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

+ **CM(M) 519/2022 & CAV 150/2022, CM APPL. 26412/2022**

Date of decision: 05.10.2023

JAIN FOOT COMFORTS PVT LTD Petitioner

Through: **Mr. Dhananjai Jain, Advocate**
(through VC)

versus

AMIT RAI AGARWAL AND ORS Respondent

Through: **Mr. Umesh Suri and Mr. Avinash Suri, Advocates**

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CAV 150/2022

Since the counsel for the Respondent has entered appearance, the caveat stands discharged.

Accordingly, the present application stands disposed of.

CM(M) 519/2022 & CM APPL. 26412/2022

1. This petition filed under Article 227 of the Constitution of India impugns the order dated 28.03.2022 passed by ADJ, Tis Hazari Courts, Delhi ('Trial Court') in CS No. 12148/2016, titled as **Amrit Rai Aggarwal v. Jitender Kumar** whereby an application filed by the Petitioner under Order I Rule 10, of Code of Civil Procedure, 1908 ('CPC') seeking impleadment as a defendant in the suit has been dismissed.



2. The Petitioner is in physical possession of the property bearing no. 426 to 431 situated at Gali No. 8, Friends Colony, G.T. Road, Shahdara, Delhi ('suit property'). The Petitioner claims to be a mortgagee in possession from Smt. Jagwati Jain. The Petitioner is also admittedly holding a decree dated 05.08.2019.

3. The Respondent Nos. 1 to 4 dispute that Smt. Jagwati Jain has any right, title or interest in the suit property. It is the case of the Respondent Nos. 1 to 4 that Smt. Jagwati Jain has fraudulently dealt with the property and therefore, the Petitioner herein also has no right, title or interest in the property.

3.1. The learned counsel for Respondent Nos. 1 to 4 states that all transactions pertaining to the suit property are non-est as there was an interim order dated 07.06.2004 operating, whereby the original defendant Mr. Jitender Kumar was restrained from selling, transferring, parting with the possession and creating third party interest in the suit property.

3.2. He states that Mr. Jitender Kumar fraudulently executed transfer documents in favour of Smt. Jagwati Jain, the mortgagor from whom the present Petitioner is claiming interest.

4. However, without prejudice to the respective stand of the parties and with a view to preserve the property and prevent further creation of third party interest in the subject property, the Respondent Nos. 1 to 4 have consented to implead Petitioner herein as defendant no.2 in the suit on the following conditions, which are also acceptable to the Petitioner:

i. The Petitioner shall remain bound by its affidavit dated 21.09.2023 which reads as under:

"AFFIDAVIT"



I, Dhanesh Chand Aggarwal S/o Sh. Devi Sahai age 60 years Director of M/s Jain Foot Comforts Pvt. Ltd. office at 21A & 21B, Ground Floor, Rishabh Corporate Tower, Plot no. 16, Community Centre, Karkardooma, Delhi - 110095, do hereby solemnly affirm and declare as under:

1. *That I am director of the petitioner company in the above noted matter and as such fully conversant with the facts of the case.*

2. *That the property bearing nos. 426 to 431 situated at Gali no. 8, Friends Colony, G.T. Road, Shahdara, Delhi belongs to one Jagwati Jain from whom I have acquired rights by way of enforcement of my mortgage, who executed an unequivocal mortgage of this property in favour of Jain Foot Comfort Pvt. Ltd.*

3. **That I would be bound by statement and averment concerning this property made by Jitender Kumar in his written statement in Suit No. 12148 of 2016 and pleas available to the deponent. The final adjudication of the suit shall be binding upon me.**

Deponent

Verification: -

Verified at New Delhi on this 22th August, 2023 by me the above-named deponent that statements made in para no. 1 to 3 of the above affidavit are true to my knowledge.

Deponent"

(Emphasis supplied)

ii. The Petitioner will remain bound by the interim order dated 07.06.2004 which is subsisting in the suit proceedings. Further, the Petitioner undertakes to not create any third-party interest or part with possession of the suit property without first seeking permission of the Trial Court.

iii. The Petitioner agrees that the execution proceedings filed by the Petitioner i.e., EX. P. No. 9/2020 with respect to the suit property shall stand withdrawn. The Petitioner will move a formal application in the execution petition withdrawing the said relief.

However, the Petitioner will be at liberty to pursue the said execution



proceedings with respect to the other properties, if any, owned by Smt. Jagwati Jain and the judgment debtors.

iv. The Petitioner is impleaded by this order as defendant no.2 in the suit proceedings. The Petitioner is adopting the stand of Mr. Jitender Kumar i.e., the defendant no.1. The Petitioner is adopting the written statement of defendant no.1 and undertakes not to file any additional written statement. The Petitioner as per the affidavit dated 22.08.2023 has undertaken to remain bound by the stand of Mr. Jitender Kumar in the said written statement.

v. The parties agree that present Petitioner will be given an opportunity to cross examine PW-1 as per the pleadings/defence in the written statement of Mr. Jitender Kumar and any other legal plea which may be available to said Mr. Jitender Kumar. To this effect, PW-1 will be recalled in the witness box and Petitioner herein will get an opportunity to cross-examine PW-1.

vi. In addition, the Petitioner herein will be at liberty to lead defendant evidence ('DE') in accordance with law on the basis of the pleadings/defence raised in the written statement filed by Mr. Jitender Kumar.

5. The learned counsel for the parties state on instructions that the aforesaid conditions are acceptable to the respective parties. The statement is taken on record and the parties are bound down to the same.

It would be relevant to record that the matter was adjourned on 16.08.2023, 11.09.2023, 21.09.2023 and 27.09.2023 to enable the parties to take the aforesaid instructions.

6. The parties jointly agree that in view of the fact that the civil suit was filed on 23.03.2004 and has remained pending at the stage of evidence for



past nineteen (19) years, the parties will co-operate with the Trial Court for expeditious recording of the evidence and disposal of the suit. The matter is listed before the Trial Court on 31.10.2023.

7. The parties agree that the newly impleaded defendant no.2 (the Petitioner herein) will complete recording of its evidence within three (3) months from 31.10.2023 and the final arguments will be addressed within three (3) months thereafter.

8. The Petitioner herein is directed to file its list of witnesses within ten (10) days and take all necessary steps for summoning its witnesses before the Trial Court. The Petitioner will place before the Trial Court the original of the affidavit dated 22.08.2023 (sworn on 23.09.2023) filed in this petition along with this order within the same time. The Petitioner will remain bound by the contents of the said affidavit and it shall form part of the record.

9. The Respondent Nos. 1 to 4 are directed to file an amended memo of parties before the Trial Court within ten (10) days.

10. The learned Trial Court is requested to make an endeavour to complete the trial within six (6) months from the next date fixed for hearing i.e., 31.10.2022.

11. With the consent of the parties, the present petition is disposed of in the aforesaid terms. The impugned order dated 28.03.2022 is set aside. Pending application is disposed of.

MANMEET PRITAM SINGH ARORA, J

OCTOBER 5, 2023/msh/sk

Click here to check corrigendum, if any