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

Date of decision: 30th November, 2021

+ **EX.F.A. 5/2021 & CM APPL. 4046/2021**

M/S. NULON INDIA LTD. Appellant
Through: Mr. C.P. Vig and Mr. Prateek Kumar,
Advocates. (M:9891736272)
versus

ISHWAR INDUSTRIES LTD. Respondent
Through: Ms. Ekta Mehta and Mr. Shreyans
Singhvi, Advocates. (M:9971443037)

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present execution first appeal arises out of the impugned judgement dated 17th December, 2020 passed by the Ld. ADJ-03, South-East District, Saket Courts, New Delhi (*hereinafter "Executing Court"*) in **MISC No.74/2020** titled "**M/s. Nulon India Ltd. v. Ishwar Industries Ltd.**". By the impugned order, the objections filed by the Objector/Appellant herein (*hereinafter "Objector"*) under Order XXI Rule 97 CPC against the execution of the decree dated 19th February, 2020 passed by the Executing Court, have been rejected by the Executing Court.
3. On 19th September, 2005, a suit for possession and mesne profits, being **CS No.1317/2005 (New CS No.9831/16)** titled "**Ishwar Industries Ltd. v. M/s. Gallus Chattles P. Ltd. & Ors.**" was instituted by the

Plaintiff/Respondent herein (*hereinafter* 'Plaintiff') against certain Defendants, being M/s. Gallus Chattels Pvt. Ltd., M/s. Crocus Chattels Pvt. Ltd., M/s. Colorado Chattels Pvt. Ltd. and M/s. Nulon Global Ltd (*hereinafter* 'Defendants'). The case of the Plaintiff was that the Plaintiff had given a leave and license for the temporary occupation of the suit property, vide letter dated 17th March, 1994 to Defendant Nos.1-3. It was further alleged that the period of license was 180 days and despite the expiry of the said period, the Defendants did not vacate the suit property. As per the Plaintiff, Defendant No.4 a sister concern, was a trespasser therein. The reliefs sought in the plaint were as under:

“a) Decree be granted directing the defendants to hand over vacant possession of the said portion of Block No.4 shown in red in the site plan under their occupation after removal all additions/alterations and stocks, furniture, fixtures and fittings installed therein belonging the defendants.

b) A perpetual injunction restraining the defendants, their agents or servants from alienating, charging, or parting with possession of said portion of Block No.4 under their occupation shown Red in the site plan and not to carry on any further additions, alterations or unauthorized constructions, store or remove stocks for the purpose of carrying on business or trade.

c) A decree for Rs.9,24,000/- with interest @ 18% p.a. from date of suit till payment.

d) Enquiry into mesne profit and damages and award interest thereon @ 18% p.a. Pre-filing of the suit, pendente lite until handing over of vacant possession of the suit property by the defendants to the plaintiff.”

4. In the said suit being **CS OS No.1317/2005**, the following issues were

framed by the Court:

“1. Whether the plaintiff has no right, title or interest in the suit property? OPD (onus was changed as OPP subsequently)

2. Whether the suit has not been signed filed, verified and instituted by duly authorized person? OPD (onus was changed as OPP subsequently)

3. Whether the suit is bad for mis-joinder and non-joinder of necessary parties? OPD

4. Whether the plaintiff is entitled for decree of possession as prayed for? OPP

5. Whether the plaintiff is entitled for decree of permanent injunction as prayed for? OPP

6. Whether the plaintiff is entitled for decree of Rs.9,24,000 along with interest? If so at what rate. OPP

7. Whether the plaintiff is entitled for mesne profits? If so at what rate and for what period. OPP

8. Whether the plaintiff is entitled for interest on mesne profits? If so at what rate and for what period. OPP”

5. The said suit being **CS OS No.1317/2005** was decreed against the Defendants, vide judgement dated 19th February, 2020. The operative portion of the judgement and decree dated 19th February, 2020 is extracted below:

“52. In the light of aforesaid findings, the suit of the plaintiff is decreed as under:

(i) A decree is passed thereby the defendants are directed to hand over the physical vacant possession of the suit property i.e., block no. 4 as shown in site plan (Ex.PW1/4) within 30 days to the plaintiff after

removing their additions, alternations, stocks, furnitures, fixtures, fittings, construction, and installations. If the defendants do not remove the same, the possession will be delivered in the same position to the plaintiff and the plaintiff will not be liable to pay any damages/amount of the said construction/installations.

(ii) A decree of permanent injunction is also passed in favour of the plaintiff and against the defendants and the defendants are restrained to alienate, transfer, charge or parting with possession of the said suit property and to carry out any further alternations or additions, or to carry any further business from there [except for prayer (i)]

(iii) A decree of damages/mesne profits is also passed in favour of the plaintiff and against the defendants @ Rs. 75 per sq. feet w.e.f. 23.11.1996 for the area of 2,500 sq. feet (which comes out to be Rs.1,87,500 per month) till the date of delivery of possession.

