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

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Date of Decision: 11.01.2024+ **FAO(OS) (COMM) 5/2024****THAKAR DASS BHATIA****THROUGH SON CHETAN BHATIA**

..... Appellant

Through: Mr Varun Singh, Mr Rohan Chandra,
Mr Ytharth Kumar and Mr Pankaj
Kumar, Advocates.

versus

SURESH KUMAR BHATIA & ORS.

..... Respondents

Through: Mr Pankaj Kumar Singh and Ms
Bimla Sharma, Advocates.**CORAM:****HON'BLE MR. JUSTICE RAJIV SHAKDHER****HON'BLE MR. JUSTICE AMIT BANSAL****[Physical Hearing/Hybrid Hearing (as per request)]****RAJIV SHAKDHER, J. (ORAL)**

1. This appeal is directed against the judgment dated 07.12.2023 passed by the learned Single Judge in an interlocutory application filed in the suit lodged by the appellant. The interlocutory application preferred under Order XXXIX Rule 1 & 2 of the Civil Procedure Code, 1908 [in short, 'CPC'] sought several prayers.

1.1. The prayer which is relevant for our purposes, even according to the counsel for the appellant, is prayer clause (b). For convenience, the said prayer clause is set forth hereafter:

“(b) Direct the Defendants to maintain status quo with respect to

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property situated at B-77, Chander Nagar, Ghaziabad, U.P.”

2. In sum, the appeal centres around the aforementioned property, which is described as B-77, Chander Nagar, Ghaziabad, U.P.

2.1. Concededly, this property is owned by the appellant/plaintiff. It is also not in dispute that the said property was offered as collateral security by the appellant/plaintiff for a loan that the partnership firm (i.e., respondent no. 4) obtained from Axis Bank. There is no dispute that the loan is outstanding.

3. Mr Varun Singh, learned counsel, who appears on behalf of the appellant, states that since the aforementioned property is not the property of the partnership firm/respondent No. 4, a direction should be issued to Respondent Nos. 1 to 3 to approach Axis Bank for release of the property.

4. In support of this plea, Mr. Varun Singh relies on the bank's communication dated 27.07.2023, calling upon Respondent Nos. 1 to 3 to consider releasing the property. Once again, for convenience, the relevant part of the letter is extracted hereafter:

“With refer to letter dated 22.07.2023, we bring into your notice that we already informed borrower M/s Supermax Laboratories for our consent for release of personnel guarantee of Mr Thakur Dass Bhatia and property documents bearing “Plot No. B-77, Block - B on ground floor, Sector-12, T.H.A. Residential Colony, Chander Nagar, Ghaziabad, Uttar Pradesh in the name of Mr Thakur Dass Bhatia” vide letter dated 17.03.2021.

You are requested to contact M/s Supermax Laboratories for releasing the property documents and cancelling the guarantee of Mr Thakur Dass Bhatia. Documents will be released with consent and presence of both borrower and mortgagor.”

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5. A perusal of the aforementioned letter addressed by Axis Bank to the appellant/plaintiff would show that it in substance calls upon the appellant to touch base with the partnership firm/Respondent No. 4) for securing release of his “property documents” and for cancellation of the personal guarantee furnished by him. There is no commitment by the Axis Bank, at least at this juncture, that it would lift their charge on the property in issue; although it has conveyed its consent to release of the property from its charge if the borrower and mortgagor/ appellant/plaintiff agree.

6. Mr Singh, however, relies upon Section 14 of the Indian Partnership Act, 1932 [in short, “the 1932 Act”] to contend that, since the aforementioned property is not the property of the partnership firm, the said property cannot be used by Respondent Nos. 1 to 4 to secure the loan taken from Axis Bank. In support of this plea, reliance is placed by Mr. Singh on the following judgments:

- (i) ***Arm Group Enterprises Ltd. v. Waldorf Restaurant & Ors.***, (2003) 6 SCC 423.
- (ii) ***Gurdeep Singh v. Jaspal Kaur***, 2022 SCC OnLine Del 4849.

7. We have heard Mr Singh at some length. According to us, there are several reasons that the appeal has no merit:

- (i) First, there was no prayer made in the application of the kind that is sought in the appeal [i.e., Respondent Nos. 1 to 4 should approach the Axis Bank for release of the charge on the aforementioned property].





- (ii) Second, the appellant cannot but accept that charge/equitable mortgage *qua* the aforementioned property was created voluntarily by the appellant when the loan was extended to the partnership firm/Respondent No. 4.
- (iii) Third, the loan, admittedly, is outstanding and Axis Bank has not agreed to release its charge *qua* the property unless the borrower and the mortgagor arrive at an agreed arrangement, which would ordinarily require substitution of the security.
- (iv) Fourth, Section 14 of the 1932 Act would have no application for the reason that it is no one's case that the property in issue is the property of the firm. Section 14 concerns with [albeit subject to contract between the partners], what would constitute the property of the firm. The Section provides that it would include all property and rights and interests in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm or for the purposes and in the course of business of the firm, besides the goodwill of the business. The presumption being that unless there is an intention to the contrary, property and rights and interests in property acquired with the money belonging to the firm are deemed to have been acquired for the firm. Therefore, as indicated above, all that Section provides for, is what would constitute the property of the firm.

7.1. As alluded to above, it is in this context that the two judgments relied upon by Mr. Varun Singh, hold that merely because a property not





belonging to the firm, is used for the business of the firm, it does not constitute a property of the firm.

7.2. Mr. Varun Singh, in our view, wrongly appears to extend the ratio of these judgments to include a property which is given as security to a third party. Based on this contention, Mr. Singh submits that since the aforementioned property is not the property of the firm, it cannot be used to defray the loan, in case it is not repaid.

7.3. In our opinion, there is nothing in the judgments cited before us which would have us conclude that the property which the appellant/plaintiff offered as security *qua* the loan extended by Axis Bank, would have to be released because it is not the property of the firm.

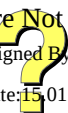
7.4. As a matter of fact, the learned Single Judge, in our view, has protected the interests of the appellant/plaintiff, by directing Axis Bank to deposit the title deeds with the Court once the loan is repaid.

7.5. In our view, the property can be released from the charge either by the lender, i.e. Axis Bank or if respondent Nos. 1 to 4 to approach the bank and offer an alternate security. No such eventuality has occurred.

8. Therefore, for the reasons stated hereinabove, we are of the view that no interference is called for with the impugned judgement. The appeal is, accordingly, dismissed.

8.1. Consequently, CM No. 1970/2024 is rendered inefficacious. It is, consequently, closed. The same result will follow vis-à-vis the other two applications, i.e. CM Nos. 1971/2024 and 1972/2024.

9. At this stage, Mr. Varun Singh says that the appellant/plaintiff be





given liberty to approach the lender, i.e. Axis Bank.

9.1. In our view, no such liberty is required. The appellant/plaintiff, on his own volition, if deemed fit, can approach the lender/Axis Bank.

10. Parties will act based on the digitally signed copy of the order.

RAJIV SHAKDHER, J.

AMIT BANSAL, J.

JANUARY 11, 2024/kd

Click here to check corrigendum, if any

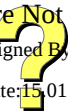
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