



2024:DHC:3932



\$~1

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

% *Date of decision: 8th May, 2024*

+ **CS(COMM) 793/2023, I.A. 14360/2017**

M/S METRO BUILDTECH PRIVATE LIMITED Plaintiff

Through: Mr. Ashim Shridhar, Ms. Niyati
Patwardhan and Ms. Radhika Gupta,
Advocates

versus

MR. SHRIDHAR Y. CHITALE & ANR Defendants

Through: Mr. Akash Madan, Advocate for D-1.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T (oral)

**I.A.6869/2024 (under Order V Rule 1 CPC, Order VIII Rule 1 read
with Section 151 CPC)**

1. The present application has been filed on behalf of Defendant No. 1 under Order VII Rule 1 CPC for condonation of delay of 41 days in filing the Written Statement.

2. This Court vide Order dated 31.10.2023 had directed the defendants to file their Written Statement within 30 days. However, defendant No. 1 failed to comply with the order as the parties have been in mediation since the inception of the Suit wherein several attempts have been made to bring a quietus to this dispute.

3. **It is submitted in the application** that the perpetual Sub Lease relied upon by the plaintiff was not legible which had hampered the preparation of



Written Statement, within time. It is also submitted that Defendant No. 2 clandestinely removed the documents upon the demise of defendants' mother. It thus, took significant time and effort for defendant No.1 to compile the documents in support of his case.

4. Further, even though the Mediation talks were concluded on 31.10.2023, the Defendant No. 1 had still been approaching Defendant No. 2 for settlement.

5. **Learned counsel on behalf of the plaintiff** has opposed the application and has submitted that the delay is not of 41 days but is of 82 days in filing the Written Statement. It is also submitted that no cogent explanation has been given by the Defendant for the delay in filing the Written Statement.

6. Submissions heard.

7. The first reason given in the application is that the copy of the perpetual Sub Lease, the document on the basis of which the Defendant No. 1 is deriving the title, was not legible. However, the perpetual Sub Lease was not in dispute and was not a document which could have hampered the preparation of Written Statement in time.

8. Though it is asserted that various records have been taken away by the Defendant No. 2, the details of the records which were taken away and that were required for the preparation of the Written Statement, have not been disclosed. There is also no Notice, whatsoever, given to the Defendant No. 2 for production of the so called records, removed by him clandestinely.

9. However, this is a suit for Specific Performance of the Collaboration Agreement. In the interest of justice and considering that the delay is condonable being within the permissible time for filing it, the application is



2024:DHC:3932



allowed and the delay is condoned subject to payment of costs of Rs. 25,000 to the plaintiff within 15 days.

10. List before the learned Joint Registrar for the date already fixed i.e.02.07.2024.

I.A 10453/2024(under Order VII Rule 11 CPC)

11. The present application has been filed on behalf of Defendant No. 1 under Order VII Rule 11 CPC for rejection of the Plaint.

12. Learned counsel appearing on behalf of the plaintiff appears on advance notice.

13. Reply be filed within 6 weeks with a copy to the opposite counsel.

14. List before the learned Joint Registrar for the date already fixed i.e.02.07.2024.

I.A. 3540/2024 (under Order XXXIX Rule 2A CPC read with Section 10, 11 and 12 of the Contempt of Courts Act, 1971 on behalf of the plaintiff for initiating contempt proceedings against the Contemnor/defendant No.1 for wilful and deliberate disobedience of the Order dated 05.12.2017)

15. The plaintiff had filed a Suit for *Specific Performance of Collaboration Agreement dated 14.07.2015*, in respect of the Suit Property bearing No. B-111, Neeti Bagh, New Delhi-110049.

16. The application under Order XXXIX Rule 2A read with Section 151 CPC read with Section 10, 11 and 12 of the Contempt of Courts Act, 1971, has been filed on behalf of the plaintiff, initiating contempt proceedings for the violation of the Order dated 05.12.2017 by the defendant No. 1, Mr. Shridhar Y. Chitale.

17. **It is submitted in the application** that *vide* Order dated 05.12.2017, the defendants were restrained from alienating, encumbering or parting with



the possession of the suit property.