(iv) A decree is also passed in favour of the plaintiff and against the defendants by granting a reasonable interest @ 12% per annum on the aforesaid amount for the period prior to filing of the suit till the date of decree i.e. w.e.f. 23.11.1996 till date. If the defendants do not hand over the physical vacant possession of the suit property within 30 days to the plaintiff, the interest will be applicable @ 15% per annum for the future period after said 30 days at the same rate of mesne profit till delivery of possession.

(v) In the case of 'Salem Advocates Bar Association v. Union of India, 2005 (6) SCC 344' the Hon'ble Supreme Court of India has dealt with the relevant provisions under the CPC, 1908 for award of compensatory and punitive costs in favour of the successful party. The Hon'ble Supreme Court of India in this landmark judgment has suggested a hike in the

quantum of costs on persons indulging in frivolous and vexatious litigations, which are clogging up the justice delivery system in the country. In view of the said judgment and the conduct of the defendants, this court award an exemplary/punitive cost of Rs.3,00,000, out of which Rs.2,00,000 shall be paid to the plaintiff and Rs.1,00,000 to be deposited either with the Prime Minister's National Relief Fund or the Chief Minister's Relief Fund, Govt. of NCT of Delhi within 30 days and receipts thereof be placed on record.

(vi) All the defendants are jointly and severally liable in respect of aforesaid reliefs/ directions.

*53. Ordinary cost of the suit is also awarded in favour of the plaintiff and against the defendants as per rules. Decree sheet be prepared accordingly. **File be consigned to record room after due compliance.**"*

6. The Defendants challenged the judgment dated 19th February, 2020 by way of **RFA 23/2020**. In the said RFA, stay order was granted subject to certain conditions. However, those conditions were not fulfilled by the Defendants and the stay order was vacated. Thus, the judgement/decree became executable.

7. The Objector- M/s. Nulon India Ltd, which is a sister concern of the Defendants in **CS OS No.1317/2005**, filed objections under Order XXI Rule 97 CPC before the Executing Court claiming that it was not bound by the judgment and decree dated 19th February, 2020 as it was not a party to the suit proceedings, as also claiming an independent right in the suit property. The said objections filed by the Objector were dismissed by the Executing Court, vide the impugned judgment dated 17th December, 2020. The operative portion of the impugned judgment is extracted below:

"23. In the light of aforesaid facts and circumstance,

this court holds that the present objection is false, frivolous and not maintainable having no legally acceptable defence. Consequently, the plaintiff is entitled for passing a judgment under Order 14 Rule 1 (6) CPC straightway. As such, the objection/application is dismissed. At the same time, it is observed that defendants had filed various applications, one after another, to delay the suit to illegally retain the possession for a long period. The present objection is also in that direction only even after passing of judgment against the defendants with clearly indicates that they want to delay the execution of the judgment/decreed and delivery of possession of the suit property to the plaintiff. The Directors of the objector company are also the Directors of the defendant companies (along with other Directors) and as such, they were well aware of each and every stage of the previous proceedings and despite that, they have filed the present frivolous objection/claim. Accordingly, this court deems it fit to take criminal action against them and to impose exemplary cost.

Xxx

25. *Accordingly, objection of the objector is dismissed with a cost of Rs.2lacs, out of which Rs.1 lac shall be payable to the plaintiff/respondent within 30 days and Rs.50,000 to the Prime Minister's National Relief Fund and Rs.50,000 to the Chief Minister's Relief Fund (Delhi) within 30 days by the objector.*

26. *Keeping in mind the conduct of the objector and filing of false claim in the present objection, the Directors of Objector Company and Sh. G.P. Chobey, AR/Officer of the Objector Company are directed to show cause in writing as to why action should not be initiated against them for filing of a complaint under Section 340 Cr.P.C. for committing the offence under Section 209 IPC, on the next date of hearing with*

*advance copy to the opposite counsel on her
Whatsapp/email.”*

8. The Objections were filed even before the execution was filed by the Plaintiff.

9. Mr. Vig, Id. Counsel appearing for the Objector/Appellant herein makes the following submissions:

- i. The Objector has been in possession of the suit property since 17th March, 1994. Further, the Objector had filed a suit against the Plaintiff being ***Suit No.36/2003*** titled ***“M/s. Nulon India Ltd. v. The Ishwar Industries Ltd.”*** against the Plaintiff, on 15th May, 1997. In the said suit, judgment dated 31st October, 2005 was passed by which an interim order was granted against the demolition of the office portion of Block No.4, Tribhuvan Complex, Iswar Nagar, Delhi-Mathura Road, New Delhi-110065 (*hereinafter “suit property”*). The operative portion of the judgment dated 31st October, 2005 reads as under:

“.... If, plaintiff is illegally occupying this portion/suit property, the defendants are always at liberty to claim and seek recovery of possession of the property from the plaintiff. No one in this land is authorized to use force for the purpose of eviction someone from any property, until unless it has sanction of the Law.

