

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

FAO 307/2022 and CM APPL. 51707/2022 (Direction)

Reserved on : 19.01.2023

Date of Decision : 10.02.2023

IN THE MATTER OF:

BR AGARWALA AND CO INDIA PVT LTD Appellant
Through: Ms. Richa Kapoor, Mr. Prakhar Dixit,
Ms. Tusharika Sharma and Mr. Vipin T.P.,
Advocates
Versus

ANITA JALAN & ORS. Respondents
Through: Mr. Aditya Wadhwa, Ms. Adya Jha and
Mr. Siddharth Sunil, Advocates for respondents
No.1 to 3
Mr. Rajesh Kumar Agnihotri, Advocate for
respondent No.4

CORAM:
HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

JUDGMENT

MANOJ KUMAR OHRI, J.

1. The present appeal has been instituted by the appellant/plaintiff under Section 104 read with Order 43 Rule 1 CPC assailing order dated 21.09.2022 passed by the learned ADJ-02, South District, Saket Courts, Delhi in CS (COMM) No.473/2022, whereby its application under Order 39

Rules 1 and 2 CPC was dismissed. The appellant further seeks directions to respondent Nos.1 to 3 restraining them from selling or parting with the title and possession of *Rear Ground Floor and Front First Floor of D-68, Hauz Khas, New Delhi-16* (hereinafter, '*suit properties*').

2. Learned counsel for the appellant assailed the impugned order by contending that the Trial Court failed to appreciate that there is likelihood of respondents No.1 to 3 creating third-party interest in the suit properties. It was submitted that the parties had entered into a Family Settlement Agreement Award on 16.12.2019, whereby the suit properties falling in the share of *Mr.Raj Kumar Jalan* were to be transferred to *Mr.Prakash Chand Jalan* and his family members. The transfer was subject to *Mr.Prakash Chand Jalan* fulfilling his obligations under the family settlement which, however, was not done.

It was further submitted that the respondents had played fraud upon the appellant as prior to entering into the Family Settlement, the suit properties already stood transferred and this fact was withheld at the time of entering into the Family Settlement. It was also contended that consideration amount received in the account of the appellant was fraudulently re-transferred to respondents/defendant Nos.1 and 2.

3. Learned counsel for respondent Nos.1 to 3, on the other hand, disputed the submissions made on behalf of the appellant. He also objected to the maintainability of the underlying suit by drawing attention to Section 430 of the Companies Act and placing reliance on the decision in

Dinesh Kumar v. Sinecure Technocity Pvt. Ltd. & Ors., CS(COMM)
No.242/2019.

4. I have heard learned counsels for the parties and gone through the material placed on record.

5. It is worthwhile to observe that prior to the Family Settlement Agreement Award dated 16.12.2019, another family settlement was executed on 20.08.2019. In Clause 3 of the said settlement agreement, it was agreed between the parties that the suit properties would be transferred to respondent Nos.1 to 3. The transfer took place by virtue of a Board Resolution dated 05.08.2019 and as per the Minutes of Meeting, it was *Mr.Raj Kumar Jalan* who had presided over the meeting as Chairman.

At the time of hearing, the Trial Court had asked for the Minutes of Meeting, but the same were not produced by the appellant. On *prima facie* reading of the family settlement, I find merit in the submission of learned counsel for respondent Nos.1 to 3 that the money was to be transferred back. Besides, the appellant has not raised any challenge to the Board Resolution vide which the money received by the appellant was transferred.

6. It is pertinent that on 25.06.2019, *Mr.Raj Kumar Jalan* is reported to have signed the appellant's balance sheet. Further, the decision to transfer was taken by *B.R. Agarwala and Company* at a time when the respondent(s) were its majority shareholders. Subsequent to the family settlement, *Mr.Raj Kumar Jalan* has become the majority shareholder and

after nearly more than 1½ years, he has filed the underlying suit. The appellant, though seeking annulment or cancellation of the sale deed(s), has not sought specific performance of the family settlement.

7. Insofar as a challenge has been raised as to the maintainability of the underlying suit by learned counsel for respondent Nos.1 to 3, it is observed that the limited issue before this Court relates to the application filed by the appellant under Order 39 Rules 1 and 2 CPC, which came to be dismissed vide the impugned order.

8. In view of the foregoing discussion, I am of the *prima facie* opinion that for the purposes of the present appeal, the appellant has failed to establish a *prima facie* case and balance of convenience in its favour, as well as failed to show as to how any irreparable loss or injury would be caused to it if the impugned order is not set aside. Accordingly, the appeal is dismissed. The issue of maintainability of the underlying suit is left open. Pending application stands disposed of.

9. Needless to state, the views expressed hereinabove shall not have a bearing on the trial.

(MANOJ KUMAR OHRI)
JUDGE

FEBRUARY 10, 2023

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