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

Date of decision: 03.08.2023

+ **CM(M) 1334/2022 & CM APPL. 51945/2022**

UNIMEXX BUILDERS AND DEVELOPERS SUMIT KHANNA
SOLE PROPRIETORSHIP UNIMEXX BUILDERS Petitioner

Through: Mr. M.P.S. Kasana and Mr. Shaida
Dass, Advocates

versus

NAND KISHORE BINDRA Respondent

Through: Ms. Beenashaw Soni, Advocate with
Ms. Mansi Jain and Ms. Anu Joseph,
Advocates

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+ **CM(M) 1336/2022**

UNIMEXX BUILDERS AND DEVELOPERS Petitioner

Through: Mr. M.P.S. Kasana and Mr. Shaida
Dass, Advocates

versus

M/S SURYA ENTERPRISES PVT LTD. Respondent

Through: Ms. Beenashaw Soni, Advocate with
Ms. Mansi Jain and Ms. Anu Joseph,
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(M) 1334/2022

1. This petition filed under Article 227 of the Constitution of India



impugns the order dated 11.04.2022 passed by the ADJ-02, South District, Saket Courts, New Delhi ('Trial Court') in CS DJ 8586/16 titled as "**Nand Kishore Bindra v. M/s Unimexx Builders And Developers Pvt. Ltd**" whereby, the Trial Court in exercise of its power under Section 94 read with Section 151 of Code of Civil Procedure ('CPC') has attached a bank account No. 603620110000748, Bank of India, Safdarjung Enclave, New Delhi in the name of M/s Unimexx Builders Pvt. Ltd.

1.1. The Petitioner herein is the defendant and the Respondent herein is the plaintiff in the civil suit.

1.2. The civil suit has been filed for recovery of possession, mesne profits and maintenance charges. The relationship between the parties is admittedly of landlord and tenant.

1.3. The parties admit that the possession of the property bearing flat No. 301-A, Surya Mansion-1, Kaushlaya Park, Hauz Khas, New Delhi ('suit property') has been recovered by the Respondent on 15.10.2014 during the pendency of the suit proceedings.

1.4. It is the contention of the Respondent that the Petitioner herein defaulted in making payment of the agreed rent for the period 01.10.2012 till 15.10.2014; and in these circumstances, the Trial Court in an application filed by the Respondent under Order XXXIX Rule 10 read with Section 151 of CPC passed a detailed order dated 02.02.2019 directing the Petitioner herein to deposit the admitted amount of Rs. 19,35,818/-, which became due and payable for the period of 01.10.2012 till 15.10.2014.

1.5. The Petitioner herein was directed *vide* order dated 02.02.2019 to deposit the said amount in the form of Fix Deposit Receipt ('FDR') in the name of the Trial Court within a period of 30 days. The said order has become



final and has been accepted by both the parties.

1.6. The Petitioner herein defaulted in complying with the direction issued in the said order dated 02.02.2019 and therefore, the Trial Court by the impugned order has issued the order of attachment.

Arguments of the Petitioner

2. The learned counsel for the Petitioner states that the Petitioner herein failed to make a deposit of the FDR as directed by the Trial Court *vide* order dated 02.02.2019.

2.1. He states that, however, upon the default in complying with the order of the Trial Court dated 02.02.2019, the limited power, with the Trial Court was to strike off the defence of the Petitioner herein.

2.2. He states that however the Trial Court has committed an error inasmuch as the Trial Court by the impugned order dated 11.04.2022 has proceeded to attach the bank account of the Petitioner herein. He states that an amount to the extent of Rs. 3,00,000/- approximately is lying with the said account.

2.3. He states that the effect of the impugned order is that the Trial Court has proceeded to execute its order dated 02.02.2019, which is not permissible and the orders of the execution could have only been passed after a final decree was passed in the suit.

2.4. He relies upon the judgements of this Court in ***Sanjay Gupta vs. M/s Cottage Industries Exposition Ltd.*** in C.S. (OS) No. 140/2021 and ***Mr. Vijendra Kishan Gupta and Another vs. M/s Yusuf Engineering Co. Pvt. Ltd. and Ors*** in C.S. (OS) No. 1108/2007; in support of his contention.