XXX Accordingly, defendant is restrained from demolishing the office portion of plaintiff in Block No.4, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi without adopting due process of law. I further restrained the defendant from dispossessing the plaintiff from the office portion of the property and from the plot under the demolished store portion of property in Block

no.4, Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi.”

Thus, the Plaintiff was well aware that the Objector was in possession of the suit property, however, the Plaintiff chose not to implead the Objector as Defendant in the suit.

- ii. The Objector is a separate and distinct corporate entity from the Defendants. However, in the impugned judgment dated 17th December, 2020, it was held that the directors of the Defendants are the same and thus, the Court has dismissed the objections filed by the Appellant.
- iii. The corporate veil could not have been lifted in this manner for the purpose of execution of decree, when the Plaintiff had complete knowledge that the Objector was in possession of the suit property. The dates of incorporation of the Defendant Companies as also the Objector are different. The Directors of the said Companies are different. The purpose for which they were incorporated is also different. Reliance is placed upon the judgments in ***Indowind Energy Ltd. v. Wescare (I) Ltd. [Civil Appeal No.3874/2010 decided on 27th April, 2010]*** and ***Anirban Roy v. Ram Kishan Gupta & Anr. [CM(M) 559/2017 decided on 3rd August, 2017]*** to argue that the corporate veil could have been lifted only in extraordinary circumstances. However, in the present case such circumstances did not exist as the Plaintiff was well aware

of the possessory rights of the Appellant in the suit property.

- iv. By the impugned order, the Executing Court has also initiated action under Section 340 Cr.P.C. against the Director of the Objector/Appellant Company, which is also not tenable in law.
- v. Reliance is placed upon the judgment dated 19th February, 2020 in **CS OS No.1317/2005** to argue that one of the trespassers, Defendant No.4-Nulon Global Limited, has been made a party to the suit. However, the Appellant/Objector- Nulon India Limited, was not made a party to the said suit. When one trespasser could be made a party, there was no reason why the Objector, who had independent rights in the suit property could not have been impleaded. According to the judgment dated 31st October, 2005 in **Suit No.36/2003**, the Objector was held to be in settled possession of the suit property, and forcible dispossession was not permissible. In view thereof, the Objector ought to have been impleaded.
- vi. The Objections filed by the Objector raised a triable issue which was raised before the Executing Court, which ought to have been tried by the Executing Court.
- vii. There are two transactions arising out of two separate licenses. The first license is dated 17th March, 1994. However, as is pleaded in the suit which was filed by the Objector being **Suit No.36/2003**, it was the Plaintiff's case

that the suit property was given out on license again in 2005. Thus, the transactions of 1994 and 2005 are two different transactions which are independent of each other. This was not pleaded in the present suit being **CS OS No.1317/2005**, and was also not considered by the Executing Court.

- viii. In the cross-examination which was conducted in the suit, it was acknowledged that the the Defendants and its sister concerns were in possession of the suit property. The word ‘sister concerns’ was used and would include the Objector, which clearly shows that the Plaintiff was well aware of the Objector being in possession of the suit property.
- ix. Reliance is also placed upon the site plan to argue that a substantial question of the property is in possession of the Objector. The Objector had also entered into a Collaboration Agreement with the original owner of the suit property- Growth Techno Projects Ltd., who is also shown as a Vendor. Since the Objector had purchased the suit property from Growth Techno Projects Ltd., and the said collaboration had not been cancelled, the title of the two units of the suit property lies with the Objector.
- x. The above issues require to be adjudicated by the Executing Court by recording evidence and could not have been dismissed *in limine* in the manner as is sought to be done by the impugned judgement.
- xi. Reliance is also placed on an order dated 29th September,

2021 passed by the learned Single Judge of this Court in **CM(M) 654/2021** wherein the objections as to the maintainability of the Execution Petition filed by the Respondent were itself directed to be decided expeditiously. The Executing Court, however, has not decided the question of maintainability but has proceeded to decide the objections of the Appellant.

- xii. The Executing Court ought not to have proceeded further with the matter and issued warrants of possession on 16th November, 2021 as the Objector has preferred a transfer petition which is pending before the District Court. During the pendency of the transfer petitions, the manner in which the Executing Court is proceeding shows that the same is not in accordance with law.
- xiii. For all the foregoing reasons, the Objector submits that the impugned judgment dated 17th December, 2017 deserves to be set aside.

