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

+ **EX.F.A. 31/2024 & CM APPL. 56442/2024**

RAJIV GAMBHIR

.....Appellant

Through: Ms.Kirti Mewar and Ms.Eesha
Shonak, Advocates.

versus

ANUPAMA MOTWANI AND ANR & ANR.Respondents

Through: Mr.Sanjeev Mahajan, Mr.Aman
Sareen and Mr.Gurpratap Singh,
Advocates for R-1.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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14.10.2024

1. Heard learned counsel appearing on behalf of the appellant.
2. In addition to the submissions made by learned counsel for the appellant which stood recorded in order dated 25.09.2024, she submits that if the entire reasoning of the impugned order dated 12.07.2024 is perused, the same would clearly indicate that the Executing Court has rejected the objection only on the basis of mere surmises and conjectures. She also submits that the documents demonstrating the tenancy of the appellant were duly placed on record.
3. Learned counsel for the appellant further submits that the Trial Court ought to have recorded the evidence and after due appreciation of the material, should have rendered the findings. In absence of a fair trial to



adjudicate upon the objections and the contentious issue with respect to the tenancy of the appellant, the impugned order suffers with material illegality and perversity. She, therefore, submits that the impugned order deserves to be set aside and the Executing Court be directed to proceed to consider the objections raised and shall decide the same after recording the evidence of the parties.

4. I have considered the submissions made by learned counsel appearing on behalf of the appellant and also perused the record.

5. This Court while issuing the notice to the respondents *vide* order dated 25.09.2024, has taken into consideration the decisions relied upon by learned counsel for the appellant with respect to her primary submission that in absence of there being any specific relief of possession, the Executing Court ought not have issued a warrant of possession. The Court without taking note of the said position has passed the interim order.

6. When the matter was called out, learned counsel appearing on behalf of the respondent places reliance on a decision passed by the Supreme Court in the case titled as *Manickam alias Thandapani and Another vs. Vasanthat*¹ and contends that the relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. He then submits that if the enunciation of law laid down by the Supreme Court in the case of *Manickam alias Thandapani* is carefully perused, the same would clearly indicate that the relief of possession *vide* decree for specific performance is inherent.

7. Paragraph nos.25 and 26 of the said decision are reproduced as under:-



“25. A perusal of the aforesaid judgments would show that relief of possession is ancillary to the decree for specific performance and need not be specifically claimed. That was the position even under the Specific Relief Act, 1877. Section 22 of the Act was introduced in pursuance of the recommendation of the Law Commission to avoid multiplicity of proceedings and to cut down the delay. Therefore, though the preponderance of judicial opinions under the Specific Relief Act, 1877 was in favour of the fact that relief of possession is ancillary to the decree for specific performance, it was further clarified by introducing Section 22 of the Act.

26. The matter can be examined from another angle as well. Section 22(2) of the Act, though is worded in negative language, "no relief under clause (a) or clause (b) of sub-section (1) shall be granted by the court unless it has been specifically claimed", but the proviso takes out the mandatory nature from the substantive provision of sub-section (2) when the plaintiff is allowed to amend the plaint on such terms as may be just for including the plaint for such relief "at any stage of the proceeding". "At any stage of the proceeding" would include the proceeding in suit or in appeal and also in execution. The proviso to sub -section (2) of Section 22 of the Act contemplates that the Court shall, at any stage of the proceedings, allow the plaintiff to amend the plaint on such terms as may be just for including a claim for such relief. The said proviso makes the provision directory as no penal consequences follow under sub-section (2) of Section 22. Therefore, sub-section (2) of Section 22 is a rule of prudence to ask for possession "in an appropriate case". The appropriate case would not include a suit for specific performance simpliciter but may include a suit for partition or a suit when the decree is to be executed against a transferee. Sub-section (2) cannot be said to be a mandatory provision as the power to claim relief at any stage of the proceeding makes sub-section (2) directory. Subsection (2) is a matter of procedure to avoid multiplicity of proceedings. The procedural laws are handmaid of justice and cannot defeat the substantive rights. Reference may be made to Ganesh Trading Co. v. Moji Ram ³ wherein it was held as under:

"2. Procedural law is intended to facilitate and not to obstruct the course of substantive justice. Provisions relating to pleadings in civil cases are meant to give to each side intimation of the case of the other so that it may be met, to enable courts to determine what is really at issue between parties, and to prevent deviations from the course which litigation on particular causes of action must take."

¹ 2022 SCC OnLine SC 2096



8. Reliance has also been placed on behalf of the respondent on a decision of the Supreme Court in the case titled as ***Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and Another***² with specific reference to paragraph no.14 thereof, which reads as under:-

‘14. It is clear that the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary.’

