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

Date of decision:03.11.2023

+ EX.F.A. 11/2021 & CM APPL. 41174/2023

SANJEEV MALIK

..... Appellant

Through: None

versus

AMARJIT KAUR & ORS.

..... Respondent

Through: Mr. Gaurav M. Liberhan and Mr.
Arun Singh Rawat, Advocates

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 41174/2023

1. This is an application filed by Respondent Nos. 1 and 2 i.e., decree holders seeking modification of the order dated 20.05.2021 passed in the present petition wherein this Court had directed that if the Respondent Nos. 1 and 2 intend to sell the subject property they shall do so only after seeking prior permission from this Court.

2. Notice in this application was issued to the non-Applicant, Appellant on 11.08.2023 and made returnable on 09.10.2023 i.e., the date already fixed in the matter.



2.1 It has come on record that as per the service report, the Appellant has refused to accept the notice sent to him through speed post. The service report also records that notice in this application has been duly served upon the learned counsel for the Appellant. The learned Registrar after verifying the record has recorded the aforesaid facts in the order dated 16.10.2023.

2.2 In addition, an advance copy of this application was also served on the counsel for the Appellant on 07.08.2023 as per the Delhi High Court Rules. The Appellant has, therefore, been duly served with the application.

2.3 As per order dated 19.04.2023 the matter was adjourned for hearing to 09.10.2023 and thereafter, to 03.11.2023. The matter is therefore, listed today in due course.

3. However, none appears on behalf of the Appellant despite due service in the application and also for the scheduled date of hearing in the appeal.

4. The learned counsel for Respondent Nos. 1 and 2 states that this Court in its order dated 20.05.2021 had made the following observations while imposing the condition on the Respondents for seeking prior permission to of this Court if they intend to sell the property in question. The relevant portion reads as under:

*“20. Considering the long-drawn litigation between the parties, and the fact that the suit of the Appellant itself was rejected, in the opinion of this court, it cannot be said that evidence ought to have been recorded during adjudication of the objections, in the execution proceedings. The executing court has given detailed findings after going through the record. **Above all objections, it is the settled position in law that a decree would be binding on any party which claims its right or title or interest, through the judgment debtor, as per the scheme of Order XXI CPC. The Appellant being a dealer of HPCL, the decree is binding on him.**”*

21. Accordingly, the Judgment Debtor is directed to hand over the possession of the suit property in question, to the Decree Holders. However, since the appeal of the Appellant is stated to be pending before the District Court, the



Appellant is permitted to seek modification of this order if the appeal is decided in his favour.

22. In order to protect the interest of the Appellant during the pendency of this appeal, as also the appeal filed by the Appellant against the rejection of his plaint, before the Id. ADJ, it is directed that the subject property may be utilised by the Decree Holders in whatever manner they deem it appropriate, however, if they intend to sell the property in question, they shall do so only after seeking prior permission from this Court. At present however, the concerned officer of HPCL shall handover the vacant and peaceful possession to the Decree Holders, in terms of the decree dated 9th October 2015, and the Appellant shall not raise any objections or obstruct the handing over of the said possession. If required, assistance of the SHO of the concerned area may be sought by HPCL/Decree Holders.”

(Emphasis supplied)

4.1 He states that there has been a material subsequent development that in as much as the appeal i.e., RCA DJ 109/2019 filed by the Appellant against the order dated 02.07.2019 passed by the Civil Judge has also been dismissed by the ADJ-02, South East, District Court, Saket, New Delhi (‘Appellate Court’) vide judgment dated 18.05.2023. He relies upon the findings of the Appellate Court reads as under:

“16. The appellant/plaintiff became the sole proprietor of the said business on the execution of deed of dissolution dated 19.10.2002 between him and Sh. Vas Dev Mariwala. Thereafter, on 05.04.2006, respondent no.3/defendant no.3 /HPCL executed a dealer agreement with the appellant/plaintiff which in its title shows as Corporation Owned Outlets, and the said agreement dated 05.04.2006 reflects that Corporation is the owner/lessee of the suit plot and leave, licence and permission was granted to the dealer/ plaintiff/appellant for the duration of the agreement to enter and use the said premises for the sole purpose of dealing with the products of HPCL and the dealer (the plaintiff/appellant) shall have no right, title or interest in the said premises. It being the case, it is the appellant who himself had executed such an agreement dated 05.04.2006 stating himself as the licensee in the suit premises.