10. On the other hand, Ms. Ekta Mehta, Id. Counsel appearing for the Respondent/Plaintiff, makes the following submissions:

- i. The Objector herein- M/s. Nulon India Ltd. is the same as the Defendants in the suit as also the Judgement Debtors in the execution petition, in light of the following facts. The directors in all these companies are common. The authorized representative of the Objector/Appellant Company, Mr. G.P. Chobey, is the same person who has preferred the appeal as also was the main witness for the

Defendants in the suit. The said witness, Mr. G.P. Chobey, was also the person who filed the suit resulting in judgment dated 31st October, 2005 in ***Suit No.36/2003***. The said judgment was passed *ex-parte*. Further, in the suit being ***CS OS No.1317/2005*** filed by the Plaintiff leading to the judgment dated 19th February 2020, Mr. Chobey had filed the written statement on behalf of all the Defendants and did not disclose the judgment dated 31st October, 2005 in ***Suit No.36/2003***. The evidence of Mr. Chobey was also recorded in the suit, on behalf of all the Defendants wherein he relied upon the allotment letters, which had been cancelled. However, the cancellation thereof, was sought to be concealed from the Court. Mr. K.K. Golyan in his cross-examination, in effect, has admitted that a suit was filed challenging the said allotment letters. The said suit was dismissed and thereafter, the appeal was also dismissed.

- ii. She further submits that the judgment dated 31st October, 2005 has been disclosed for the first time in the objections filed before the Executing Court. The said judgment was passed on 31st October, 2005, whereas the suit being ***CS OS No.1317/2005*** leading to the execution proceedings was filed in September, 2005. In the written statements, which were filed by Mr. Chobey in the suit, the said judgment dated 31st October, 2005 was not disclosed in February, 2006.
- iii. All the foregoing facts go on to show that the parties are

hand in glove with each other, and they are one and the same parties. They have repeatedly tried various mechanisms to evade the handing over the possession of the suit property. The dismissal of the objections filed by the Objector and the proceedings under Section 340 Cr.P.C. against the Directors of the Objector Company and the Authorised Representative of the Objector have been sought to be initiated in view of the conduct of the Objector, in concealing the relevant facts from the various Courts.

11. This Court has perused the record, and heard the Id. Counsels for the parties. The intention of the Objector is self-evident in the manner in which this litigation has proceeded. The Plaintiff is repeatedly made to face obstacles after obstacles in one way or the other in the execution of the decree. All the subsequent proceedings viz., the objections, the transfer petition etc., have been resorted to by the Objector in order to prevent the enforcement of the decree by the Plaintiff. The present appeal is no exception.

12. The suit property is a prime property situated at Mathura Road, Delhi. The Objector is a part of the Group of Companies, which are run by the Golyan family. The Executing Court has set out the names of the Directors of each of the Companies, in the impugned judgment dated 17th December, 2020. The same is set out hereinbelow.

“NULON INDIA – Objector

1. *Smiti Golyan*
2. *K. K. Golyan*
3. *M.P. Golyan*

GALLUS CHATTELS PVT. LTD. –
Defendant No.1

1. *Smiti Golyan*
2. *K. K. Golyan*
3. *M.P. Golyan*
4. *Shakuntala Devi Golyan*
5. *Yashvardhan Golyan*
6. *Harjeet Singh Dang*
7. *Mohd. Naushad*
8. *Raj Kishore Singh*
9. *Lalit Kumar Bajoria*
10. *Poonam Devi Bajoriapa*
11. *Paresh Shantilal Shah*

CROCUS CHATTLES PVT. LTD. -
Defendant No.2

1. *Smiti Golyan*
2. *K. K. Golyan*
3. *M.P. Golyan*
4. *Shakuntala Devi Golyan*
5. *Yashvardhan Golyan*
6. *Harjeet Singh Dang*
7. *Mohd. Naushad*
8. *Raj Kishore Singh*
9. *Lalit Kumar Bajoria*
10. *Poonam Devi Bajoriapa*
11. *Paresh Shantilal Shah*

COLORADO CHATTELS PVT. LTD. -
Defendant No.3.

1. *K. K. Golyan*
2. *Smiti Golyan*
3. *Raj Kishore Singh*
4. *Harjeet Singh Dang”*

13. As is evident from the list set out above, the Defendant Nos.1 to 4 were the Defendants in the suit and the Judgment Debtors in the execution

petition. The suit being **CS OS 1317/2005** was filed relying upon the letter dated 17th March, 1994 by which the Respondent/Plaintiff had handed over the suit property, on a temporary basis, to the Defendant Companies namely M/s. Gallus Chattels Pvt. Ltd., M/s. Crocus Chattels Pvt. Ltd., M/s. Colorado Chattels Pvt. Ltd. These three Companies were the original Defendant Nos.1-3. Another Defendant Company, which was disclosed as trespasser in respect of the suit property, was made Defendant No.4. The reliefs sought in the suit have been extracted hereinabove.

