



\$~82 to 93

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

Date of decision: 05.09.2023

+ CM(M) 759/2023 & CM APPLs. 23911/2023, 23912/2023
SATYANARAYAN KHANDELWAL Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER & ANR. Respondent

Through: Mr. Vipin Nandwani, Advocate.

83

+ CM(M) 763/2023 & CM APPLs. 23938/2023, 23939/2023
RADHEY SHYAM Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANR Respondent

Through: Mr. Vipin Nandwani, Advocate.

84

+ CM(M) 764/2023 & CM APPLs. 23942/2023, 23943/2023
MANOJ KUMAR BANSAL Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER Respondent

Through: Mr. Vipin Nandwani, Advocate.

85

+ CM(M) 765/2023 & CM APPLs. 23945/2023, 23946/2023



MAHAVEER BANSAL

..... Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER

..... Respondent

Through: Mr. Vipin Nandwani, Advocate.

86

+ CM(M) 767/2023 & CM APPLs. 23949/2023, 23950/2023

ISHWAR SINGH

..... Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER

..... Respondent

Through: Mr. Vipin Nandwani, Advocate.

87

+ CM(M) 768/2023 & CM APPLs. 23951/2023, 23952/2023

PRAKASH CHAND MODI

..... Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER

..... Respondent

Through: Mr. Vipin Nandwani, Advocate.

88

+ CM(M) 1399/2023 & CM APPLs. 44485-86/2023

RADHEY SHYAM

..... Petitioner

Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER

..... Respondent

Through: Mr. Vipin Nandwani, Advocate.



89

+ CM(M) 1400/2023 & CM APPLs. 44487-88/2023
 MANOJ KUMAR BANSAL Petitioner
 Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER Respondent
 Through: Mr. Vipin Nandwani, Advocate.

90

+ CM(M) 1401/2023 & CM APPLs. 44489-90/2023
 MAHAVEER BANSAL Petitioner
 Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANR Respondent
 Through: Mr. Vipin Nandwani, Advocate.

91

+ CM(M) 1402/2023 & CM APPLs. 44491-92/2023
 ISHWAR SINGH Petitioner
 Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANR Respondent
 Through: Mr. Vipin Nandwani, Advocate.

92

+ CM(M) 1403/2023 & CM APPLs. 44493-94/2023
 PRAKASH CHAND MODI Petitioner
 Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER Respondent
 Through: Mr. Vipin Nandwani, Advocate.

93

+ CM(M) 1405/2023 & CM APPLs. 44528-29/2023
 SATYANARAYAN KHANDELWAL Petitioner



Through: Mr. Praveen Suri, Advocate.

versus

PREM ARORA AND ANOTHER Respondent

Through: Mr. Vipin Nandwani, Advocate.

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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(M) 1399/2023 & CM APPLs. 44485-86/2023

CM(M) 1400/2023 & CM APPLs. 44487-88/2023

CM(M) 1401/2023 & CM APPLs. 44489-90/2023

CM(M) 1402/2023 & CM APPLs. 44491-92/2023

CM(M) 1403/2023 & CM APPLs. 44493-94/2023

CM(M) 1405/2023 & CM APPLs. 44528-29/2023

1. These petitions filed under Article 227 of the Constitution impugns the common order dated 19.07.2023 passed by ADJ, District New Delhi, Patiala House Courts, New Delhi ('Trial Court'), whereby the Trial Court has dismissed six (6) similar applications all dated 31.03.2022 filed by the Petitioner under Section 113 read with Order 46 Rule 1 of Code of Civil Procedure, 1908 ('CPC') in six connected matters.

1.1 The Respondent Nos. 1 and 2 are the plaintiffs and they have instituted six separate suits seeking recovery of possession by eviction, arrears of rent, mesne profits and damages against the respective defendant(s) therein.



1.2 The Petitioner in each of these petitions is the defendant in the respective suits.

2. For the sake of convenience, the parties are being referred to in this judgment by their original rank and status before the Trial Court.

3. The defendant(s) were admittedly inducted as a tenant(s) by plaintiff no.2 i.e., father of the plaintiff no.1, in property bearing No. RZ-21/284, Gitanjali Park, West Sagarpur, New Delhi ('subject property'). The subject property consists of 9 shops and the defendant(s) in the suits are tenants in the said shops and to this extent there is no dispute about the existence of relationship of landlord and tenant.