17. Therefore, appellant/plaintiff cannot be permitted to claim ownership of the suit property once the appellant himself assuming the character of a licensee in the suit premises more than 16 years after he became a partner in the partnership firm on 16.07.1986. In my considered opinion, there was



no infirmity in the impugned order dated 02.07.2019 passed by the Ld. Trial Court whereby the Ld. Trial Court had rightly rejected the plaint holding that there is no cause of action and as per the admitted case of the plaintiff, plaintiff is not entitled to any relief.”

(Emphasis supplied)

4.2 He states that with the passing of the judgment dated 18.05.2023, the judgment of the Civil Court dated 01.08.2013 dismissing the Appellant's suit for declaration, permanent and mandatory injunction has attained finality. He states that in view of the said dismissal, the Appellant's claims of ownership had been set at naught. He states therefore, the reason which weighed with this Court while passing the interim order dated 20.05.2021 also does not survive.

4.3 He states that, further, as is evident from the record, the Appellant herein has not been prosecuting the present appeal since 16.11.2022. He states that the matter was listed on 19.04.2023, 11.08.2023, 09.10.2023 and 16.10.2023. He states that the Appellant has elected not to appear in these proceedings on the last few dates. He states that the main appeal itself is listed for hearing today and none has appeared on behalf of the Appellant.

4.4 He states that in these circumstances, the present appeal itself be dismissed for non-prosecution. He states that Respondent No.1 who is 82 years old lady would like to dispose of the subject property and consolidate her estate during her lifetime.

4.5 He, further, submits that the Appellant had also filed a civil suit bearing no. 622/2020 for seeking nullification of the decree dated 09.10.2015. He states that the said civil suit as well has been dismissed in default by the concerned Court on 19.04.2023. He, therefore, states that taking a holistic view of the conduct of the Appellant who is not appearing



in these proceedings and has permitted the civil suit No. 622/2020 to be dismissed in default; it is apparent that the Appellant's non-appearance today is deliberate and intentional.

4.6 He states that the Courts have successively upheld the Applicant/Respondent No.1 and 2's claim of ownership and therefore, the restraint on sale be vacated.

5. This Court has considered the submissions of the counsel for the Applicants/Respondents and perused the record.

6. In the opinion of this Court, the judgment dated 01.08.2013 passed by the Civil Court dismissing the suit for declaration filed by the Appellant and the judgment dated 18.05.2023 passed by the Appellate Court upholding the judgment dated 02.07.2019 is a material fact which is subsequent to the passing of the interim order dated 20.05.2021 passed by this Court.

6.1 There is no dispute that the entitlement of Respondent Nos. 1 and 2 herein and ownership has been unequivocally upheld by the decree dated 09.10.2015, which is a subject matter of execution in this appeal.

6.2 This Court has perused the record and finds that the Appellant's claim of ownership to the subject property has been repelled by the civil courts in the judgments dated 02.07.2019 and 18.05.2023. The Executing Court as well by its impugned order dated 12.05.2021 has rejected the claims of the Appellant after a detailed examination of his claim. In view of these judgments, the right, title and interest of Respondent Nos. 1 and 2 is beyond any doubt.

6.3 This Court finds merit in the submissions of the counsel for the Applicant/Respondent Nos. 1 and 2 that the non-presence of the Appellant today before this Court is deliberate and wilful.



7. In these circumstances, this Court is of the opinion that the Respondent Nos. 1 and 2 have made out a case for seeking modification of the order dated 20.05.2021. Accordingly, Respondent Nos. 1 and 2 are permitted to sell the suit property and the restriction imposed on them vide order dated 20.05.2021 is hereby recalled. Accordingly, the application is hereby allowed.

EX.F.A. 11/2021

8. The non-appearance of the Appellant on 19.04.2023, 11.08.2023, 09.10.2023 and 16.10.2023 i.e., last dates of hearing evidences his lack of interest in pursuing this appeal, and therefore, this Court, further finds merit in the contention of the counsel for the Applicant that the present appeal should be dismissed in default.

8.1 In view of the non-appearance of the Appellant, the appeal itself is dismissed for non-prosecution. For this reason, in addition, the interim order dated 20.05.2021 even otherwise stands vacated.

9. The learned counsel for the Respondent is directed to file the copy of the order dated 19.04.2023 passed in CS 622/2020 with the registry during the course of the day.

10. Pending application if any stands disposed of.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 3, 2023/msh/sk

Click here to check corrigendum, if any