14. In the said suit being **CS OS 1317/2005**, which was instituted on 19th September, 2005, written statement was filed in February, 2006 by Mr. Chobey on behalf of all the Defendants. The evidence on behalf of the Defendants was also led by Mr. Chobey along with other witnesses. The allotment letters, relied upon now by the Objector, including the two which were issued in favour of the Objector were also relied upon. A full-fledged trial was conducted. It is noteworthy that in the suit, the Objector-M/s. Nulon India Ltd. had also led its evidence through one, Mr. Ajay Kumar Sharma, who was claimed to be the authorised representative and employee of M/s. Nulon India Limited. The defences raised in respect of the allotments were rejected and the suit came to be decreed by the Trial Court vide judgment dated 19th February, 2020. The Court held that the Plaintiff has succeeded in establishing its right, title and interest in the suit property, and that the Defendant Companies' claims of independent rights in the suit property were frivolous and vexatious. Accordingly, the Defendants were directed to hand over vacant possession of the suit property. The reliefs granted by the Court, vide judgement dated 19th February, 2020 have been extracted hereinabove.

15. It is relevant to point out that the question of misjoinder and non-joinder of parties was also considered by the Court in the suit, and the same was rejected on the ground that there was no disclosure made as to which of the parties had not been impleaded.

16. The Defendants in the suit had challenged this decree in **RFA 23/2020**. In the said RFA, stay order was granted subject to certain conditions. However, those conditions were not fulfilled by the Defendants and the stay order was vacated. Thus, the judgement/decree became executable. The Respondent/Plaintiff, accordingly, sought execution of the said judgment dated 19th February, 2020, in which warrants of possession are stated to have already been issued by the Executing Court. In the said execution petition, on the premise that the Objector had learnt of the judgment and decree dated 19th February, objections were filed by the Appellant.

17. The Objector, having led evidence in the suit through its witness Mr. Ajay Kumar Sharma and through its promoter Mr. Golyan, has adequate knowledge and notice of the suit. It has also filed its evidence in the suit and placed its stand. Mere non-impleadment of the Objector in the suit cannot defeat the decree especially because all these entities are clearly not coming clean with the Court. The filing of objections on the ground that the decree came to the knowledge of the Objector only at the time of filing of objections is also completely misleading. The Objector has led evidence in the suit and has fully participated in the proceedings. The answers given by the said witness were found to be evasive. In the cross-examination, the Objector's witness was also asked if any payment was made in respect of units 164 and 165 of the suit property, of which the ownership is claimed by

the Objector, the clear answer was that the witness did not remember the same. The relevant portion of the evidence by way of affidavit and the cross-examination is set out below:

***“EVIDENCE ON BEHALF OF DEFENDANTS BY
WAY OF AFFIDAVIT***

I, Ajay Kumar Sharma, aged about 49 years S/o Late B.P. Sharma R/o 127, Ramesh Colony, Faridabad, Haryana-121003 do hereby solemnly affirm and declare as under:

1. That the deponent is an employee of M/s Nulon India Ltd. and is ware of the fact that the said firm purchased unit No.164 and 165 out of 17 allotment letter dated 12.12.1991, 16.12.1991, 17.12.1991 and 19.12.1991 situated at Block No.4, Ishwar Nagar, Tribhuvan Complex, Delhi-Mathura Road, New Delhi-110065 and possession of the same was given to M/s. Nulon India Ltd. and to others in part performance of the said allotment letters which was treated as agreement to sell in favour of purchasers.”

“DW-6

Statement of Sh. Ajay Kumar Sharma, S/o Late Sh. B.P. Sharma, aged about 49 years, R/o- 127, Ramesh Colony, Faridabad, Haryana-121003.

On SA

I tender my affidavit as my examination in chief which is Ex.DW6/A bearing my signatures at point A and B.

XXXXXX by Sh. Amit Sethi, Ld. counsel for the plaintiff.

Possession of unit no.164 and 165 of Block No.4, Tribhuvan Complex, Ishwar Nagar of unit No.164 and 165 was given on the basis of letter dated 17.03.1994.

At this stage, copy of the said letter is shown to the witness, who stated that he does not remember about the same.

Q. Can you tell whether unit no.164 & 165 were in built up condition at the time alleged giving of possession?

Ans. It might be so. Again said, I cannot say.

Q. Can you tell on which floor of the building the unit no.164 & 165 situate at the time alleged giving of possession?

Ans. They were at ground floor.

Q. Is it correct that in the letter dated 17.03.1994, there is no mention of the unit number, or alleged giving of possession of Nulon India Ltd.?

Ans. I have already said that I do not know about the content of the said letter.

Q. Do you have any agreement to sell or sale deed indicating the giving of possession of unit no. 164 & 165 to Nulon India Ltd.?

Ans. It might be in the file lying in our office.

I cannot say whether the said documents have been filed or not. It is wrong to suggest that no such documents is in existence therefore it was not placed on record.

Q. Can you show the proof of payment in respect of unit no. 164 and 165 at any time made by Nulon India Ltd.?

Ans. I do not remember about it. (Vol. However, I have seen the record of making of payment).

Q. Are you aware of the fact that the allotment of the aforesaid units was cancelled on account of non-payment of amount?

Ans. I do not know.

