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

+ **FAO(OS) 51/2024, CM APPL. 24601/2024, CM APPL. 24602/2024
& CM APPL. 24603/2024**

DEEPAK SINGH

..... Appellant

Through: Ms. Nandni Sahni, Advocate

versus

MS GURBANI SINGH & ANR.

..... Respondents

Through:

%

Date of Decision: 29th April, 2024

CORAM:

HON'BLE THE ACTING CHIEF JUSTICE

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

JUDGMENT

MANMOHAN, ACJ: (ORAL)

1. This first appeal has been filed under Section 10 of the Delhi High Court Act, 1966, impugning the order dated 19th February, 2024 passed in CS(OS) No. 367/2022, whereby the learned Single Judge while hearing the application (IA. 3897/2024) filed by the Respondents i.e., the plaintiffs in the suit, under Order XXXIX Rule 10 of the Code of Civil Procedure, 1908 (CPC), directed the Appellant herein i.e., the defendant, to pay Rs. 15,000/- per month to the Respondents from the rent recovered from one of the suit properties bearing no. 12/33, Old Rajinder Nagar, New Delhi, as an interim arrangement till the disposal of the said application.



2. The Respondents herein have filed the underlying suit for partition seeking half share in the estate of late Sh. Govind Singh. The Respondents are the grandchildren of late Sh. Govind Singh and are claiming their share through their deceased father Sh. Rajat Singh. The Appellant is real Uncle of the Respondents. The suit for partition is with respect to three immovable properties i.e., (i) bearing no. 361, Double Storey, New Rajinder Nagar, New Delhi; (ii) bearing no. 362, Double Storey, New Rajinder Nagar, New Delhi and (iii) bearing no. 12/33, Old Rajinder Nagar, New Delhi.

3. The Respondents have asserted that property bearing no. 12/33, Old Rajinder Nagar, New Delhi ('subject property') is a coparcenary property owned by P.G. Sons HUF ('HUF').

4. The Appellant herein on 12th July, 2020, filed his written statement along with the Counter Claim in the said suit. The Appellant has admitted that late Sh. Govind Singh was the owner of property bearing no. 12/33, Old Rajinder Nagar, New Delhi ('subject property'), however, he has claimed exclusive ownership of the said property by virtue of testamentary devolution of interest on the basis of an unregistered Will dated 02nd March, 2016. The Appellant while categorically admitting to the existence of the HUF as a taxing entity has disputed that the subject property is owned by the said HUF.

5. In view of the assertions made by the Appellant in the written statement, Respondents filed an application bearing no. I.A. No.3897/2024, seeking direction to the Appellant to deposit the rental income (Rs. 50,000/-) from the property bearing no. 12/33, Old Rajinder Nagar, New Delhi, per month in Court or in alternate pay 50% of the admitted income from the said property to the Respondents for their sustenance.



6. The said application was taken up for hearing before the learned Single Judge and the Court observed that in view of the assertions made in the written statement, the existence of the HUF stands confirmed by the Appellant/defendant. Pertinently, at paragraph 4 of the written statement the Appellant admitted that he was recovering rent of Rs. 50,000/- per month from the subject property. The Respondents pleaded financial hardship and prayed for release of money equal to 50% of the said amount. The learned Single Judge relying on the averments made in the pleadings passed the impugned order, as an interim arrangement pending final adjudication of I.A. No. 3897/2024. The operative portion reads as under:

“10. Considering the fact that all the three properties are currently in the control of the Defendant, and the further fact that the present suit has been filed seeking declaration as also the written statement admits that the HUF did exist, the following directions are issued:

i. The status quo in terms of order dated 03rd June, 2022 shall continue;

*ii. **In view of the rental income which is being received by the Defendant in respect of property in question i.e., 12/33, Old Rajinder Nagar, New Delhi-110060, the Defendant shall pay to the Plaintiffs a sum of Rs. 15,000/- per month for the everyday expenses and maintenance;***

iii. Ld. Counsel for the Defendant refutes the fact that the access to the kitchen is not been given. In view thereof, it shall be ensured that the Plaintiffs shall be given free access to the kitchen and to the common areas.

11. This shall be the interim arrangement till the disposal of this application.

(Emphasis supplied)

7. Learned counsel for the Appellant states that the impugned order dated 19th February, 2024 is contrary to the principle of Order XXXIX Rule 10 CPC as there is no such admission of liability by the Appellant in the written statement. She states that nature of admission to justify an order/direction under Order XXXIX Rule 10 CPC is akin to the admission



as envisaged under Order XII Rule 6 CPC. She states that admission has therefore to be clear and unambiguous.

7.1. She states that the Respondents were under a statutory compulsion to demonstrate that the Appellant has clearly admitted not only the existence of the HUF but also that the property was HUF and not inherited by Late Shri Govind Singh from his father.

7.2. She states that by virtue of the unregistered Will dated 02nd March, 2016 the Appellant is the sole owner of the subject property and therefore, is under no legal obligation to maintain the Respondents or pay them any monies. She fairly admits that the genuineness and validity of the Will is not admitted by the Respondents and is pending proof in probate proceedings.

