

#S-2 & S-28

IN THE HIGH COURT OF DELHI AT NEW DELHI

Judgment Delivered On: 16.03.2023

S-2

FAO(OS) 25/2023, CM APPL. 8512/2023 (Stay) and CM APPL. 8513/2023 (Condonation of delay in filing)

KAMRUDDIN SAIFI

..... Appellant

versus

GAUTAM CHOPRA & ANR.

..... Respondents

AND

S-28

FAO(OS) 24/2023, CM APPL. 8436/2023 (Stay) and CM APPL. 8437/2023 (Condonation of delay in filing)

RAHISUDDIN

..... Appellant

versus

GAUTAM CHOPRA & ANR.

..... Respondents

Advocates who appeared in this case:

For the appellants : Mr. Ashish Mohan and Mr. Aniket Gupta, Advocates
For the respondents : Mr. Rajesh Yadav, Senior Advocate along with Ms. Ruchira V. Arora, Advocate.

CORAM:

HON'BLE MR. JUSTICE SIDDHARTH MRIDUL

HON'BLE MR. JUSTICE TALWANT SINGH

J U D G M E N T

SIDDHARTH MRIDUL, J. (OPEN COURT)

CM APPL. 8514/2023 (Exemption), CM APPL. 8515/2023 (Exemption) & CM APPL. 8516/2023 (Exemption) in FAO(OS) 25/2023

CM APPL. 8438/2023 (Exemption), CM APPL. 8439/2023 (Exemption) in FAO(OS) 24/2023

Exemptions allowed, subject to all just exceptions.

The applications are disposed of accordingly.

FAO(OS) 25/2023, CM APPL. 8512/2023 (Stay) and CM APPL. 8513/2023 (Condonation of delay in filing)

FAO(OS) 24/2023, CM APPL. 8436/2023 (Stay) and CM APPL. 8437/2023 (Condonation of delay in filing)

1. The present appeals assail the common order dated 14.11.2022, passed in **CS(OS) 270/2021**, titled '*Gautam Chopra & Anr. vs. Rahisuddin*' and **CS(OS) 271/2021**, titled '*Gautam Chopra & Anr. vs. Kamruddin Saifi*', whereby the applications being **IA No. 13241/2022** [under Order XV-A of the Code of Civil Procedure, 1908 (hereinafter referred to as CPC)] in **CS(OS) 270/2021** and **IA No. 13239/2022** (under Order XV-A of CPC) in **CS(OS) 271/2021**, filed by Mr. Gautam Chopra and Ms. Devika Mahajan, the plaintiffs in the subject suits, were allowed and the defence of the appellants, was struck off, consequent upon the latter's failure, to comply with the directions issued *vide* the earlier common order dated 30.03.2022, which was rendered by the learned Single Judge, with the consent of the parties.

2. The common order dated 30.03.2022, passed by the learned single judge, is extracted herein below *in extenso*:

“I.A. No.7294/2021 (for directions) in CS(OS) 270/2021 & I.A. No.7297/2021 (for directions) in CS(OS) 271/2021

1. These applications have been filed on behalf of the plaintiffs under provisions of Order XV-A of the Code of Civil Procedure, 1908 (CPC) on the basis that the defendants are in occupation of a portion of the open, vacant land in front of Godown No. 1, measuring approx. 430 sq. yards i.e. 360 sq. mtrs, situate at A-1, Manraj Garden, Ziauddinpur, Wazirabad Road, Opposite Yamuna Vihar, New Delhi- 110094, which belongs to the plaintiffs. It is the case of the plaintiffs that the defendants have forcibly and illegally fenced the open area in front of Godown No. 1 and behind the shops of the defendants and in respect of which they are each liable to pay rent/charges in terms of Order XV-A of the CPC at the rate of Rs.50,000/- per month.

2. It is submitted by the counsel for the plaintiffs that the defendant in CS(OS) 270/2021 has encroached about 115 sq. mtrs. of the land of the plaintiffs and the defendant in CS(OS) 271/2021 has encroached about 120 sq. mtrs, of the land of the plaintiffs.