3.1 The plaintiffs on 28.08.2017 filed an application under Order 12 Rule 6 CPC before the Trial Court in each of the suits and notice was issued in the said application. This Court *vide* order dated 02.09.2021 in CM(M) 563/2021 and connected matters passed a direction to the Trial Court to dispose of the said application within two (2) months; however, the said applications have remained pending till date.

3.2 The defendant(s) in written statement have resisted the relief for eviction by setting up a plea that he has entered into an unregistered agreement to sell with the landlord. The defendant(s) have also filed a separate and distinct suit seeking specific performance of the said agreement to sell on 05.01.2019.

3.3 The plaintiffs have disputed the execution of the said unregistered agreement to sell and have neither admitted its existence nor the receipt of any consideration thereunder. The plaintiffs have denied their



signatures on the said agreement and stated that the same are forged and fabricated by the defendant(s).

4. The defendant(s) on 31.03.2022 filed six (6) separate applications under Section 113 read with Order 46 Rule 1 of CPC seeking a 'Reference' to the High Court on the plea that mere admission of relationship of landlord and tenant by the defendant cannot be termed as an unequivocal admission for passing a decree of eviction under Order 12 Rule 6 CPC since the tenant has set up a plea that he has entered into an unregistered agreement to sell with the landlord.

4.1 The reference was sought by the defendant(s) on the plea that the view expressed by the High Court of Delhi in ***Shiv Kumar v. Sumit Gulati, 2015 (225) DLT 591*** is divergent and not consistent with the view expressed by Supreme Court in the matter of ***S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287***. It was the contention of the defendant(s) that in view of the judgment of the Supreme Court there is a reasonable doubt on the interpretation of this aspect of law.

5. The Trial Court by its impugned order dated 19.07.2023 analysed the judgments of this Court on the issue raised by the defendant and has concluded that it does not entertain any doubt on the proposition of law for which a reference is being proposed by the defendant(s) and accordingly, dismissed the applications. The relevant portion of the impugned order reads as under:

"9. The above stated position of law has been reiterated by the High Court of Delhi on multiple occasions. I have gone through the decision in Shiv Kumar's case (supra). The judgment in S.M. Arif's case (supra) was, in fact, considered by the High Court of Delhi in the said case and the above stated position of law



was reiterated. In view of the settled position of law, this court does not entertain any doubt on the preposition of law for which a reference may be made to the High Court of Delhi. The application seeking reference is misconceived and the same is dismissed.”

(Emphasis supplied)

6. The Trial Court while dismissing the said application also took note of the observations returned by the Division Bench of this Court *vide* order dated 11.11.2021, in transfer petitions filed by the defendant(s), specifically negating the defence of Section 53A of the Transfer of Property Act, 1882 ('TPA') raised by the defendant(s) in the facts of this case. It would be relevant to refer to the observations made by the Division Bench in the order dated 11.11.2021 which reads as under:

*“3. The interim order sought by the petitioners is clearly to scuttle the hearing of the applications preferred by the respondent/ landlord under Order XII Rule 6 CPC. The petitioners having set up the agreements to sell cannot derive benefit thereof till they are able to establish the same as the said agreements are in serious dispute by the respondent/ landlord. On the other hand, there is no dispute about the ownership of the properties in question vesting in the respondent. We may refer to the decision of this Court in “**Sunil Kapoor Vs. Himmat Singh & Others**” CM (M) 1215/2007 dated 29.01.2010. The Court observed in Para 11 as follows:*

*“11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in **Jiwan Das Vs. Narain Das** AIR 1981 Delhi 291 has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.”*

4. The petitioners cannot take resort to Section 53A of the Transfer of Property Act, as the petitioners do not claim to have been put in possession of the suit properties under the agreements set up by them.



5. *We are, therefore, not inclined to stay the proceedings in the suits filed by the respondent/ landlord. The proceedings in the said suits should continue. The concerned Courts dealing with the said suits should proceed to dispose of the pending applications, including the one under Order XII Rule 6 CPC, without in any way being influenced by the pendency of these petitions.*

6. *These stay applications are, accordingly, dismissed.”*

(Emphasis supplied)

7. The Trial Court after referring to the said order of the Division Bench concluded that it does not entertain any doubt on the point of law urged by the defendant(s) and opined that there was no further scope for interpretation of law by the said Court.

8. The Trial Court in fact, opined that the defendant(s) have made it impossible for the Trial Court to proceed with the hearing in the matter and applications have been filed successively to scuttle the hearing of the application preferred by the plaintiffs under Order 12 Rule 6 CPC. The relevant finding of the Trial Court reads as under:

“10. Before parting, it is observed that defendants have been moving miscellaneous with the sole intention of delaying the matter. The applications are being filed to scuttle the hearing of the application preferred by the plaintiff/landlord under Order XII Rule 6 of CPC.....”