9. It is, thus, seen that in view of the aforesaid exposition of law which clearly states that the relief of possession is ancillary to the decree for specific performance and need not be specifically claimed, the primary argument raised on behalf of the appellant deserves to be rejected.

10. With respect to the additional argument raised on behalf of the appellant that the Trial Court ought not to have rejected the objection without recording the evidence is concerned, the Court has perused the findings rendered by the learned Trial Court in Paragraph nos. (e) to (h), which read as under:-

“....

E) On appreciating the record, I have reached a conclusion that there are various facts and circumstances which provide support to the argument of the DH that the objections are an afterthought. If the story of the objector is to be believed, it means JD inducted him as a tenant in the suit property after executing a rent deed dated 30.03.2004, for a period of five years, on a rent of Rs.600/- per month. Admittedly, the tenancy was created for a period of five year but the rent deed was not registered, although, the same was required to be compulsory registered

² (1998) 3 SCC 723



as per Section 17 of The Registration Act. In view of this, the bar created under Section 49 of The Registration Act applies in full force and the rent deed becomes inadmissible.

F) The argument that the rent deed has been created subsequently find support from the fact that Agreement-to-Sell dated 25.05.2005 did not contain any averment to the effect that the property was being occupied by the objector. It can be seen from the record that although, JD filed an appeal against the judgment dated 17.04.2017 but he did not mention before the Appellate Court that there is a tenant in the suit property.

G) The conclusion that the story of tenancy is concocted draws further support from the fact that neither the original rent agreement nor the original addendum has been placed on record. The objector claims that he took the suit property on rent for commercial purposes but not even a single document has been placed on record to demonstrate that he was doing any sort of business from the said premises at any point of time. It is also noted that the objector has also not placed on record any rent receipt or proof to show that he paid rent to the JD at any point of time.

H) The story of tenancy appears to be improbable. It is the case of the objector that the rent of the suit property was Rs. 600/- per month excluding electricity & ,water charges. He has mentioned that the tenancy was created on 30.03.2004 by means of a rent deed and it was extended by means of an addendum dated 29.03.-2019. I have perused both the documents. Clause 3 of the addendum recites that the rent agreement stands extended for four more terms of five years each and would remain valid till the year 2044. In case, the story of the objector is believed to be correct, it means that JD inducted him as a tenant in the suit property on 30.03.2004 at a rent of Rs.600/- per month, and he kept occupying the same for a period of 15 years and thereafter, JD extended the tenancy for a further period of 25 years by executed an addendum by increasing the rent from Rs. 600 to Rs. 950/- per month. No sane or prudent would do so. This circumstance goes on to show that there is a collusion between the objector and JD. They are convincing with each other to create a false story for the purpose of defeating the decree. The compromise deed dated 11.12.2019 and the civil suit for injunction were also steps in the said direction. It is no surprise that JD compromised the matter with the objector in the civil suit of permanent injunction. The collusion between the objector and the JD is writ large. Every such effort to abuse the process of law should be put to rest at the earliest. I have reached a conclusion that there are no merits in the objection filed by the objector Rajiv Gambhir. The same are accordingly rejected/dismissed with a cost of Rs.25,000/- (Rupees Twenty Five Thousand only) to be paid to DH.

It is found from the record that the pay orders submitted by the DH



are still lying on the judicial file. DH is directed to revalidate the same and submit the same in the court. DH has filed an application seeking warrants of possession of the suit property. The certificate for transferring the lease ' hold right already stands registered in favour of the DH. In view of this, issue warrants of possession of the suit property bearing No.17-6, West Patel Nagar, New Delhi-110008 upon filing of PF. DH to file affidavit regarding no stay at the time of filing of PF and also submit the re-validated pay orders.

DH to appear before Ld.ACJ for appointment of Bailiff on 30.07.2024 and before this court on 27.09.2024.”

11. If the findings are carefully analyzed, the same would clearly manifest that the present appellant is claiming to be the tenant of respondent no.2, the Trial Court has recorded in the impugned order that the Agreement to Sell dated 25.05.2005, did not contain any averments to the effect that the property was being occupied by the obstructor. The adjudication of any objection under Order 21 rule 97 of the CPC may not, in all cases, require recording of the evidence.

12. The Court, at this stage, concurs with the view taken by the Appellate Court and finds no reason as to why the aforesaid important aspect did not find any recital in the Agreement to Sell dated 25.05.2005.

13. Having noticed the overall findings and the other issues, as has been discussed, the Executing Court has rightly dismissed the objection without recording the evidence, as no *prima facie* case is made out in favour of the appellant to record the evidence.

14. The instant appeal is, therefore, dismissed along with pending application.

PURUSHAINDR KUMAR KAURAV, J

OCTOBER 14, 2024

Nc/dp



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