



\$~2

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

Date of decision: 20th September, 2023

+ **TR.P.(C.) 103/2022 & CM APPL. 48700/2023**

KARAN KAPOOR

..... Petitioner

Through: Mr. Shree Prakash Sinha, Mr. Rakesh Mishra, Ms. Mohua Sinha, Ms. Shwetam and Mr. Rishabh Kumar, Advocates.

versus

MADHURI KUMAR

..... Respondent

Through: Mr. Ravinder Singh, Ms. Raveesha Gupta, Mr. Dhruv Goel and Mr. Arnav Dasgupta, Advocates.

CORAM:

HON'BLE MR. JUSTICE NAVIN CHAWLA

NAVIN CHAWLA, J. (ORAL)

1. This petition has been filed by the petitioner seeking transfer of the suit filed by the respondent, that is, Civil Suit No. 867/2018, titled as *Madhuri Kumar vs. Karan Kapoor*, pending adjudication before the learned Additional District Judge-07, South-East District, Saket Courts, Delhi, to this Court and seeking direction for the same to be tagged/heard alongwith the suit filed by the plaintiff, that is, CS(OS) No.397/2019, titled as *Karan Kapoor vs. Madhuri Kumar & Ors.*, which is pending adjudication before this Court.

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 25.09.2023

16:06:19

TR.P.(C.) 103/2022



2. For considering the prayer made, a few basic facts would need to be mentioned.

3. Civil Suit 867/2018 has been filed by the respondent claiming herself to be the owner/landlady of the property bearing no. B-228, Ground Floor, Greater Kailash - I, New Delhi-110048 (hereinafter referred to as the 'subject property') and against the petitioner herein, claiming that the petitioner is a lessee in the said property under lease deed dated 07.08.2011 as extended on 07.08.2013. On the other hand, the petitioner, while not denying the fact of the ownership of the subject property of the respondent, the tenancy, and the rent, in the written statement has pleaded that the parties had entered into an Agreement to Sell dated 22.04.2017 (ATS-I) and the final Agreement to Sell dated 30.12.2017 (ATS-III); the son of the respondent had also entered into another agreement dated 25.05.2017 (ATS-II) with the petitioner regarding properties in Amloh, Punjab. The petitioner claimed that in terms of the Agreement(s) to Sell, the petitioner is entitled to withhold the possession of the subject property.

4. The respondent, in the above referred Suit, filed an application under Order XII Rule 6 of the Code of Civil Procedure (in short 'CPC'), 1908. The said application was allowed by the learned Additional District Judge, vide order dated 01.12.2020. Review against the same was dismissed by the learned Additional District Judge, vide order dated



17.02.2021. The petitioner herein filed an appeal challenging the above order, being RFA No.218/2021, which came to be dismissed by this Court, vide its order dated 08.04.2021. The petitioner challenged the said order before the Hon'ble Supreme Court in form of SLP (C) No. 13800/2021. The same was allowed by the Hon'ble Supreme Court, vide its judgment dated 06.07.2022. The observations made in the said judgment have some relevance to the present petition. The same are reproduced herein under:

“20. In the context of the said legal position, reverting to the facts of the present case, it is apparent that the first Lease Agreement was executed on 07.08.2011 on a monthly rent of Rs. 1,17,000/- of a suit premises. The said Lease Agreement was for a period of 02 years ending in July 2013. By the consent of the parties extended Lease Agreement dated 07.08.2013 was executed for a further period of 11 months for a monthly rent of Rs. 1,50,000/- with approximate increase in rent amount by 30% for the next one year. Admittedly, the notice for eviction was issued terminating the lease due to non-payment of the rent after the expiry of the extended lease period which is due for payment by the Defendant. The suit for eviction was filed on 18.05.2018 for possession (based on Landlord-Tenant relationship), arrears of rent, mesne profit and pendente lite. The said suit was contested by the Defendant in which the ownership was not denied. The execution of first Lease Agreement dated 07.08.2011 and the extended Lease Agreement dated 07.08.2013 was also not denied. The monthly tenancy and payment of rent in terms of Lease Agreement is also not denied by the Defendant. The Defendant has taken a defense that the property belonging to him in Amloh



was agreed to be sold to the Plaintiff to which effect ATS-II dated 25.05.2017 was executed. Further the Defendant has contended that, ATS-III dated 30.12.2017 was executed after some adjustments in consideration was made. Hence, the Defendant argued that on account of execution of the three Agreements to Sell with respect to the suit property for a sum of Rs. 3,60,00,000/-, the relationship of Landlord-Tenant ceased to exist and the Defendant acquired the status of the owner as he has already parted with the possession of the property under the Lease Agreement.