(Emphasis supplied)

9. The learned counsel for the defendant(s) has reiterated the submissions made before the Trial Court and in addition, placed reliance on the judgment of the Supreme Court in **Karan Kapoor v. Madhuri Kumar, (2022) 10 SCC 496** to contend that the impugned order be set aside, the applications filed before the Trial Court be allowed and a reference be made by this Court to itself and decide the reference for



effective disposal of the applications filed by the plaintiffs under Order 12 Rule 6 CPC.

10. In reply, learned counsel for the plaintiffs has stated that the defendant(s) have not left any stone unturned to obstruct the adjudication of the plaintiffs application filed under Order 12 Rule 6 CPC. He states that though the application was filed on 28.08.2017 the defendant(s) have not permitted hearing in the said applications. He states that the present petitions filed under Article 227 of the Constitution is not maintainable against the impugned order and he relied upon the judgment of this Court in *Masonic Club (Regd) vs. Jamna Lodge & Anr. 2014 (207) DLT 62*.

10.1 He states in addition to the fact that the Division Bench *vide* order dated 11.11.2021 has already held that the defence of Section 53A of the TPA is not available to the defendant(s) herein in the facts of this case; he states that the defendant(s) have suppressed from this Court that they had preferred CM(M) 309/2022 raising identical pleas and identical reliefs for consideration of this Court. He states the said petition was unconditionally withdrawn by the defendant on 04.04.2022, with no liberty reserved and having withdrawn the said petition, the defendant(s) are precluded from raising the same pleas in the present petition.

10.2 He states that in view of the fact that the purported agreements to sell relied upon by the defendant is unregistered, the same admittedly cannot be relied upon for invoking the defence of part performance under the provisions of Section 53A of TPA after its amendment in 2001.



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

12. As noted hereinabove, the Trial Court has in the impugned order returned an unequivocal and an emphatic finding that it does not entertain any doubt on the proposition of law for which a reference is being sought by the defendant(s) and has, therefore, declined to make any reference to this Court. In the facts of this case, the said issue has already been answered against the defendant(s) by a Division Bench of this Court in order dated 11.11.2021 as rightly noted by the Trial Court.

13. In the opinion of this Court, a petition under Article 227 of the Constitution should not be entertained against an order of the Trial Court dismissing an application filed by a party under Section 113 read with Order 46 Rule 1 of CPC. The power of the Trial Court to make a reference is discretionary and in this regard, it would be relevant to refer to Section 113 and Order 46 Rule 1 of CPC which reads as under:

“113. Reference to High Court-Subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit:

[Provided that where the Court is satisfied that a case pending before it involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case, and is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative, but has not been so declared by the High Court to which that Court is subordinate or by the Supreme Court, the Court shall state a case setting out its opinion and the reasons therefor, and refer the same for the opinion of the High Court.

Explanation. —In this section, “Regulation” means any Regulation of the Bengal, Bombay or Madras Code or Regulation as defined in the General Clauses Act, 1897, (10 of 1897) or in the General Clauses Act of a State.]



Order 46 Rule 1 Reference of question to the High Court-Where, before or on the hearing of a suit or an appeal in which the decree is not subject to appeal, or where, in the execution of any such decree, any question of law or usage having the force of law arises, on which the Court trying the suit or appeal, or executing the decree, entertains reasonable doubt, the Court may, either of its own motion or on the application of any of the parties, draw up a statement of the facts of the case and the point on which doubt is entertained, and refer such statement with its own opinion on the point for the decision of the High Court."

(Emphasis supplied)

14. A Division Bench of High Court of Calcutta in the case of ***Ranadeb Choudhuri v. Land Acquisition Judge & Ors, 1971 SCC OnLine Cal 4***, while emphasising on the key features which are peremptory for the subordinate Court to examine before exercising its powers under Section 113 of the CPC, observed as under:

*25. Scrutinizing this provision of the Code of Civil Procedure, the following features should be emphasised. **In the first place**, ordinarily this power of reference belongs to the subordinate court. **Secondly**, such, power of reference is discretionary in the sense that in such a case the court may state a case and refer the same for the opinion of the High Court. **Thirdly**, the subordinate court has to be satisfied that a case pending before it involves a question as to the validity of any Act. **Fourthly**, the subordinate court has to be satisfied that the determination of that question of the validity of the Act is necessary for the disposal of the case. **Fifthly**, the subordinate court has to be of the opinion that such Act is invalid or inoperative. **Sixthly**, the subordinate court has to be of the opinion that such invalidity or has not been declared either by the High Court to which the court is subordinate or by the Supreme Court. If these conditions are satisfied, then the subordinate Court's power to refer is no longer discretionary but mandatory and the subordinate court shall state a case setting out its opinion and the reasons therefor. In this event the subordinate court will have to express its opinion whether the Act is invalid or inoperative. Unless he comes to that conclusion, the subordinate court is not bound to make a reference to the High Court. The disposal of the application in the present case under Section 113 of the CPC does not dispose of the pending case before the Special Land Acquisition Judge.*

(Emphasis supplied)

15. On a plain textual reading of the Section 113 and Order 46 Rule 1 CPC, it is evident that the jurisdiction of the Trial Court under these



provisions to make a reference is discretionary. In this regard it would be appropriate to refer to a decision of a Coordinate Bench of Kerala High Court in the case of ***George v. Abraham, 1978 SCC OnLine Ker 181***, wherein the High Court observes as under:

“6. It is evident that the power under the above provision is discretionary and it is for the Court to decide whether it should make a reference to the High Court. But if a case involves a question as to the validity of any Act, Ordinance or Regulation or of any provision contained in an Act, Ordinance or Regulation, the determination of which is necessary for the disposal of the case and the Court is of opinion that such Act, Ordinance, Regulation or provision is invalid or inoperative and has not been so declared by the High Court or the Supreme Court, it is obligatory on the part of the Court to state a case setting out its opinion and the reasons there for and refer the same for the opinion of the Court.”

(Emphasis supplied)

16. Further, to attract the exercise of discretion under Section 113 and Order 46 Rule 1 of the CPC, it is necessary that the Trial Court should itself entertain some doubt on the proposed question of law. However, where the Trial Court opines that it entertains no doubt and declines to make a reference to the High Court, the exercise of said discretion does not merit interference by this Court in exercise of its supervisory jurisdiction under Article 227 Constitution. This is for the reason, that the order of the Trial Court declining to make a reference is not an order on the merits of the case and therefore, no prejudice is caused to a party who seeks such a reference. The order which the Trial Court will pass on the merits of the claims of the plaintiffs and the defence of the defendant(s) is amenable to appeal and revision; and it is at that stage that the decision of the Trial Court will be tested by the High Court. In this regard, the phrase ‘decree not subject to appeal’ in Order 46 Rule 1 CPC is material and relevant. In this case, as well, the order of the Trial



Court on the application filed by the plaintiff under Order 12 Rule 6 CPC is amenable to appellate and revisional jurisdiction and the correctness of the order will be tested therein.

17. In the facts of this case, in any event, as pointed out by the Respondent, the Petitioner had approached this Court in CM(M) 309/2022 raising these identical question of law for determination under Article 227 of the Constitution which was not entertained by this Court and the same was dismissed as withdrawn without reserving any liberty. It is trite law that a party cannot relitigate the same issue again and again and is estopped by the doctrine of estoppel from filing successive petitions seeking same reliefs, the said point of law has been discussed by the Supreme Court in the case of ***K.K. Modi v. K.N. Modi, (1998) 3 SCC 573***. The defendant(s) ought to have disclosed the filing of the said petition and by not disclosing the same they have not approached the Court with clean hands.

18. This Court is further of the opinion that the pleas raised by the Petitioners in these applications is barred by the principles of estoppel in view of the order dated 11.11.2021 passed by the Division Bench and therefore, this Court finds merit in the conclusion of the Trial Court that these applications have been filed to obstruct the hearing in the applications filed under Order 12 Rule 6 CPC.

19. This Court finds no infirmity in the impugned order dated 19.07.2023 dismissing the applications of the defendant(s) and imposing costs on them. Accordingly, the present petition(s) are dismissed subject to costs of Rs. 10,000 (each) payable to the plaintiffs within two (2)



weeks. This cost is in addition to the costs imposed by the impugned order.