3. The counsel for the defendants does not dispute the ownership of the plaintiffs in respect of the aforesaid land. However, he disputes that the area in occupation of the defendants is much less than that claimed by the plaintiffs. He submits that the defendant in CS(OS) 270/2021 and the defendant in CS(OS) 271/2021 have respectively been in actual, physical, continuous and peaceful possession of 68.79 sq. mtrs. and 109.44 sq. mtrs. of the land of the plaintiffs for over thirty years.

4. I have heard the counsels for the parties.

5. The plaintiffs have not placed on record any lease deeds in respect of

similarly located properties of the neighbourhood to support the premise of rent/charges being payable in terms of Order XV- A of the CPC at the rate of Rs.50,000/- per month.

6. Nevertheless, with the consent of the parties, the following directions are passed:

(i) Each of the defendants shall deposit arrears of rent/charges at the rate of Rs.10,000/- per month with effect from 1st June, 2021 till date, i.e. 31st March, 2022, before the Court.

(ii) In view of the financial constraints expressed by the defendants, the arrears of rent/charges for the aforesaid period of ten months, amounting to Rs.1,00,000/-, for each of the defendants be deposited before the Court in four equal three-monthly instalments.

(iii) The first instalment of Rs. 25,000/- each shall be deposited by the defendants on or before 1st July, 2022.

(iv) With effect from 1st April, 2022, each of the defendants shall deposit in each succeeding month, on or before 5th of every month, rent/charges at the rate of Rs.10,000/- before the Court.

(v) The amounts as deposited by the defendants be kept in a fixed deposit.

7. The aforesaid applications stand disposed of in terms of the above.

I.A. No. 7293/2021 (u/O-XXXIX R-1 & 2 of CPC) in CS(OS) 270/2021 & I.A. No.7296/2021 (u/O-XXXIX R-1 & 2 of CPC) in CS(OS) 271/2021

8. The order dated 4th June, 2021 of this Court is confirmed till the final adjudication of the suit.

9. The applications stand disposed of in above terms.

I.A. No.8554/2021 (u/O- XXXIX R-2A of CPC) in CS(OS) 270/2021

10. The counsel for the defendant seeks further time to file reply.

11. Let a reply be filed within four weeks.

12. Rejoinder thereto, if any, be filed before the next date of hearing.

13. List before the Joint Registrar on 20th May, 2022 for completion of pleadings.

CS(OS) 270/2021 & CS(OS) 271/2021

14. List before the Joint Registrar on 20th May, 2022 for admission/denial of documents.”

3. It is an admitted position before us, that the appellants in the present appeals, failed to comply with the directions enshrined in the consent order dated 30.03.2022, within the time specified therein. The solitary submission made on behalf of the appellants, before the learned Single Judge was that the counsel representing them at the time of the rendering by the learned Single Judge, of the consent order dated 30.03.2022, did not consult the former before recording his consent for payment of arrears of rent/charges, as recorded in the said order.

4. The review petitions being **Review Pet. 206/2022** in **CS(OS) 270/2021** and **Review Pet. 205/2022** in **CS(OS) 271/2021**, instituted on behalf of the appellants, in this behalf, seeking modification of the consent order dated 30.03.2022, came to be dismissed by the learned Single Judge on 26.08.2022. For the sake of completeness, the relevant paragraph of the order dated 26.08.2022, is extracted hereinbelow :-

“11. There is merit in the submission of the plaintiffs that if the case of the review petitioners was that the

previous counsel had wrongfully given consent for the passing of the said order, the aforesaid ground should have been taken in the appeal filed by the review petitioners against the said order. I have perused the memo of appeal filed on behalf of the review petitioners and no such ground exists.

12. Further, if the consent was wrongfully given by the previous counsel, the review petitioners should have immediately approached this Court. They could not have waited for almost three months before filing the present review petitions and that too, after he had been unsuccessful in the appeal filed against the said order.

13. Clearly, the review petitions are in the nature of an afterthought. In any event, if the consent was wrongfully given by the previous counsel, the remedy of the review petitioners was not filing the present review petitions, but to take other remedies as per law in this regard. Reference in this regard may be made to the judgment of this Court in Archies Greetings & Gifts Limited v, Garg Plastic, AIR2003 Del 468.

