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

*Date of decision: 28.08.2023*

+ **CM(M) 1241/2023 & CM APPL. 39586/2023**

**NARESH KUMAR**

..... Petitioner

Through: Dr. N. Pradeep Sharma, Mr. S.K. Rout,  
Mr. Gaurav Singhal, Advocates along  
with Petitioner in person

versus

**ANITA SINGH AND ANR**

..... Respondents

Through: Mr. Shaurya R. Rai, Advocate for R-1  
Mr. Sushil Kumar Pandey, Advocate  
for R-2

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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):**

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 11.04.2023 passed by the Senior Civil Judge, Patiala House Courts, New Delhi ('Trial Court') in Civil Suit bearing No. 77/2019, titled as *Anita Singh v. NDBA*, whereby the application filed by the Petitioner under Order 1 Rule 10 Code of Civil Procedure, 1908 ('CPC') seeking impleadment in the said civil suit filed by the Respondent No.1 herein was dismissed by the Trial Court.

2. The Respondent No.1 is the plaintiff and Respondent No.2 is the sole defendant in the civil suit.

2.1. The subject matter of the civil suit is with respect to allotment of Chamber No.31 (Advocate Chambers) situated in the Patiala House Court,



New Delhi ('chamber no. 31').

3. The learned counsel for the Petitioner states that the Petitioner herein was in possession of the entire chamber no.31 and it is the case of the Petitioner herein that though there is no formal letter of allotment in his favour however, he has completed all formalities for the allotment and was therefore in rightful possession of chamber no. 31. He states that he was illegally dispossessed from the said chamber no. 31 by Respondent No. 2, i.e., New Delhi Bar Association ('NDBA') on 20.09.2018.

3.1. He states that the Petitioner herein has filed a separate civil suit bearing no. 1439/2018 under Section 6 of the Specific Relief Act, 1963 against Respondent No.2, NDBA. He states that the Respondent No.1 herein has also been impleaded as a party to the suit filed by the Petitioner.

3.2. He states that since the Respondent No.1 has filed an independent suit bearing No. 77/2019 claiming her allotment rights in chamber no. 31 to avoid conflict of orders, he is also seeking impleadment in the said suit. He states that the Petitioner herein has competing claims with the Respondent No.1 for allotment of chamber no. 31.

4. The learned counsel for the Respondent No. 1 has entered appearance. He states that the Petitioner has suppressed in this petition the material fact of the dismissal of an earlier application filed by the Petitioner under Order 1 Rule 10 CPC, by the Trial Court *vide* order dated 11.07.2019 holding that the Petitioner herein is neither a necessary nor a proper party. He states that the said order has become final and hence a 2<sup>nd</sup> application filed by the Petitioner herein on 09.09.2022 under Order 1 Rule 10 CPC was not maintainable on the principle of res judicata.

4.1. He states it is the 2<sup>nd</sup> application which has been dismissed *vide*



impugned order dated 11.04.2023.

4.2. He states that the order dated 11.07.2019 has become final and is binding on the Petitioner.

4.3. He further states that no allotment letter was ever issued by Respondent No.2, NDBA in favour of the Petitioner for chamber no.31, therefore, Petitioner has no right, title and interest in chamber no. 31. He states that the Petitioner herein is a trespasser and was illegally occupying chamber no. 31.

4.4. He states that there are two allottees of chamber no. 31 i.e., Respondent No.1 herein and another Advocate Mr. Bhupendra Kumar.

4.5. He states that Respondent No.1 herein is opposed to impleading the Petitioner as a defendant in the suit as no rights are claimed against the said Petitioner.

5. The learned counsel for the Respondent No.2, NDBA has entered appearance. He states that as per the record maintained by Respondent No.2, NDBA the Petitioner herein is not an allottee of chamber no. 31.

5.1. He states that the chamber no. 31 is presently lying vacant and the lock and key of the said chamber is in the possession of Respondent No.2, NDBA.

5.2. He states Respondent No.2, NDBA will abide by the final decision of the competent Court.

5.3. He states that as per the records of Respondent No.2, NDBA the Petitioner has been allotted chamber bearing no. 943, Patiala House Courts, New Delhi which as per the Respondent No.2, NDBA the Petitioner has further sold/transferred to a third-party.

6. This Court has considered the submissions of the counsel for the parties and perused the record.

7. At the outset, Order 1 Rule 10 of the CPC, which arises for



consideration in these proceedings empowers the Civil Court to add parties to the suit, if the said Court concludes that the party proposed to be added has a direct and legal interest in the controversy involved in the suit. The Court may direct impleadment of a party, if it opines that the plaintiff has a right to some relief against the proposed defendant in respect of the controversy involved in the suit and/or no effective decree can be passed in the absence of the proposed defendant. The discretion on whether to add parties in a pending litigation, therefore, vests with the Court which is in seisin of the litigation.