20. Pending applications stand disposed of.

CM(M) 759/2023 & CM APPLs. 23911-12/2023

CM(M) 763/2023 & CM APPLs. 23938-39/2023

CM(M) 764/2023 & CM APPLs. 23942-43/2023

CM(M) 765/2023 & CM APPLs. 23945-46/2023

CM(M) 767/2023 & CM APPLs. 23949-50/2023

CM(M) 768/2023 & CM APPLs. 23951-52/2023

21. These Petitions filed under Article 227 of the Constitution impugns the common order dated 25.02.2023 passed by the ADJ, District New Delhi, Patiala House Courts, New Delhi ('Trial Court'), whereby the Trial Court dismissed six (6) similar applications all dated 11.06.2022 filed by the Petitioner under Section 113 read with Order 46 Rule 1 of Code of Civil Procedure, 1908 ('CPC') in six connected matters.

22. The defendant(s) filed separate six (6) other applications on 11.06.2022 seeking another reference to this Court on the question of whether without service of any notice under Section 106 of TPA, the landlord can file a suit for Possession. However, after reviewing the judgments of this Court and Supreme Court, the said application(s) as well have been dismissed by the Trial Court *vide* order dated 25.02.2023 holding that it does not entertain any doubt on the said proposition of law. The relevant portion of the order reads as under:

10. The arguments raised by the counsel for defendant are erroneous. In fact, the judgments relied on by the defendant demolish his own arguments. Counsel for defendant has placed on record the decision in Ram Kumar Vs S.K. Gulati's case (supra). In this matter, the High Court of Delhi dealt with the decision given by the Apex Court in the matter of "V. Dhanpal Chettiar Vs Yesodai Amal" 1979 (4) sec 2014 as well as "Nopany Investments (P) Ltd.



Vs Santokh Singh (HUF)” 2008 (2) SCC 728 and held that under general law, the eviction suit itself is a notice to quit on the tenant.....

11. The observation made in *Ram Kumar Vs S.K. Gulati’s case (supra)* were subsequently reiterated by the High Court in *Vijay Pal Singh Vs Bharat Bhushan Gulati’s case (supra)*. In the matter of “*Bhawanjeet Singh Vs Dewan Singh*” RSA 55/2016, decided on 11.07.2016, the High Court again reiterated the same preposition that under general law, the service of the suit for possession would amount to notice. In this matter, the court relied on *Nopani Investment’s case (supra)* and “*Jeevan Diesels & Electrical Ltd. Vs Mis Jasbir Singh Chadha (HUF)*” 182(2011) DLT 402 and clarified that under general law, the service of summons for settlement of issues of suit for possession clearly reveals the intention of the landlord to terminate the tenancy. This view point was again reiterated by the High Court of Delhi in the matter of “*Ashok Kumar Bagga Vs Rajvinder Kaur*” RFA 2016/2020 and CM APPL. 20247/2020 decided on 07.04.2021.

12. *Thus, it can be seen that the Supreme Court of India has categorically held in the matter of Nopani Investment’s case (supra) that filing of an eviction suit under general law itself is a notice to quit on the tenant. As observed in the preceding paras, the High Court of Delhi has consistently reiterated the said preposition of law in number of judicial pronouncements. In view of this, the position of law on the said point is well settled. This court does not entertain any doubt on the said preposition of law. The application seeking Reference to the High Court of Delhi is misconceived and the same is dismissed.*

(Emphasis supplied)

23. No separate arguments were addressed by the counsel for the defendant(s) on the dismissal of these application(s).

24. A perusal of the impugned order shows that the Trial Court has reviewed in detail the judgments of the Supreme Court and High Court on this proposition of law and returned a finding that it does not entertain any doubt on the said proposition of law.

25. For the reasons recorded in this judgment while dismissing the first six (6) petitions, this Court does not find any ground for entertaining these petitions and interfering with the discretion exercised by the Trial Court and accordingly, the present petition(s) are dismissed subject to costs of Rs. 10,000 (each) payable to the plaintiffs within two (2) weeks.



26. Pending applications, if any, stand disposed of.

Direction

27. The learned counsel for the plaintiffs has made a prayer to this Court that for seeking a direction for expeditious disposal of the suits. In this regard, it is noted that, a Coordinate Bench of this Court vide order dated 02.09.2021 has already requested the Trial Court to dispose of the pending applications expeditiously. Though, it is apparent from the record that the defendant(s) have been filing successive applications and thus, impeding the progress of trial; this Court therefore, while reiterating the said request of expeditious disposal to the Trial Court further directs that the Trial Court exercises its jurisdiction under Order 17 CPC to ensure that no unnecessary adjournment is granted to the parties and adjournments are granted subject to costs.

MANMEET PRITAM SINGH ARORA, J

SEPTEMBER 05, 2023/msh/sk/ms

Click here to check corrigendum, if any