14. I find no merit in the review petitions and the applications for condonation of delay in filing the review petitions. The review petitions along with the aforesaid applications stand dismissed.”

5. It is further observed that the appeals being **FAO(OS) 127/2022** and **FAO(OS) 130/2022**, filed against the above said common order dated 26.08.2022, came to be dismissed as withdrawn by this Court on 15.11.2022. For the sake of completeness, it would be profitable to extract the said order dated 15.11.2022, in those appeals, herein below:

“FAO(OS) 127/2022 & FAO(OS) 130/2022

Learned counsel appearing on behalf of the appellants, in these connected appeals, seeks leave to withdraw the same.

Learned counsel appearing on behalf of the appellants, states that the latter are willing to comply with the impugned directions, issued by the learned Single Judge vide order dated 30.03.2022 in CS(OS) 270/2021 titled '*Gautam Chopra & Anr. vs. Rahisuddin*' and in CS(OS) 271/2021, titled '*Gautam Chopra & Anr. vs. Kamruddin Saifi*', and pray for liberty to approach the learned Single Judge, in this behalf, by way of an appropriate application, in accordance with law.

Without prejudice to the rights and contentions of the parties, the present appeals are dismissed as withdrawn whilst reserving liberty to the appellants, to move the learned Single Judge, in relation to the compliance with directions issued vide the impugned order dated 30.03.2022.

No further directions are prayed for.

With the above direction, the appeals are disposed of. All pending applications also stand disposed of."

6. Learned counsel appearing on behalf of the appellants, argued that the provisions of Order XV-A of the CPC, 1908 vest a discretion with the learned Single Judge, to permit deposit of the directed amounts even subsequent upon the date specified for the said purpose and that, in the present case, in the facts and circumstances antecedent and attendant, the learned Single Judge has failed to exercise the discretion vested in the Court appropriately.

7. At this stage, it would be appropriate to extract the relevant provision of Order XV-A of the CPC, which reads as follows:-

“ORDER XV-A STRIKING OFF DEFENCE IN A
SUIT BY A LESSOR

(1) In any suit by a owner/lessor for eviction of an unauthorized occupant/lessee or for the recovery of rent and future mesne profits from him, **the defendant shall deposit such amount as the court may direct on account of arrears upto the date of the order** (within such time as the court may fix) and thereafter continue to deposit in each succeeding month the rent claimed in the suit as the court may direct. The defendant shall continue to deposit such amount till the decision of the suit unless otherwise directed. **In the event of any default in making the deposit as aforesaid, the Court may subject to the provisions of sub-rule (2) strike off the defence. ”**

8. A plain reading of the above provision leaves no manner of doubt that the subject provision expresses a clear mandate and stipulation requiring a party to comply with an order of deposit, passed by the learned Single Judge, on pain of suffering an adverse order of striking off the defence upon failure so to do. Further, it is not the appellant's case that, he deposited arrears of rent/charges, in terms of the said common order dated 30.03.2022, within the time stipulated therein.

9. In view of the foregoing discussion, having given our anxious consideration to the observations recorded by the learned Single Judge, specifically in paragraphs 7, 8, 9, 10 and 11 of the impugned orders, we find ourselves unable to countenance the submission made on behalf of the appellants.

10. The guiding principles as laid down by the Hon'ble Supreme Court in **Wander Ltd v. Antox India Pvt. Ltd** reported as **1990**

(Supp) SCC 72 justifies interference only when the exercise of discretion is palpably perverse. Even otherwise, in the present case, the common order dated 30.03.2022, was passed, with the consent of the parties and is consequently not amenable, to an appeal.

11. In view of the aforesaid parameters, this Court finds no ground to interfere with the impugned order as the same is devoid of merits and is accordingly dismissed; with costs of Rs.10,000/-, each, to be deposited within a period of two weeks from today, with the Juvenile Justice Board.

12. Both the appeals are disposed of accordingly. The pending applications also stand disposed of.

13. A copy of this judgment be uploaded on the website of this Court *forthwith*.

**SIDDHARTH MRIDUL
(JUDGE)**

**TALWANT SINGH
(JUDGE)**

MARCH 16, 2023/rs/ac

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