3. In reply, the learned counsel for the Respondent states that the Trial Court has exercised its jurisdiction under Section 94 read with Section 151 of CPC and more specifically under Section 94 (b) and (e) of CPC.

3.1. She states that the facts and circumstances in this case, justified the



exercise of that jurisdiction by the Trial Court, so as to secure the ends of justice. In this regard, she relies upon the proceedings of 25.09.2019, 11.08.2020, 21.01.2021 and 23.02.2021 before the Trial Court.

3.2. She states that after the passing of the order dated 11.04.2022, the Petitioner herein without any just cause absented from appearing in the proceedings or being represented by a counsel.

3.3. She states that the Trial Court was compelled to issue bailable warrants for securing the presence of the defendant and after the representative defendant entered appearance, they also brought on record the fact that one of the directors was in judicial custody.

3.4. She states that it was also brought on record that the original defendant i.e., M/s. Unimexx Builders and Developers Pvt. Ltd. has been converted into proprietorship firm, pursuant to the de-registration of the company by the Registrar of Companies ('ROC').

3.5. She states that in these circumstances, it was apparent from the record that the Petitioner was seeking to frustrate the proceedings and the orders passed by the Trial Court.

3.6. She relies upon the judgement of the Supreme Court in **Vareed Jacob v. Sosamma Geevarghese (2004) 6 SCC 378**, to contend that the Trial Court has the requisite jurisdiction under Section 94 CPC to direct an order for furnishing security to the defendant during the pendency of the proceedings. She also relies upon the judgement of the High Court of Karnataka in **Sri Seebi Narshima Swami Temple vs. Shri C. Narshima Modi** in Writ Petition No. 41031/2012.

3.7. She states that the Trial Court *vide* impugned order dated 11.04.2022 has not taken steps to execute the order dated 02.02.2019 as contended by the



Petitioner and the Trial Court has only sought to secure the admitted amount.

3.8. She further states that the sum total of the amounts due and recoverable from the Petitioner in both these petitions is a sum of Rs. 50,00,000/- approximately and the amount, which is lying attached in the bank account is a meagre amount of Rs. 3,00,000/-.

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

5. The facts in the present case are not disputed by the Petitioner. The material facts, which led to the passing of the impugned order are as under:-

- (i) The relationship of landlord and tenant existed between the parties.
- (ii) The Petitioner defaulted in making payment of the admitted rent for the period 01.10.2012 till 15.10.2014.
- (iii) The order dated 02.02.2019 passed by the Trial Court under Order XXXIX Rule 10 CPC has become final and has been accepted by the Petitioner.
- (iv) The Petitioner has failed to deposit the amount determined *vide* order dated 02.02.2019.
- (v) The Petitioner failed to appear before the Trial Court subsequently on several dates.
- (vi) The Trial Court was compelled to issue bailable warrants *vide* order dated 21.01.2021 to secure the presence of the Petitioner.
- (vii) M/s. Unimexx Builders and Developers Pvt. Ltd., the original defendant has been converted into proprietorship firm, pursuant to the de-registration of the company by the ROC.
- (viii) Mr. Sumit Khanna, the proprietor of M/s Unimexx Builders and Developers was sent to judicial custody.



6. The aforesaid admitted facts show that the defendant has an admitted liability towards unpaid rent and after the determination of the said liability, the defendant started unreasonably absenting itself from the proceedings. The defendant failed to comply with the order dated 02.02.2019 and also obstructed the proceedings by the non-appearance. In these facts, it is apparent that circumstances as contemplated under Order 38 Rule 5 CPC existed. Therefore, the Trial Court was justified in passing the impugned order. This Court finds no merit in the submission of the Petitioner that the Trial Court has no power to secure the admitted amount and agrees with the submission of the Respondent that the impugned order does not enforce the order dated 02.02.2019.

7. In the opinion of this Court, in the aforesaid admitted facts and the non-compliance of the directions of the Trial Court by the defendant, the Trial Court was well within its jurisdiction to exercise its powers under Section 94 CPC read with Section 151 CPC as the circumstances warranting the said exercise existed.