xxxx

23. Be that as it may, the arguments advanced by both the sides, in our view can be appreciated by the Trial Court by affording opportunity to them to lead evidence. As per the pleadings, there may be admission to the extent of execution of the Lease Agreement, rate of rent and monthly payment but simultaneously the defense taken by the Defendant is also based on ATS-I, II and III. In view of the contents of those agreements and terms specified therein, the defense as taken by the Appellant/Defendant is plausible or not is a matter of trial which may be appreciated by the Court after granting opportunity to lead evidence by the respective parties. There may be admission with respect to tenancy as per lease agreements but the defense as taken is also required to be looked into by the Court and there is need to decide justiciability of defense by the full-fledged trial. In our view, for the purpose of Order XII Rule 6, the said admission is not clear and categorical, so as to exercise a discretion by the Court without dealing with the defense as taken by Defendant. As we are conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defense as taken by the Defendant. We are only inclined to say



whether the judgment and decree passed in exercise of the power under Order XII Rule 6 of CPC is based on clear and categorical admission. In our view, the facts of the case in hand and the judgment in S.M. Asif (supra) are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case. Consequently, the judgment and decree passed by the Trial Court, as confirmed by the High Court, only on admission of fact without considering the defense in exercise of power under Order XII Rule 6 of CPC is hereby set-aside. The matter is remitted back to the Trial Court to decide the suit as expeditiously as possible affording due opportunity to the parties to record evidence that shall be appreciated by the Court on merit.

24. In the present case, the tenant has not paid any amount of rent w.e.f. 07.07.2014. In a suit based on Landlord-Tenant relationship, the amount of rent and arrears thereof ought to be paid in terms of the order of the Court. The said view is fortified by the judgment of S.M. Asif (supra). As the Lease Agreement dated 07.08.2011 and the extended Lease Agreement dated 07.08.2013, which are not in dispute and by the extended Lease Agreement, which was for one year, the rent was increased for the year 2013-2014 by 30%. The Defendant has not paid any rent till date though the period of more than 7 years has already passed. Therefore, we direct that in terms of the admitted fact by extended Lease Agreement and the increase in the percentage of rent, the Trial Court shall first decide the issue of payment of monthly rent applying the said increase on year to year basis and pass appropriate orders for payment of arrears as well as deposit of regular monthly rent. The said payment may be subject to outcome of the decision of the present suit as well as the suit for specific performance of the agreement filed by the Appellant.”

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 25.09.2023

16:06:19

TR.P.(C.) 103/2022



5. Pursuant to the above judgment of the Hon'ble Supreme Court, another dispute arose between the parties with the respondent claiming that the petitioner has not paid the rent as directed by the Hon'ble Supreme Court by its judgment dated 06.07.2022. This led to another round of litigation between the parties, travelling right up till the Supreme Court, and decided by an order dated 03.03.2023 passed in SLP (C) No. 373/2023.

6. In the meantime, by an order dated 03.01.2023, the learned Additional District Judge has been pleased to frame the following issues in CS No. 867/2018:

"1. Whether the defendant and the plaintiff had validly executed the agreement to sell dated 22.04.2017 qua the tenanted premises? If so, to what effect? OPD

2. Whether the defendant and the plaintiff had validly executed the agreement to sell dated 25.05.2017 qua the Amloh, Punjab property of the defendant? If so, to what effect? OPD

3. Whether the defendant and the plaintiff had validly executed the agreement to sell dated 30.12.2017 qua the tenanted premises? If so, to what effect? OPD

4. Whether the plaintiff is entitled to recover the possession of the tenanted premises? OPP

5. Whether the plaintiff is entitled to recover from the defendant, arrears of rent for the period, 02.06.2015 to 30.04.2018? If so, at what rate? OPP

6. Whether the plaintiff is entitled to recover from the defendant, mesne profits/damages w.e.f. 01.05.2018? If so, at what rate? OPP



7. Whether the plaintiff is entitled to recover interest from the defendant, in respect of arrears of rent and mesne profits/damages? If so, at what rate? OPP

8. Relief.”

7. By a subsequent order dated 25.01.2023 in CS No. 867/2018, the above issues were recast to a limited extent, observing as under:

“With the consent of the Ld. Advocate for the plaintiff, the arguments qua both the aforesaid applications have been heard, today. In so far as the first application is concerned, the Ld. Advocates for the defendant have submitted that the defendant will be satisfied if the onus qua the issue no.1, framed on 03.01.2023 is placed as, 'OPP/OPD' and if the issue no.2 is amended to incorporate the son of the plaintiff, instead of the plaintiff. In view thereof, the said amendments are allowed. The necessary corrections have been made in red ink, in the issues framed, on 03.01.2023. The first application stands disposed off.”

