

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

Reserved on : 08.09.2009
Pronounced on : 30.10.2009

+ **CS(OS) 994/2002**

B.L. MALHOTRA & ANR.

..... Plaintiffs

Through : Mr. S.C. Anand, Advocate.

Versus

DDA

..... Defendants

Through : Mr. Rakesh Mittal and Ms. Meenu Pandey,
Advocates, for DDA.

Mr. R.V. Sinha and Mr. A.S. Singh, Advocates, for UOI.

Mr. Rajat Aneja, Advocate, for Defendant No.5

Mr. Amitabh Marwah, Advocate, for Defendant No.12.

CORAM:

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

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| 1. | Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. | To be referred to Reporter or not? | Yes |
| 3. | Whether the judgment should be
reported in the Digest? | Yes |

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

I.A. No. 692/2009 (Under Order 7 Rule 11) in CS (OS) in 994/2002

1. The present order would dispose of an application, I.A. No. 692/2009, filed by the Defendant No.2 in CS (OS) 692/2009, Mr. Ranjit Lal Malhotra, for rejection of the suit.
2. The brief facts are that the suit is filed by Mr. Bikramjit Lal Malhotra (hereafter called "B.L.Malhotra") and Mr. Vijay Dixit (hereafter called "Dixit", the second plaintiff), claiming injunction against the Delhi Development Authority (hereafter called "DDA"), and anyone

acting on its behalf from implementing a Lease Cancellation Order dated 04.03.2002, as regards property no. F-5, East of Kailash, New Delhi (hereafter called “the suit property”) and from interfering with peaceful use and occupation of the plaintiffs and their employees, transferors etc.

3. According to the suit averments, one Mr. Charanjit Lal Malhotra (hereafter called “Charanjit Lal”) was the owner of leasehold rights in regard to the suit property, pursuant to a Registered Deed dated 28.12.1972. On his death, his legal heirs, i.e. B.L. Malhotra and his sons, Ranjit Lal Malhotra (hereafter called “R.L. Malhotra”) and Inderjit Lal Malhotra (hereafter called “I.L. Malhotra”) and daughter, Ms. Meera Malhotra (hereafter called “Meera”) succeeded to his estate. The DDA mutated the property in favor of those legal heirs by a letter dated 27.11.1995. It is contended that the said heirs of Charanjit Lal entered into agreements to sell on 28.06.1996, in favor of Dixit and constituted him as their lawful attorney through a deed. The suit significantly alleges that Dixit took possession of the suit property in part-performance of the agreement, entered into further agreements to sell with the other owners and sought for conversion of the suit property, sometime in 1997. It is stated that Dixit also got the building plans sanctioned from the DDA. The suit states that the construction of the building was completed and that B.L. Malhotra as well as Dixit are in use and occupation of the building.

4. The suit alleges that the plaintiffs became aware of an order dated 13.03.2002 issued by the DDA, canceling the Lease Deed on the ground that the said heirs of Charanjit Lal had entered into agreements to sell the property, contrary to the terms of Lease Deed, particularly, Clause-II-(5)(a)(11)(13) of the Lease Deed; it was also alleged that the Show Cause Notice dated 22.11.2001 had not been responded to. The Lease Cancellation Order was issued on

04.03.2002; the letter directed that the possession of the suit property should be handed-over to the DDA.

5. The suit alleges that the DDA acted illegally and without jurisdiction in issuing the Show Cause Notice and proceeding to cancel the lease. The plaintiffs point to the existing policies of DDA to contend that they permit lessees to enter into Agreements to Sell and also execute General Power of Attorney which can be utilized for converting the leasehold property into freehold. The plaintiffs also mention about a Show Cause Notice dated 28.10.1999 and allege that they never violated the terms of the Lease Deed. Initially, the plaintiffs had impleaded only the DDA as party-defendant; however, by an order dated 10.09.2007, the Court allowed Mr. R.L. Malhotra, another heir of Charanjit Lal to be impleaded as a party Defendant No.2; the said R.L. Malhotra also filed a written statement on 10.07.2008.

6. This Court, by an order dated 10.09.2007 also dismissed the suit so far as Dixit was concerned, for non-prosecution, since Mr. S.C. Anand, who used to appear on his behalf stated that he was no longer representing him.

