

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

% **Decided on: 28th February, 2020**

+ **CS (OS) 664/2018**

MR. MAYANK SHARMA Plaintiff

Represented by: Mr.Pranjal Shekhar, Adv.

Versus

MRS. SANTOSH SHARMA & ORS. Defendant

Represented by: Mr.Rajinder Wali, Adv. for Punjab
National Bank-newly impleaded
defendant
Mr.I.S.Chauhan, Adv. for M/s.
Kalyani India Pvt. Ltd.-newly
impleaded defendant

CORAM:
HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

CS(OS) 664/2018

1. On 31st January, 2020, this Court passed the following order in IAs 17730/2018, 17019/2019, 16315/2019 & 16892/2019, thereby dismissing IA 17730/2018 under Order XXXIX Rule 1 and 2 CPC and allowing IAs 17091/2019 under Order XXXIX Rule 4 CPC and 16315/2019 & 16892/2019 under I Rule 10 CPC:-

“1. By IA 17730/2018, the plaintiff had sought an ex parte ad-interim injunction restraining the defendants from

selling, alienating, transferring, disposing of the suit property being D-38, Panchsheel Enclave, New Delhi-110017.

2. After the summons in the suit were issued to the defendants, despite receipt of summons, none appeared for defendant Nos. 3 to 6. Counsels for the defendant Nos. 1 and 2, who sought time for filing written statement, had also filed an application under Order VII Rule 10 and 11 CPC.

3. When the matter was listed before the learned Joint Registrar on 28th September, 2019, none appeared on behalf of the parties. On 21st October, 2019, learned counsel for the defendant Nos. 1 and 2 stated that he was not receiving any instructions from the defendant Nos. 1 and 2 and prayed for an adjournment. He also stated that defendant Nos. 1 and 2 were grand-mother and father of the plaintiff. It was noted that the right of the defendant Nos. 1 and 2 to file the written statement had already been closed.

4. Thereafter, two applications have been filed by interveners i.e. Punjab National Bank and M/s. Kalyani India Pvt. Ltd. being IA Nos. 16315/2019 and 16892/2019 under Order I Rule 10 CPC, seeking impleadment in the suit. Punjab National Bank also filed an IA 17091/2019 under Order XXXIX Rule 4 CPC.

5. Case of the interveners is that the present suit seeking partition of the property i.e. D-38, Panchsheel Enclave, New Delhi is a collusive suit between the plaintiff and defendant Nos. 1 and 2, who are all family members, as the property was already mortgaged with the Punjab National Bank and pursuant thereto, the said property has been sold

in auction under SARFAESI Act to M/s. Kalyani India Pvt. Ltd. In the suit, these facts were not stated and so as to be able to continue in the possession, despite the fact that the suit property was mortgaged, was sold in auction and an ad-interim ex parte order was sought seeking direction to maintain status quo as to the title and possession of the suit property thereby frustrating the enforcement of the rights of the applicants.

6. Notice in these two applications being IA Nos. 16315/2019 and 16892/2019 was issued on 3rd December, 2019, when learned counsel for the plaintiff/non-applicant stated that she has no instructions from the plaintiff/non-applicant in the matter and sought discharged. Thus, this Court issued Court notice to the plaintiff in the suit and the applications returnable before Court on 20th December, 2019. On 20th December, 2019, learned counsel for the plaintiff had entered appearance and time of two weeks for filing the reply affidavit was granted. In the reply affidavit, the plea taken by the plaintiff is that the plaintiff seeks partition of the property, rendition of accounts and the Punjab National Bank and M/s. Kalyani India Pvt. Ltd. have no locus standi to be parties to the present suit since the suit was inter se family members. In the meantime, on 4th December, 2019, an application under Order XXXIX Rule 4 CPC being IA 17091/2019 was also filed by the Punjab National Bank, wherein also notice was issued to the plaintiff/non-applicant, in which, time for filing reply was sought by the plaintiff. In the reply affidavit to IA 17091/2019 under Order XXXIX Rule 4 CPC, the plaintiff again sought the time that the dispute in suit was inter se family members and the applicant-bank could not defeat the plaintiff's legitimate rights.

7. The plaintiff, in the suit, did not disclose the material facts that the defendant No. 2 i.e. father of the plaintiff was the borrower from the bank and defendant No. 1 along with her deceased-husband, who owned the suit property had mortgaged the same and in this regard, plaintiff has also approached the Debt Recovery Tribunal by filing a Securitization Application being SA No. 32/2019 on 22nd January, 2019, wherein, notice was issued when the details of the auction purchaser of the suit property etc. was provided to the plaintiff. Though the claim of the plaintiff is that the plaintiff did not receive the mail, however, the copy of the said mail dated 7th February, 2019 has been placed on record. Plaintiff claims that the bank has violated the status quo order dated 21st December, 2018 passed by this Court by entering into a sale with third party and issued the sale certificate on 15th February, 2019.

8. Considering the fact that an ad-interim ex parte injunction was passed because the plaintiff in a collusive manner concealed material facts, which collusion is further evident from the fact that though defendant Nos. 1 and 2 were served and filed an application under Order VII Rule 10 and 11 CPC, but, did not pursue the same nor filed any written statement. In the application under Order VII Rule 10 and 11 CPC, stand of the defendant Nos. 1 and 2 was that it was not an HUF property, and admitted the fact that a mortgage was created on the suit property, it is evident that the plaintiff had filed the suit by concealing material facts. Consequently, IA 16315/2019 and 16892/2019 under Order I Rule 10 CPC are disposed of impleading the Punjab National Bank and M/s. Kalyani India Pvt. Ltd. as defendants in the suit.

9. Further, IA No. 17730/2018 seeking interim injunction in favour of the plaintiff and against the defendants and status quo as to title and possession with respect to the suit

property is dismissed and IA 17091/2019 under Order XXXIX Rule 4 CPC is allowed. The interim order passed on 21st December, 2018 is vacated.

10. Order dasti.”

2. From the facts as noted above, it is evident that the present suit was filed as a collusive suit showing the suit property as an HUF property thereby seeking injunction to frustrate the orders passed in favour of the Punjab National Bank and M/s. Kalyani India Pvt. Ltd., the auction purchasers of the suit property. The suit property having already been sold in auction and there being no evidence of the suit property being put in HUF which fact has been refuted as per the application being IA 2030/2019 filed by the defendant Nos. 1 and 2 also, and defendant Nos. 1 and 2 have already availed the remedies available before the DRT, the present suit is dismissed being devoid of any cause of action.

I.A.2030/2019 (under Order VII Rule 10 CPC by D1 and D2)

Application is dismissed as infructuous.

(MUKTA GUPTA)
JUDGE

FEBRUARY 28, 2020
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