8. We have heard the learned counsel for the Appellant and perused the record.

9. Though, the suit has been filed for partition of three immovable properties, yet the subject matter of the impugned order is only property bearing no. 12/33, Old Rajinder Nagar, New Delhi ('subject property'). The Appellant admits that the subject property was owned by late Shri Govind Singh and the Appellant alongwith Respondents are the Class-I legal heirs of late Shri Govind Singh. Thus, in ordinary course, Respondents are entitled to 50% share in the subject property by operation of Hindu Succession Act, 1956.

10. However, the Appellant has disputed the share of the Respondents in the subject property by relying upon an unregistered Will dated 02nd March, 2016. The Respondents dispute the alleged Will dated 02nd March, 2016 and therefore the onus to prove the validity of the Will is on the Appellant.



11. The Appellant has admitted in the written statement at paragraph 4 under the section of para-wise reply on merits that he is recovering rent of Rs. 50,000/- from the subject property. In addition to the subject property, the Appellant is also claiming absolute ownership rights in two other immovable properties inherited from late Shri Govind Singh to the exclusion of Respondents herein. The Appellant is thus in control of all the three suit properties and is enjoying the same during the pendency of the suit.

12. The Respondents on the other hand have pleaded financial hardship and prayed for directions of payment of 50% of the rent of Rs. 50,000/- collected from the subject property. The Respondents are admittedly very young, orphaned and financially dependent on the Appellant who is their Uncle.

13. In the aforementioned facts, the interim arrangement directed by the learned Single Judge, pending final disposal of I.A. No. 3897/2024, appears fair and reasonable and does not merit any interference in this appeal. The contention of the Appellant that a direction for deposit under Order XXXIX Rule 10 CPC can be passed only if the admission is unambiguous and unequivocal as required for passing judgment under Order XII Rule 6 CPC is misconceived. This Court in *Nokia Technologies Oy v. Guangdong Oppo Mobile Telecommunications Corp Ltd. & Ors.*¹ has negated the said submission and held as under:

“THE TEST APPLICABLE FOR PASSING A JUDGMENT UNDER Order XII Rule 6 CANNOT BE IMPORTED INTO ORDER XXXIX RULE 10
64. This Court is of the view that the impugned judgment **incorrectly** holds that the scope of Nokia's application under Order XXXIX Rule 10 is narrower than under Order XII Rule 6 CPC.

¹ 2023 SCC OnLine Del 3841



65. This is because Order XII CPC deals with “Admissions” whereas Order XXXIX CPC deals with “Temporary Injunctions and Interlocutory Orders”. The language of Order XII Rule 6 CPC requires an “admission of fact”, whereas Order XXXIX Rule 10 CPC only requires a party to admit that money is due to other party. Further, the Court is entitled under Order XII Rule 6 CPC to pass a judgment on admission as the Legislature itself conceptualized Order XII Rule 6 CPC to be applicable on an admission “of fact” where no further trial is required by the court to deliver its judgment, whereas the Court is entitled under Order XXXIX Rule 10 CPC to pass interim orders.

66. The said admission though sufficient for an interim deposit order under Order XXXIX Rule 10 CPC, is further subject to the outcome of trial. Thus, as Order XXXIX Rule 10 CPC has been enacted for passing interim orders pending the final outcome of the suit only, the threshold for admissions necessarily has to be different than that under Order XII Rule 6 CPC.

67. Had the scope been narrower, or even identical, then the Legislature in its wisdom, would not have enacted two separate provisions of law to cater to two different situations.

68. The Division Bench of the High Court of Bombay in **Rajul Manoj Shah v. Navin Umarshi Shah** (supra) has rightly held that the threshold of admission required for applicability of the two provisions is different and applying a strict standard of Order XII Rule 6 CPC would make the existence of Order XXXIX Rule 10 CPC otiose. This Court is also in agreement with the view of the Bombay High Court in Rajul Manoj Shah v. Navin Umarshi Shah (supra) to the extent it disagrees with the ratio of the judgment of the learned Single Judge of this Court in Harish Ramchandani v. Manu Ramchandani (supra) and holds that the test applicable for passing a judgment on admission under Order XII Rule 6 cannot be imported in Order XXXIX Rule 10 CPC which empowers the Court to pass an interim order. The relevant portion of the judgment in Rajul Manoj Shah (supra) is reproduced hereinbelow:—

22.....The power under Rule 10 of Order XXXIX is a power to pass an interim order pending suit. But the power under Rule 6 of Order XII is a drastic power of passing a decree on admission without conducting trial. The standards applicable to a provision conferring power to pass a decree on admission cannot be applied to Rule 10 of Order XXXIX which empowers the Court to pass an interim order. Therefore, in our view, the test applicable for passing the judgment on admission under Rule 6 of Order XII of the said Code cannot be imported in Rule 10 of Order XXXIX.....”

69. This Court is further of the opinion that the judgment of the Supreme Court in **Karan Kapoor v. Madhuri Kumar** (supra) does not hold that the test of Order XII Rule 6 CPC has to be applied while deciding an application under Order XXXIX Rule 10 CPC.”

(Emphasis supplied)



14. Accordingly, the present appeal along with pending applications stand dismissed.

ACTING CHIEF JUSTICE

MANMEET PRITAM SINGH ARORA, J

APRIL 29, 2024/hp/sk

Click here to check corrigendum, if any