7. Defendant No.2 alleges that the suit is liable to be dismissed because the alleged cause of action is the Lease Cancellation Order dated 04.03.2002 and that the plaintiffs are seeking permanent injunction without challenging the legality of such statutory order. It is contended that by virtue of Section 41(h) of The Specific Reliefs Act, the relief of injunction, simplicitor in the absence of any other declaratory relief concerning the legality of the cancellation order, is not maintainable. It is pointed out that the suit clearly mentions that B.L. Malhotra had handed-over possession of the suit after entering into an agreement to sell, with Dixit. Learned counsel also emphasized that B.L. Malhotra has nowhere signed on

the suit nor supported it with his affidavit and instead, his counsel is pressing the action on the basis of averments verified by Dixit, as his (first plaintiff's) attorney, even though the said Dixit's suit has been dismissed.

8. It is also submitted that the averments in the suit that the plaintiffs were in use and occupation of the building is contrary to the earlier stand that possession was handed-over to Dixit by B.L. Malhotra and other co-owners. Having regard to these facts, there is no question of any suit for injunction surviving *vis-à-vis* B.L. Malhotra. It is contended that all legal heirs of Charanjit Lal have filed suits in this Court and also before the District Courts through common counsel. In this context, the Court's notice is brought to orders made in C.R.P. 114, 119 and 120 dated 16.11.2008, by this Court which had dismissed the three suits.

9. Mr.S.C. Anand, appearing on behalf of B.L. Malhotra submitted that the present suit is maintainable and that the Court has framed issues after considering all the pleadings and circumstances. Learned counsel stated that the second defendant has not demonstrated how the suit is barred for the technical reason of B.L. Malhotra not signing the plaint. It was emphasized that though the relief of declaration that the cancellation of the lease deed, by an order of DDA dated 04.03.2002, has not been specifically claimed, such relief has been sought in two other suits, i.e. Suit No. 1310/2002 (filed by Ms. Indu Bala, one of the legal heirs of I.L. Malhotra) and Suit No. 1033/2003, filed by the estate of Ms. Meera Malhotra. DDA contends that the plaintiffs have concealed material facts and that the suit property was being misused for commercial purposes, even though the lease required its use to be residential.

10. Section 41(h) of The Specific Relief Act mandates that injunction cannot be granted when equally efficacious relief can certainly be obtained by any other usual mode of proceeding, except in case of breach of trust. Section 41(j) similarly states that relief should be refused if the plaintiff has no personal interest in the matter. In this case, the suit averments would disclose that Charanjit Lal was the original lessee; upon his death, the estate was succeeded to by his five children, including B.L. Malhotra. They concededly entered into an agreement to sell their interest or share in the suit property, with Dixit; para 6 of the suit avers that he was handed-over possession of the property. It is a matter of record that the DDA issued a statutory order on 04.03.2002, canceling the Lease Deed. The suit does not seek any declaration about the invalidity of the order or that it violates any provision of law. It proceeds on the assumption that the DDA can be restrained from taking-back possession, notwithstanding the existence of such an order.

11. The materials on record disclose that this Court, in C.R.P.114, 119 and 120/2006 allowed applications under Order 7 Rule 11 CPC, and rejected the suits filed by the legal heirs, Dixit and I.L. Malhotra; that order reads as follows:

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.....6. It is settled law that while considering an application under Order 7 Rule 11 of the CPC, the Court has to read the plaint in a exhaustive and meaningful manner and the plaint has not to be read only in a formal and cursory manner. If the Court finds that there was gross misuse of process of law and the judicial process was being misused, the Court is duty bound to nip the evil in the bud. Drafting craft of the plaint should not be allowed to create confusion and should not be allowed to play fraud with the Court. A clever and crafty drafting should not be allowed to encourage bogus litigation and bogus litigation must be stopped at the initial stage itself