8. In order to decide the controversy at hand, it may be apposite to refer to the principles to be applied while deciding a cause of action involving Order 1 Rule 10 of the CPC:

(i) In ***Vindur Impex and Traders Pvt. Ltd. & Ors. v. Tosh Apartments Pvt. Ltd. & Ors***, (2012) 8 SCC 384, the Supreme Court has laid down the principles to be followed while deciding an application filed under Order I Rule 10 (2). Paragraph 36 in this regard reads as under:

*“36. Though there is apparent conflict in the observations made in some of the aforementioned judgments, the broad principles which should govern disposal of an application for impleadment are:*

*1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as Plaintiff or Defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.*

*2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.*

*3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.*

***4. If a person is not found to be a proper or necessary party the Court does not have the jurisdiction to order his impleadment against the wishes of the Plaintiff.***”

(Emphasis Supplied)

(ii) In ***Mumbai International Airport (P) Ltd. v. Regency Convention***



***Centre & Hotels (P) Ltd. & Ors., (2010) 7 SCC 417***, the Supreme Court stated that the general rule in regard to impleadment of parties is that the plaintiff in a suit, being *dominus litis*, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. The impleadment of a party can be on the basis that it is a necessary or a proper party to the proceedings. A necessary party is one against whom the plaintiff seeks relief or in whose absence an effective decree cannot be passed. A proper party is one against whom relief may not be sought but whose presence is essential for the determination of the questions involved in the suit.

(iii) ***In Gurmit Singh Bhatia vs. Kiran Kant Robinson and Ors. (2020) 13 SCC 773*** decided on 17.07.2019 in Civil Appeal Nos. 5522-5523/2019, the Supreme Court after considering its earlier judgment in the case of ***Kasturi vs. Iyyanperumal, (2005) 6 SCC 733*** held that the Plaintiff cannot be forced to add as a party against whom he does not want to fight. The relevant finding of the Court reads as under:

*“That thereafter, after observing and holding as above, this Court in Kasturi further observed that in view of the principle that the plaintiff who has filed a suit for specific performance of the contract to sell is the dominus litis, he cannot be forced to add parties against whom, he does not want to fight unless it is a compulsion of the rule of law.*

*5.4. In the aforesaid decision in Kasturi 5, it was contended on behalf of the third parties that they are in possession of the suit property on the basis of their independent title to the same and as the plaintiff had also claimed the relief of possession in the plaint and the issue with regard to possession is common to the parties including the third parties, and therefore, the same can be settled in the suit itself. It was further submitted on behalf of the third parties that to avoid the multiplicity of the suits, it would be appropriate to join them as party defendants. This Court did not accept the aforesaid submission by observing that merely in order to find out who is in possession of the contracted property, a third party or a stranger to the contract cannot be added in a suit for*



*specific performance of the contract to sell because they are not necessary parties as there was no semblance of right to some relief against the party to the contract. **It is further observed and held that in a suit for specific performance of the contract to sell the lis between the vendor and the persons in whose favour agreement to sell is executed shall only be gone into and it is also not open to the Court to decide whether any other parties have acquired any title and possession of the contracted property.***

*5.5. It is further observed and held by this Court in Kasturi that if the plaintiff who has filed a suit for specific performance of the contract to sell, even after receiving the notice of claim of title and possession by other persons (not parties to the suit and even not parties to the agreement to sell for which a decree for specific performance is sought) does not want to join them in the pending suit, it is always done at the risk of the plaintiff because he cannot be forced to join the third parties as party defendants in such suit. **The aforesaid observations are made by this Court considering the principle that the plaintiff is the dominus litis and cannot be forced to add parties against whom he does not want to fight unless there is a compulsion of the rule of law.***

*5.6. Therefore, considering the decision of this Court in Kasturi, the appellant cannot be impleaded as a defendant in the suit filed by the original plaintiffs for specific performance of the contract between the original plaintiffs and original Defendant 1 and in a suit for specific performance of the contract to which the appellant is not a party and that too against the wish of the plaintiffs. **The plaintiffs cannot be forced to add party against whom he does not want to fight. If he does so, in that case, it will be at the risk of the plaintiffs.***

(Emphasis supplied)

9. In view of the dicta laid down by the Supreme Court and this Court, in the facts of this case, this Court is of the opinion that the order of the Trial Court dismissing the application of the Petitioner is correct in law and fact.

9.1. It is an admitted fact that Respondent No.1 was allotted half of chamber no.31 on 27.04.2018 by Respondent No.2. and due to the subsequent cancellation of the said allotment on 10.12.2018, a civil suit for declaration and injunction has been filed by Respondent No.1 against Respondent No.2. The allotment was made in favour of Respondent No.1 and another individual



Mr. Bhupendra Kumar, Advocate.