8. The judgement of the Supreme Court in *Vareed Jacob (Supra)* has categorically held that an order to furnish security or to produce any property belonging to the defendant are supplemental in nature and such orders can be passed by the Civil Court in the supplemental proceedings, when the facts for issuing the directions are made out. The relevant portion of the judgment reads as under:

“11. The above discussion shows that the source of power of the court to grant interim relief is under Section 94. However, exercise of that power can only be done if the circumstances of the case fall under the rules. Therefore, when a matter comes before the court, the court has to examine the facts of each case and ascertain whether the ingredients of Section 94 read with the rules in an order are satisfied and accordingly grant an appropriate relief. It is only in cases where circumstances do not fall under any of the rules prescribed that



the court can invoke its inherent power under Section 151 CPC. Accordingly, the courts have to grant relief of attachment before judgment, if the circumstances fall under Order 38 CPC. Similarly, courts will grant temporary injunction if the case satisfies Order 39. So depending on the circumstances falling in the prescribed rules, the power of the court to grant specified reliefs would vary. Therefore, each set of rules prescribed is distinct and different from the other and therefore, one cannot equate rules of temporary injunction with rules of attachment before judgment although all are broadly termed as interlocutory orders.

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34. An order to furnish security to produce any property belonging to a defendant and to place the same at the disposal of the court or order the attachment of any property as also grant of a temporary injunction or appointment of a receiver are supplemental in nature. The effect of such order may be felt even after decree is passed. An order of attachment passed under Order 38 of the Code of Civil Procedure would be operative even after the decree is passed. Such an order of attachment passed under Order 38 can be taken benefit of by the decree-holder even after a decree is passed. An order of temporary injunction passed in a suit either may merge with a decree of permanent injunction or may have an effect even if a decree is passed, as, for example, for the purpose of determination as regards the status of the parties violating the order of injunction or the right of a transferee who has purchased the property in disobedience of the order of injunction. The orders passed in supplemental proceedings may have to be treated distinctly as opposed to an order which is ancillary in nature or which has been passed in the incidental proceedings."

(Emphasis supplied)

As held above, in the facts of this case the liability of the Petitioner towards the admitted rent of Rs. 19,35,818/- is not in dispute and therefore, the acts and omissions of the Petitioner herein justified the exercise of the said power by the Trial Court.

9. The judgements on which the learned counsel for the Petitioner has placed reliance fails to substantiate his pleas that the Trial Court has no jurisdiction to issue attachment after the determination of the admitted amount. On the contrary, in the said judgments the Court directed the defendant to pay the admitted rent to the plaintiff during the pendency of the



proceedings.

9.1. In the case of **Sanjay Gupta (Supra)**, the learned single judge was considering an application filed by the plaintiff therein under Order XXXIX Rule 10 CPC and the Court at paragraph 41 categorically issued directions directing the defendant (i.e., tenant) therein to deposit the admitted amount of the rent. The relevant para 41 reads as under: -

“41. There is no dispute and the admitted position is that there existed a landlord-tenant relationship between the Plaintiff and the Defendant. Admittedly, rent/damages/occupation charge has not been paid by the Defendant after May 2002 till the premises were vacated by the Defendant after March 2003. This liability cannot be avoided, since it is to be met by the defendant irrespective of whether the status of the defendant during the period in question was that of a tenant or of a trespasser holding over after the determination of the lease. The last paid rent would be the minimum charges that would be payable either on account of rent or on account of damages. If it is ultimately found that the tenancy of the suit premises subsisted throughout till the vacation of the property, it would be adjusted towards rent, and if it is found that the lease was validly terminated, it would be adjusted towards partial damages. The defendant is wrong in contending that the plaintiff by way of the applications under considerations is claiming “rent” while the claim in the suit is for damages. The claim even in the applications is for damages, though, to avoid a controversy at this stage the plaintiff has limited the prayer for grant of partial damages computed at the rate at which admittedly the rent was last paid. After a trial, it may be found that the lease of the defendant stood validly terminated and in that eventuality the damages could be still higher, but to the extent of the last paid rent it is the minimum. Therefore, so far as the amount of last paid rent is concerned @ Rs. 3.50 lakhs per month, the defendant is liable to pay the same to the plaintiff for the period June 2002 to March 2003. The defendant is hereby directed to pay the same to the plaintiff within two months of the passing of this order for the period 1.6.2002 till 31.3.2003 i.e. for a period of ten months, which translates to Rs. 35 lakhs. The plaintiff had taken a security deposit of Rs. 15 lakhs from the defendant under the lease deed. After adjustment of the same, the defendant would be liable to pay to the plaintiff at this stage, a sum of Rs. 20 lakhs. Since the amount now being directed to be paid to the plaintiff is not in excess of the amount for which the suit is valued, no further court fee is payable at this stage. Consequently, no issue of payment of court fee would arise for the time being. The question of payment of interest, if any, on the said amount would be considered at the final stage. So far as the maintenance charge are concerned, in view of the law discussed hereinabove, since the said liability is conditional upon the rendering of the agreed services by the landlord and it cannot be treated as payment for use and occupation of the tenanted premises and there



