validity of any documents whatsoever to this effect and further state that all such alleged documents and claims are null and void in the eyes of law and are not binding upon the Association and / or its members and / or upon the suit property.

5. That the plaintiff has not claimed in the present suit any declaration about the legality, illegality, invalidity and nullity of the alleged sale deeds/alleged documents of title in favor the defendant No. 1.

6. That similarly, the plaintiff has also not claimed in the present suit any claim of specific performance against the Defendants No. 3-6. However, the plaintiff hereby declares that it has not relinquished or surrendered any right to seek the said declaration and further specific performance of the flat buyer agreement, as aforesaid and the defendants are not discharged there from.

7. That the Plaintiff however, as a matter of abundant precaution, and in good faith craves the leave of this Hon'ble Court to permit and grant liberty to the plaintiff either to include the aforesaid reliefs in the present suit and /or to file fresh claims/suit/legal proceedings in the Court Competent Jurisdiction, for the same.”

12. The prayer made vide the said IA i.e. I.A.No.12856/2007 seeking relief under Order II Rule 2 of the CPC has already been adverted to elsewhere hereinabove.

13. The factum that the prayers made by the subsequent suit for specific performance, declaration and injunction and other consequential reliefs as prayed though CS (OS)1562/2009 now bearing CS No.59737/2016 did not include the said prayers in the suit bearing No. CS(OS)2212/2007, and the grant of the prayer vide order dated 31.08.2014 of this Court, qua the said application i.e. I.A. No.12856/2007 being subject to just exceptions, in the circumstances, can only thus be interpreted and read to the effect that it granted the prayer made by the plaintiff of the said suit to institute a subsequent suit in relation to the reliefs qua which the plaintiff has submitted that it had not relinquished or surrendered any right to seek declaration and further specific performance of the flat buyers' agreement as submitted vide paragraph 6 of the said IA.

14. Another contention that has been raised on behalf of the petitioner herein is to the effect that the aspect of limitation was also not considered qua which it has been observed by the learned Trial Court to the effect that the question of limitation

was involved in the facts and circumstances of this suit and could not be determined without trial.

15. In the circumstances, it is held that there is no infirmity in the impugned order and the present petition is declined.

ANU MALHOTRA, J

MARCH 08, 2019/NC

