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

+ **C.R.P. 302/2024 & CM APPLs. 61505-61507/2024**

ASHISH VERMA

.....Petitioner

Through: Mr. Rahul Gupta, Mr. Shekhar Gupta,
Mr. Arav Kapoor & Mr. Raghvednra
Pratap Rao, Advocates.

versus

KANTA CHUGH & ORS.

.....Respondents

Through: None.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

21.10.2024

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1. The present Petition under Section 115 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of the Revisionist-Defendant to set aside the following Orders passed by the learned Additional District Judge, North-West District, Rohini Courts, Delhi in Civil Suit bearing CS DJ No. 640/2021 titled *Smt. Kanta Chugh vs. Sh. Ashish Verma*: -

(i) *Order dated 23.09.2024 vide which the Application under Section 10 of CPC, 1908 filed by the Revisionist-Defendant seeking stay on the proceedings in CS DJ No. 640/2021, has been dismissed.*

(ii) *Order dated 23.09.2024 vide which the Application under Order XLVII of CPC, 1908 filed by the Revisionist-Defendant seeking Review of the Order dated 12.07.2023 vide which the Application under Order VIII Rule 10 of CPC, 1908 filed by the Respondents/Plaintiffs has been allowed, has been dismissed.*



(iii) *to quash the Order dated 29.09.2024 dismissing the Objections of the Revisionist-Defendant to the Execution Petition.*

2. Learned counsel for the Revisionist-Defendant after some arguments submits that the alleged challenge to the Orders pertaining to the dismissal of the Review Application and dismissal of the Objections to the Execution Petition of the Decree of Possession (at serial no (ii) & (iii) may be permitted to be withdrawn with liberty to seek appropriate remedy.

3. In view of the submissions made, the challenge to the Orders pertaining to the dismissal of the Review Application and dismissal of the Objections to the Execution Petition of the Decree of Possession is permitted to be withdrawn with liberty as prayed for.

4. The present Revision Petition is confined to dismissal of Application under Section 10 of CPC, 1908 filed by the Revisionist-Defendant which was dismissed *vide* Order dated 23.09.2024.

5. The Revisionist/ Defendant herein had filed a *Civil Suit bearing No. CS DJ No. 455/2020 seeking Specific Performance of the Contract/Agreement dated 01.10.2014 and for Permanent and Mandatory Injunction*, allegedly executed by him with the Respondents herein which is still pending consideration.

6. While the said Suit was pending, the respondents/plaintiffs filed another *Civil Suit bearing CS DJ No. 640/2021 seeking Possession of the Suit Property No. 213, MP Mall, Pitampura, Delhi and Mesne Profits* from the Revisionist herein (defendant). The defence of the Revisionist/ defendant in the said Suit, was struck off *vide* Order dated 12.10.2022. The Revisionist-Defendant filed the Application under Order IX Rule 7 of CPC, 1908 seeking to set aside the Order *vide* which the opportunity of filing the



Written Statement was struck off. However, the said Application was dismissed *vide* Order dated 12.07.202 by the learned Additional District Judge by observing that despite due service, the Revisionist-Defendant has failed to file the Written Statement. Hence, the Court refused to exercise its discretion in his favour and the Application got dismissed.

7. Thereafter, the Suit of the respondents/plaintiffs herein was partially allowed and a Decree of Possession had been passed in their favour and against the Revisionist-Defendant though the said Suit is still pending in respect of the mesne profits.

8. Thereafter, the Revisionist-Defendant filed an Application under Section 10 of CPC, 1908 seeking stay of the second Suit bearing CS DJ No. 640/2021 pending for recovery of *Mense Profits*, on the ground that the earlier Suit bearing CS DJ No. 445/2020 filed by the Revisionist/defendant seeking Specific Performance of the Contract/Agreement dated 01.10.2014 and for Permanent and Mandatory Injunction, was still pending consideration.

9. It was claimed that the issue in both the Suits were substantially the same and pertaining to the same suit property. Therefore, the trial of the second Suit CS DJ No. 640/2021 which is still pending, be stayed.

10. The learned Additional District Judge, in the impugned Order observed that the second Suit No. 640/2021 was filed by the Respondents-Plaintiffs on the premise that the Revisionist-Defendant had been permitted to reside in the Suit Property No. 213, MP Mall, Pitampura, Delhi and had sought possession and mesne profits thereof. The first Suit No. 445/2020 filed by the Revisionist (defendant) herein on the other hand, was for Specific Performance of the Contract/Agreement dated 01.10.2014



and for Permanent and Mandatory Injunction, allegedly executed by him with the Respondents herein. It was observed that the cause of action in both the Suits was different and the reliefs so claimed were also different. Hence, the Application under Section 10 of CPC, 1908 filed by the Revisionist-Defendant was dismissed *vide* Order dated 23.09.2024 passed in CS DJ No. 640/2021.

11. Aggrieved by the Order dated 23.09.2024, the present Revision Petition has been filed on behalf of the Revisionist-Defendant.

12. **Submissions heard.**

13. From the record, it is evident that while an earlier Suit bearing CS DJ No. 445/2020 had been filed by the Revisionist claiming Specific Performance of the Contract/Agreement dated 01.10.2014 allegedly executed by him with the Respondents herein, and for Permanent and Mandatory Injunction, which is still pending, the respondents had filed Suit bearing CS DJ No. 640/2021 for the Possession of the Suit Property No. 213, MP Mall, Pitampura, Delhi and mesne profits from the Revisionist on the ground of his possession being permissive.

14. The subject matter in both the Suits is the same i.e., both the Suits pertain to the same Suit Property No. 213, MP Mall, Pitampura, Delhi, but they are essentially in the nature of Counter- Claim. While the plaintiff had sought possession on the ground that the revisionist was in permissive possession which got terminated by him, entitling him to possession which has been granted, the Revisionist has sought the Specific performance of an Agreement. His Suit rests on independent facts and the relief claimed is different. It has been rightly observed in the impugned Order that there is no issue which is substantially the same in two Suits. Furthermore, the Suit



bearing CS DJ No. 640/2021 seeking Possession of the suit property already stands decreed against the Revisionist. Even though, it may be pending for the purpose of mesne profits/damages, but the substantive relief has already been granted against the Revisionist.

15. There being no Suit pending in regard to the possession of the suit property, Section 10 of CPC, 1908 in any case could not have been invoked.

16. There is no impropriety in the impugned Order dated 23.09.2024.

17. Accordingly, the present Revision Petition along with pending applications is hereby dismissed.

NEENA BANSAL KRISHNA, J

OCTOBER 21, 2024

S.Sharma