8. From a reading of the above issues, it would be apparent that in the subject suit, the issue with respect to validity of the Agreement(s) to Sell dated 22.04.2017, 25.05.2017, and 30.12.2017, are also in issue between the parties.

9. CS (OS) No. 397/2019 has been filed by the petitioner *inter alia* praying for the following reliefs:

“a) Pass a decree in favour of the Plaintiff and against the Defendants for specific performance of the 3 (Three) agreements to sell, i.e., Agreement to Sell dated 22.04.2017, Agreement to Sell dated 25.05.2017 and Agreement to Sell dated 30.12.2017;



b) Direct the Defendants to execute necessary Writing, Agreement, Deed etc. in order to convey the Suit Property - I in favour of the Plaintiff on the terms and conditions as arrived at between the parties by virtue of the aforesaid Agreement for Sale.”

10. Clearly, the three Agreement(s) to Sell are also in issue in the suit filed by the petitioner herein, that is, CS (OS) No. 397/2019, pending adjudication before this Court.

11. Though, I am also informed by the learned counsel for the respondent that the petitioner herein has filed an application under Order VI Rule 17 of CPC seeking amendment *inter alia* in the prayer clause in the above suit, as the said application is yet to be decided by this Court in the said suit, I refrain from making any comment on the same.

12. Be that as it may, as on today, the issues in the two suits are overlapping. I, therefore, deem it appropriate to direct the transfer of the suit filed by the respondent herein, being Civil Suit No. 867/2018, titled as ***Madhuri Kumar vs. Karan Kapoor***, to this Court and to be placed before the bench hearing CS(OS) No. 397/2019, that is the suit filed by the petitioner herein.

13. I must clarify, that by this order I have not directed the consolidation of the two suits, and this issue shall be considered by the appropriate Court upon hearing the parties. The reason for the same is also explained by me as under:

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 25.09.2023

16:06:19

 **TR.P.(C.) 103/2022**



(a) The learned counsel for the respondent has submitted that in the suit filed by the petitioner herein, that is, CS(OS) No. 397/2019, the respondent has filed an application under Order VII Rule 11 of the CPC, seeking rejection of the plaint. The said application is pending adjudication before this Court.

(b) For the suit which has been filed by the respondent and has been ordered to be transferred today, there is a direction by the Hon'ble Supreme Court, vide order dated 01.09.2023 passed in Miscellaneous Application No. 1815/2023 in MA 1522/2023 in CA No. 1577/2023, titled as ***Madhuri Kumar vs. Karan Kapoor***, directing the learned Civil Court to expedite the hearing of the said suit.

(c) This Court by an order dated 19.12.2022 passed in CM(M) 1437/2022, titled as ***Karan Kapoor vs. Madhuri Kumar***, had also directed the learned trial court to dispose of the suit expeditiously, and in any case, not later than six months from the date of the receipt of the said order. The said order, as far as this direction is concerned, has been affirmed by the Hon'ble Supreme Court vide its order dated 03.03.2023 passed in SLP (C) No. 373/2023.

(d) The learned counsel for the respondent has submitted that as the petitioner has failed to comply with the direction issued by the Supreme Court vide its judgment dated 06.07.2022 (supra), directing the petitioner to pay the rent, the respondent



for striking off the defence of the petitioner herein in the said suit, and by an order dated 04.09.2023, the said application was disposed of by the learned Additional District Judge, directing the petitioner herein to make payment of the rent due with respect to the suit property, to the respondent herein, within a period of one month from the said order, failing which the defence of the petitioner shall be deemed to be struck off. The respondent claims that the said order has not been complied with.

14. The learned counsel for the respondent submits that the respondent has also filed an Execution Petition, being Execution Petition No.559/2023, seeking enforcement of the order dated 29.11.2022 passed by the learned Additional District Judge, directing the petitioner herein to continue to pay the monthly rental amount.

15. As the suit is being transferred from the court of Learned Additional District Judge, South East District, Saket, Delhi, to this court, the said Execution Petition will also be transferred to this Court, to be listed alongwith the subject suit, that is, Civil Suit No. 867/2018.

16. The suit, that is, Civil Suit No. 867/2018, pending before the court of Learned Additional District Judge, South East District, Saket, Delhi along with the Execution Petition being Ex No. 559/2023, shall be listed before this Court on its transfer



17. The petition is allowed in the above terms. The pending application is also disposed of.

18. There shall be no order as to costs.

NAVIN CHAWLA, J

SEPTEMBER 20, 2023/ns/am

Signature Not Verified

Digitally Signed By: SUNIL

Signing Date: 25.09.2023

16:06:19

 **TR.P.(C.) 103/2022**