is a dispute about the said services having been rendered or not, at this stage, I am not inclined to pass any order to direct the defendant to either pay the same to the plaintiff or even to deposit the same in the court. The payments directed by me by this order are without prejudice to the rights and contentions of the plaintiff in relation to its claim for damages and so far as the claim for arrears of maintenance charges are concerned. The said claims; and the claim for interest shall be considered only after the parties have led their evidence in respect thereof.”

(Emphasis supplied)

9.2. Similarly, the judgement of **Mr. Vijendra Kishan Gupta (Supra)** relied upon by the Petitioner also does not substantiate his plea. In that case as well, the plaintiff, landlord had filed an application for striking off the defence of the defendant, tenants on their failure to deposit the rental amount as directed by the Court in an application, which was filed under Order XXXIX Rule 10 CPC. The Court in the said judgment granted a further opportunity to the tenant to comply with the direction of payment of rent, failing which it was directed that the defence will be struck off.

9.3. Neither judgement holds that the Civil Court cannot pass appropriate directions for securing the admitted amount, which is determined by the Court under Order XXXIX Rule 10 CPC to be due and payable to the Petitioner.

10. The Petitioner herein does not dispute his liability to make the payment of Rs. 19,35,818/-, which is due and payable under Order XXXIX Rule 10 CPC as determined *vide* order dated 02.02.2019.

11. This Court therefore does not find any error of law by the Trial Court in passing the impugned order dated 11.04.2022 and accordingly, the present petition is dismissed. Pending, applications if any, stand disposed of.

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12. The Petitioner is common in both these petitions. The Respondent, landlord is distinct in this matter. No separate arguments have been addressed in this petition.



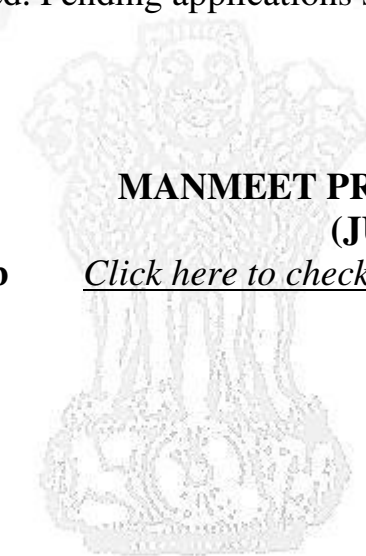
13. The amount of admitted amount of rent payable by the Petitioner to the Respondent as per Trial Court's order dated 02.02.2019 in this case is Rs. 23,01,064/- is with respect to property bearing flat No.301-B, flat no. 302, flat no. 303, flat no. 305 (total admeasuring 1542 sq. ft.) at Surya Mansion, 1 Kaushalya Park, Hauz Khas, New Delhi-110016. The said amount admittedly continues to remain outstanding. The order of attachment pertains to the same bank account of the defendant held in Bank of India.

14. For the reasons given for dismissing CM(M) 1334/2022, the present petition as well is dismissed. Pending applications stand disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 3, 2023/rhc/asb

[Click here to check corrigendum, if any](#)



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