Q. Are you aware of a suit was filed in the year 2000 for permanent injunction and declaration by Nulon India Ltd. against Ishwar Industries Ltd. and GTPL and that it was dismissed?

Ans. I do not know.

*Mr. M.P. Gulyan is the Director of Nulon India Ltd.
At this stage, Ex.PW1/11 is shown to the witness but he
states that he cannot say whether it bears signature of
Sh. M.P. Gulyan as it is a photocopy.*

*At this stage, witness is shown Ex.PW2/1 and he is
states that the signatures at point A and X might be of
Sh. M.P. Gulyan.*

*Q. I put it to you unit no.164 and 165 were supposed to
be built on first floor and were never constructed so the
question of giving of possession of said units does not
arrive?*

*Ans. I do not know about the same. (Vol. The same are
situated on the ground floor only).*

It is wrong to suggest that I am deposing falsely.”

18. The cross examination of the Objector’s witness shows that he has been completely evasive and his credibility is under serious cloud. He did not have any documents to support his stand that the Objector has rights in the suit property.

19. It is in this background that the objections filed by the Objector have been dismissed by the Executing Court, which has categorically held that there is no difference whatsoever between the Defendant Companies, as they are controlled and managed by the same persons.

20. Moreover, the Court has also perused the cross-examination of Mr. Golyan, which shows that evasive answers have been given in respect of the cancellation of allotment letters. It appears that the Appellant had also filed a suit challenging the cancellation, which was also dismissed. In respect of all these issues, Mr. Golyan has not come clean with the Court and has evaded all these questions. The cross-examination of Mr. Golyan and Mr. Chobey has been extracted below:

“DW-5

**Statement of Sh. K.K. Golyan, S/o Sh. M.P. Golyan,
R/o- B-22, Second Floor, Pamposh Enclave, New
Delhi, aged 53 years.**

On SA

I tender my affidavit as my examination in chief which is Ex. DW5/A bearing my signatures at point A and B. I rely upon following documents:-

(i) Authority letters dated 21.03.2018, Ex. DW5/1-3 (Same is mentioned as Ex.DW2/1-3 in affidavit) (Objected to not being on record with permission of the court and further beyond pleadings).

(ii) Certified copy of execution petition Ex. DW5/ 4 (Same is mentioned as Ex. DW2/4 in affidavit). (Objected to beyond pleadings and subject to order dated 31.05.2018 passed by this court).

(iii) Copy to copy of draft sale deed, marked as Mark DW5/5 (Same is mentioned as Ex. DW2/5 in affidavit).

(iv) Copy to copy of cheque dated 30.07.2014, Marked as Mark DW5/6. (Same is mentioned as Ex. [DW2/6 in affidavit).

(v) Copy to copy of award dated 06.02.2014, marked as Mark DW5/7 (Same is mentioned as Ex. DW2/7 in affidavit). (Objected to beyond pleadings).

(vi) Copy to copy of Collaboration agreement dated 04.02.1986 marked as Mark DW5/8 (Same is mentioned as Ex. DW2/8 in affidavit). (Objected to beyond pleadings)

(vii) Copy to copy of award dated 17.07.2007, Mark DW5/9 (Same is mentioned as Ex. DW2/8 in affidavit). (Objected to beyond pleadings).

(viii) Ex. DW2/10(coll) as mentioned in affidavit, is not on record and hence same is de-exhibited.”

Q.I put it to you that you have not filed anything on record to show the payment of full consideration towards allotment of 17 units. What do you have to say?

Ans. It is matter of record. I am not aware of it.

Q.I put it to you that vide letter dated 04.03.1997, the 17 allotment letters were canceled on account of non-payment. What do you have to say?

Ans. I am not aware of it.

Q.I put it to you that separate suits for declaration and permanent injunction were filed by you as well as by your father and the persons to whom you claim to have the allotment. What do you have to say?

Ans. Yes. Case was filed but I do not remember the details.

xxx xxx xxx

It is correct that I am one of directors of the defendants. It is wrong to suggest that the plaintiff has given the permission to the defendant to temporary occupy the office accommodation in block no.4 (suit property). (vol. It was given by the builder i.e. G.T.P.L.). In this regard a letter was signed by Sh. Acharya Arundev, Director of GTPL. After seeing the court record, witness states Ex.PW1/5 is the said letter. I cannot say whether the signature on Ex.PW1/11 is of my father as it is a photocopy. The address appearing on Ex.PW1/13 is correct. I am not aware whether it was received or not. I cannot say whether any reply was sent as I am not aware whether said notice was received or not.

xxx xxx xxx

Q.In your affidavit you deposed that the plaintiff agreed to sell 2500 sq. ft. (suit property) to Tulip Buildwell Pvt. Ltd., it shows that you have admitted that the plaintiff is the owner of the said suit property. What do you have to say?

Ans. I have deposed the same on the basis of court notices affixed on the suit property. I cannot say whether the plaintiff is actually owner or not.