18. The applicant/ plaintiff has asserted that sometime in November, 2023, it has learnt from reliable sources that the defendant No. 1 is proposing to transfer/part with the possession of the portion of the property in favour of his estranged wife, Mrs. Shalini Shridhar Chitale, with whom he is entangled in divorce litigation. Allegedly, a joint Petition No. 2179/2023 for Divorce has been filed by the defendant No. 1 and his wife in November, 2023, in the District Court, Saket, for dissolution of the marriage by mutual consent. According to the information available to the plaintiff, one of the conditions of divorce is relinquishment of the possession and giving of life interest of the first floor of the Suit Property, to the estranged wife.

19. It is stated that the *First Motion* of Divorce has been allowed *vide* Order dated 19.11.2023. It is claimed that this very act of relinquishment of possession permanently in favour of the estranged wife of defendant No. 1, is in disobedience of the Injunction Order dated 05.12.2017. Hence, the defendant No. 1 has committed Contempt of the Court, for which he is liable to be punished.

20. **The defendant No. 1 in its detailed reply** has asserted that the first floor of the Suit Property is the matrimonial home of his wife, Smt. Shalini Shridhar Chitale since 1994. She along with defendant No.1, has been in joint actual and physical possession of the first and second floor of the Suit Property since the mother of the defendants orally partitioned the Suit Property between the two defendants. As per the oral partition, the ground floor along with the front portion of the basement and one staff quarter was given to defendant No. 2, while defendant No. 1 was given the remaining property.



2024:DHC:3932



21. Defendant No. 1 has admitted the matrimonial disputes between him and his wife and that they physically separated in the year 2015. Since then, he is residing on the second floor while his estranged wife is residing on the first floor of the Suit property, having exclusive possession of the same.

22. The defendant No. 1 has thus, submitted that he has not alienated, encumbered or parted with the possession of the first floor or has violated the interim order. His wife has always been in exclusive possession of the first floor. Therefore, there has been no parting of possession by him in favour of his wife and no case of Contempt, is made out against him.

23. Furthermore, it is submitted that the matrimonial proceedings are confidential and the plaintiff may be directed to file an affidavit to disclose the source from where he has come to know about the litigation between him and his wife.

24. Irrespective of the above, defendant No. 1 has admitted that he and his wife have filed the Petition for divorce by Mutual Consent under Section 13(b) (1) of the Hindu Marriage Act and the Settlement Deed annexed thereto also mentions about handing over/relinquishment/ surrender. However, this Deed is of no consequence in law as it is an unregistered document.

25. Moreover, the plaintiff has failed to make any positive assertion and is only alleging to have received information from reliable sources. It is submitted that the application is without merits and is liable to be dismissed.

26. Submissions heard.

27. The plaintiff has asserted that as part of the matrimonial settlement, the defendant No. 1 has relinquished/handed-over the first floor of the Suit Property, to his wife. The defendant No. 1 while has not admitted having



2024:DHC:3932



alienated the part of Suit property, but has admitted having executed a Settlement Deed to such effect. However, it has been asserted that it is not a registered document and does not amount to parting with the possession in the eyes of law. Further, he has also asserted that his wife being estranged has been in exclusive possession of first floor, since 2015. Such prolonged possession of the first floor with the wife of the defendant No. 1 since 2015, cannot be termed as parting with possession by defendant No. 1.

28. Insofar as his relinquishment of the share of the defendant No. 1 in the first floor in favour of his wife is concerned, it may be observed that any settlement which may have been entered between the defendant No.1 and his wife, is not with any *malafide* intention but is only a consequence of the matrimonial disputes. It cannot be said that there is any wilful disobedience of the Orders of this Court, inviting the punishment for Contempt of Court.

29. However, it is hereby directed that the defendant No. 1, shall file an affidavit on record within four weeks, to disclose if any transfer of any part of the Suit Property has been made by him in favour of his wife. Any successor of defendant No. 1 in the Suit Property shall be bound by the orders made in this case based on the doctrine of *lis pendence*.

30. The application is hereby, dismissed.

**(NEENA BANSAL KRISHNA)
JUDGE**

MAY 8, 2024/PT/RS