7. It is apparent from the reading of the plaint and the reliefs claimed that the plaintiff had not disclosed the material facts before the Court and had not come to the Court with clean hands and the reliefs sought were not

maintainable and could not have been granted by the Court. A notice had already been issued by the DDA to show cause why lease should not be cancelled. In light of this notice, the Court could not have entertained a suit for permanent injunction restraining DDA from acting according to law and if warranted from canceling the lease of the property. Once a show cause notice is issued, the Court cannot intervene into the proceedings and stop the enquiry under show cause notice, unless and until the show cause notice is without jurisdiction. By clever drafting, the plaintiff in this case did not state about the issuance of show cause notice and prayed to the Court that the DDA be restrained from cancelling the lease of the property as mentioned in the notice dated 22nd November, 2001. Once a notice is issued in accordance with law, a party cannot approach the Court that the respondent authority should be stopped from acting in accordance with law. This relief could not have been granted by the court nor the suit could have been entertained. Moreover, no suit can be filed for future cause of action. In the present case, the suit had been filed for a future cause of action. The plaintiff prayed to the Court that in case DDA happened to rescind the said lease during the pendency of the case, such order passed by the DDA be declared as illegal and non-operative. The first Civil Judge had noted these anomalous prayers made by the plaintiffs and also noted the vagueness of pleadings and considering the Written statement, it framed preliminary issue. However, the transferee Civil Judge seemed to be in a motivated hurry and without giving hearing to the defendants, on the very day the case was received, dismissed the application under Order 7 Rule 11 CPC holding that the suit was maintainable. The order passed by the trial court is contrary to law and seems to be deliberately passed. It was brought to the notice of the Civil Judge that after cancellation of the lease deed, the property became a public premises and proceedings under public premises had already been initiated and the Civil Judge has no jurisdiction. However, the transferee Civil Judge, despite these submissions and despite these facts on record, observed that the suit was maintainable. It only seems that the transferee Civil Judge deliberately closed his eyes to the frame of the suit the facts and the prayers. Section 41 of the Specific Reliefs Act specifically bars granting of an injunction in restraining a person from prosecuting the judicial process. Where a competent authority has issued a show cause notice and is acting in accordance with law, no Court can issue injunction restraining an authority from acting in accordance with law. Neither in the garb of an injunction, a suit can be filed qua future cause of action that if in future, the lease deed is cancelled, such order be declared inoperative and void. When a show cause notice had been issued, the plaintiff was bound to show cause before the DDA itself. The Court could not have called upon the DDA to clarify as to what action it proposes to take in respect of the show cause notice and whether it was going to compound the misuser,

past and future, or not. Neither the Court could compel the DDA to levy or disclose the charges levied so that the court may pass a decree against the defendants in the suit already filed against them.

8. In the result, these three petitions are allowed. The impugned orders are hereby set aside. The suit filed by the plaintiffs are not maintainable. The prayers sought by the plaintiffs are beyond the purview of Specific Relief Act and the suit for future cause of action cannot held to be maintainable. The suits were liable to be dismissed on the face of it. The applications under Order 7 Rule 11 of the CPC, moved in all the three suits, are hereby allowed and the suits filed by the plaintiffs are hereby dismissed being devoid of any cause of action and devoid of any substance, it is also apparent that the plaintiffs have approached the Court with unclean hands.....”

12. The suit was instituted by Dixit as the attorney of B.L. Malhotra, who concededly did not sign or verify the pleadings. Till date, those pleadings have not been verified on his behalf. The suit further clearly states that possession was handed-over to Dixit immediately after the agreements to sell were entered into by B.L. Malhotra, in 1996. Although in a later part of the suit, it is averred that both the plaintiffs are in use and occupation of the premises; that, in the opinion of the Court, is an inconsistent plea, having regard to the overall circumstances.

13. In view of the above discussion and in view of the order of this Court in C.R.P. 114,119 and 120/2006, this Court is of the opinion that the suit cannot be maintained in its present form as it seeks relief of permanent injunction without any corresponding relief of cancellation or declaration as regards DDA's order dated 04.03.2002. That order concededly was made in exercise of statutory powers under *The Delhi Development Act, 1957*, and would bind the parties or their subject matters. Besides, the Court is also of the opinion that since the invalidity of the said order has been put directly in issue in another suit, filed by Ms. Indu Bala (Suit No.

1310/2002), as one of the reliefs, and to which proceeding, the other parties have also been impleaded, continuing to permit the present suit to be proceeded with would amount to abuse of process of Court. For these reasons, the Court is satisfied that the suits are not maintainable by reason of Sections 41(h) and 41 (j) of The Specific Relief Act.

14. For the above reasons, CS (OS) 994/2002 and all pending applications are hereby rejected.

**S. RAVINDRA BHAT
(JUDGE)**

**October 30, 2009
'ajk'**