It is wrong to suggest that defendant have no interest in the suit property. It is further wrong to suggest that I am deposing falsely.

DW-3

Statement of Sh. G.P. Chaubey (relied for further cross-examination from 26.092018)

ON SA

XXXXXXXXXXXXXXXXXby Sh. Amit Sethi, Ld. Counsel for plaintiff.

It is correct that Sh. M.P. Goliyan was the Director of all the defendants in the year 1996. At this stage, the copy of the document Ex.PW2/1 is shown to the witness and he is asked can he identify the signatures thereon at point X to which the witness claims that it is a photocopy and he cannot answer. I can neither deny nor admit that it is the signatures of Sh. M.P. Goliyan. The defendant no.1 to 4 used to filed all the annual returns in compliance of the provisions of law before the ROC. The same used to be signed under the signatures of Directors.

Xxx xxx xxx

Q. I put it to you that by letter dated 17.03.1994, temporary office accommodation in block no. 4 was provided to the defendant no. 1 to 3 by the plaintiff for a period of 9 months only?

A. It is correct that it was given on 17.03.1994 but it was given as part performance of the 17 allotment letters. Vol. It was not for a temporary period.

It is correct that the aforesaid claim of "giving 17 allotment letters as a part performance" and it was not for temporary period are not mentioned in the Ex.PW1/5.

Q. Did any of the defendants send any reply to the Ex.PW1/5

claiming that the possession was given as specific performance of alleged 17 allotment letters and it was not for temporary period?

A. I do not remember.

It is correct that the defendant no. 1 to 3 had purchased the block no. 5.

Q. I put it to you that the plaintiff provided suit property to the defendant no. 1 to 3 on temporary basis for a period of 9 months free of charge so that the defendants can make construction in block no. 5 which was purchased by the defendant?

A. It is incorrect.

xxx xxx xxx

It is wrong to suggest that the averments made in para 4 of the affidavit are wrong. It is wrong to suggest that the defendants are not in illegal or unauthorized occupation of the suit property. It is wrong to suggest that the defendants or its alleged sister concerns have assumed and presumed the letters of allotment as sale documents. It is wrong to suggest that the defendants are jointly and severally liable to pay use and occupation charges@ 75 sq. feet per month w.e.f. 24.11.1996.

xxx xxx xxx

Court Question: *What is the connection of Nulon India Ltd. with the defendants company?*

A. It is a sister concern and group company of the defendants. Vol. The Directors in all these companies are common which are 7-8 in numbers.

xxx xxx xxx

Court Question: On what post you are working with the defendants and what is your qualification?

A. I am working as Marketing Executive of M/s. Nulon India Ltd. And used to see the other work of other sister concern since the owners are same. I did B. Com in the year 1964.

Q. Who are the present Directors of defendant no. 1 to 4?

A. I cannot tell exactly their names without seeing the record but they all are family members and I can tell the names of few i.e. Sh. M.P. Goliyan, Sh. K.K. Goliyan, Mrs. Shakuntla Devi Goliyan and Ms. Smiti Goliyan. I am also a Director in defendant no. 4 M/s. Nulon Global Ltd.

It is wrong to suggest that the license of the defendants have been revoked and defendants are liable to hand over the vacant and peaceful possession of the suit property. I am not placed on record any document to show my claim regarding renovation expenses. It is correct that no counter-claim has been filed by any of the defendants. It is wrong to suggest that the defendants are not in settled possession of the suit property. It is wrong to suggest that I am deposing falsely.

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Q. I put it to you that you have not filed anything on record to show the payment of full consideration towards allotment of 17 units. What do you have to say?

Ans. It is matter of record. I am not aware of it.

Q. I put it to you that vide letter dated 04.03.1997, the 17 allotment letters were canceled on account of non-payment. What do you have to say?

Ans. I am not aware of it.

Q. I put it to you that separate declaration and permanent injunction were filed by you as well as your father and the persons to whom you claim to have the allotment. What do you have to say?

Ans. Yes. Case was filed but. I do not remember the details.

xxx xxx xxx

It is correct that I am one of directors of the defendants. It is wrong to suggest that the plaintiff has given the permission to the defendant to temporary occupy the office accommodation in block no. 4 (suit property). (vol. It was given by the builder i.e. G.T.P.L.). In this regard a letter was signed by Sh. Acharya Arundev, Director of GTPL. After seeing the court record, witness states Ex PW1/5 is the said letter. I cannot say whether the signature on Ex. PW1/11 is of my father as it is a photocopy. The address appearing on Ex. PW1/13 is correct. I am not aware whether it was received or not. I cannot say whether any reply was sent as I am not aware whether said notice was received or not.

xxx xxx xxx

Q. In your affidavit you deposed that the plaintiff agreed to sell 2500 sq. ft. (suit property) to Tulip Buildwell Pvt. Ltd., it shows that you have admitted that the plaintiff is the owner of the said suit property. What do you have to say?