9.2. It is the stand of the Petitioner herein that he was in possession of the entire chamber no.31 and was illegally dispossessed by Respondent No.2 on 20.09.2018. It is however, admitted that there is no formal letter of allotment in his favour and he was allotted a separate chamber no. 943.

10. It is a matter of record that the Respondent No.1, i.e., the plaintiff in the civil suit has vehemently opposed the impleadment of the Petitioner as defendant no. 2 in the suit. The Respondent No.1 is admittedly not claiming any relief from the Petitioner. The relief sought by Respondent No.1 is with respect to the allotment made in her favour on 27.04.2018 by Respondent No.2 and the subsequent cancellation dated 10.12.2018. The controversy in the suit filed by Respondent No.1 is therefore, inter-se Respondent No.1 and 2 only.

10.1. The Respondent No.1 has no concern with the allegation of dispossession of Petitioner by Respondent No.2 on 20.09.2018. The said controversy shall be determined by the Civil Court in the independent suit filed by Petitioner herein.

10.2. The Respondent No. 2 has not admitted the claims of the Petitioner and has confirmed by the allotment, if any was made in favour of Respondent No.1.

10.3. The Respondent No.1 is the *dominus litus* and in the facts of this case she cannot be forced to contest her claims against the Petitioner and her opposition is duly covered by the case of the Supreme Court in **Gurmit Singh Bhatia** (supra).

11. Further, it is not disputed before this Court by the Petitioner that *vide* order dated 11.07.2019, the Petitioner's 1<sup>st</sup> application under Order 1 Rule



10(2) CPC stands dismissed.

11.1. The Trial Court *vide* order dated 11.07.2019 passed a detailed order and returned a finding that the Petitioner herein is neither an appropriate nor a necessary party. The relevant portion of the said order reads as under:

*“7 The present suit has been filed praying for declaration, possession and permanent injunction qua chamber No. 31, Patiala House Courts against NDBA challenging the alleged arbitrary procedure followed by NDBA for cancellation of chamber no. 31.*

*8 It is not the case of the intervener / applicant that he is still in possession of the chamber in question. Copy of the order dt. 08/01/2019 of Ld. ADJ relied by the intervenor only as Annexure R-2 reflects that even his articles have been removed from the said chamber. No documents have been placed on record by the intervener / applicant that he has any right/ title or interest in the said chamber. No document has been placed on record to show that he was ever allotted chamber no. 31, Patiala House Courts. No order of any court/NDBA has been shown whereby the applicant / intervener was ever given possession of the chamber in question. The application is silent on the aspect as to how the applicant came in the possession of the chamber in question. Nowhere it has been averred that the allotment dt. 27.04.2018 to the plaintiff and Sh. Bhupinder Kumar, Adv was challenged by the applicant. It is not disputed that the chamber in question can be allotted by the defendant/NDBA only. The applicant may have been in possession of the chamber in question at some point of time but even that status of his is not sufficient to become a party to this suit when reliefs sought does not require his presence.*

*9 Be that what it may, he is neither allottee nor occupant of the said chamber as on date.*

*10 The court is of the opinion that the presence of applicant is not necessary for just disposal of the questions involved in the suit. The reliefs sought by the plaintiff are not such for which the intervener / applicant can be termed to be a necessary or proper party.*

*11 In view of the above, I find no merits in the application in hand and the same is disposed off as dismissed.”*

11.2. The said order dated 11.07.2019 has not been challenged by the Petitioner and it has therefore become final. Even otherwise this Court finds that the order dated 11.07.2019 is correct in law and fact.



11.3. In the opinion of this Court, the Petitioner is precluded from filing a fresh (2<sup>nd</sup>) application on 09.09.2022 under Order 1 Rule 10 CPC for seeking impleadment. The principles of res judicata apply between two stages in the same litigation and therefore, is barred by res judicata.

12. As noted above, the rights of the Respondent No.1 herein are independent of the rights of the Petitioner and she is claiming her rights in chamber no. 31 vide allotment dated 27.04.2018. The rights which the Respondent No.1 is claiming are independent and with respect to Respondent No.2, NDBA alone. The Respondent No.1 is not claiming any relief through the Petitioner herein.

13. Respondent No.2 has denied that any allotment of chamber no. 31 has been made in favour of the Petitioner. The rights of the Petitioner, if any, are sub-judice before the Civil Court in the civil suit instituted by him, bearing no. 1439/2018.

14. A perusal of the averments made in this petition shows that the cause of action, if any, which the Petitioner has is only against Respondent No.2, NDBA and since the Petitioner has already instituted a separate suit against Respondent No.2, NDBA he cannot seek impleadment in the suit filed by the Respondent No. 1, herein.

15. Accordingly, the present petition is dismissed. Pending applications, if any, stand disposed of.

**MANMEET PRITAM SINGH ARORA**  
**(JUDGE)**

**AUGUST 28, 2023/hp/ms**