Ans. I have deposed the same on the basis of court notices affixed on the suit property. I cannot say whether the plaintiff is actually owner or not.

It is wrong to suggest that defendant have no interest in the suit property. It is further wrong to suggest that I am deposing falsely.

21. Before this Court as well, the main ground of appeal is the allotment

letter allegedly issued in favour of the Objector. There is no disclosure, on behalf of the Objector, of the fact that the allotment letters have been cancelled by the Plaintiff on the ground of non-payment. There is no disclosure of the fact that a suit was filed challenging the said cancellation, and that the same was dismissed. Thus, the conduct of the Objector constitutes material suppression of relevant facts before this Court as well.

22. Recently, the Supreme Court in ***Rahul S. Shah v. Jinendra Kumar Gandhi & Ors. [2021 SCC OnLine SC 341]***, while laying down mandatory directions to be followed by all Executing Courts for an expeditious execution of decrees, has observed that any attempt to obstruct execution of a decree should not be condoned by the Court.

23. This Court is of the opinion that the Objector is a sister concern of the Defendant Companies in the suit, having the same directors and the same authorized representative. The Objector Company through its own witness Mr. Ajay Kumar Sharma and its promoter Mr. Golyan have led evidence in the suit. The name of the entity would not make a difference in such circumstances. The Objector is merely another avatar of the Defendants which is making repeated attempts to defeat the decree.

24. Thus, the impugned judgement dated 17th December, 2020, by which the objections raised by the Objector have been dismissed by the Executing Court, does not warrant any interference. The present appeal, along with all pending applications, is dismissed. The warrants of possession issued in respect of the suit property shall now be executed.

False Stand taken in the Present Appeal

25. In the present Memorandum of Appeal, the following statements have been made:

- a. That since 17.03.1994, objector is in peaceful settled possession of property in question of Block No.4 Tribhuvan Complex, Ishwar Nagar, Mathura Road, New Delhi-110065 as purchaser of unit no. 164 and 165 as per allotment letters dated 12.12.1991 and 16.12.1991 having been inducted by vendors i.e., Growth Techno Projects Ltd. who always treated the objector as owner in possession of the property in question of said Block No.4 and who never filed any suit against objector claiming possession and mesne profits and even no such suit was ever filed by respondent against objector which right if any of respondent has lapsed by efflux of time qua objector.
- b. That the trial court failed to appreciate that objector being a private limited company was a different legal entity as compared to other sister concerns of objector who were also different private limited companies with different directors and judgment and decree passed against defendants in that suit was not binding on objector.
- c. That the Trial Court failed to appreciate that appellant had purchased unit No. 164 and 165 as per allotment letters dt. 12.12.91 and 16.12.91 and was inducted by vendor GTPL who always treated the appellant as owner in possession of the property in question and he never filed any suit against appellant claiming possession and mesne profits and even no such suit was ever filed by respondent against appellant which right, if any of respondent has lapsed by efflux of time

qua appellant but nevertheless it needed trial but trial court without putting objection petition to trial has dismissed the same summarily and the judgment under challenge is liable to be set aside.

- d. Growth Techno Projects Ltd. sold unit No. 164 and 165 in the said block to appellant against consideration and appellant purchased the same as per allotment letters dt. 12.12.1991 and 16.12.1991 and which were agreed to be treated as agreements to sell and when construction to be raised got delayed, possession of Block No.4 was given to appellant and other sister concerns of appellant on 17.03.1994 by GTPL who was shown as vendor to the knowledge of respondent and respondent was shown as confirming party and in this manner, rights were created in favour of appellant by GTPL which were confirmed by respondent and hence respondent who had not granted any right and rather confirmed the rights given by GTPL has no right to disturb peaceful possession of appellant on any ground whatsoever and to dispossess the appellant from the property in question.

26. Each of the above statements is *prima facie*, false to the knowledge of the deponent, who in this appeal is Mr. G.P. Chobey. He is the authorised representative of the Objector Company and also the authorised representative of the Defendants of the group companies/sister concerns. He is obviously authorised by the main Director Mr. K.K. Golyan who has also made incorrect statements in his cross examination. He has concealed the

fact that the allotment letters were cancelled and that a suit had been filed challenging the said cancellations. Even today, the submission made on merits by the Appellant/Objector is that there are allotment letters in its favour. Clearly the intention is to misrepresent and mislead this Court.

27. Issue notice to show cause as to why proceedings for contempt/perjury should not be initiated against Mr. K.K. Golyan, Director of the Defendant Companies, and Mr. G.P. Chobey, the Authorised Representative of the Objector, for having concealed the relevant facts before this Court, as also having made false statements before the Executing Court only to retain the possession of the suit property. Let reply to the show cause notice be filed within two weeks.

28. List on 16th December, 2021, for consideration of the reply to the Show Cause notice. This matter shall be treated as part-heard.

29. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 30, 2021

mw/dk/Ad

(Corrected & released on 9th December, 2021)