(2022) 09 DEL CK 0182

In the Delhi High Court

Case No : Civil Suit (OS) No. 121 Of 2020

NAS APPELLANT

Vs

Delhi Guest House Services Private Limited & Ors. RESPONDENT

Date of Decision : 28-09-2022

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 4
Company (Significant Beneficial Owners) Rules, 2018 — Rule 2(h)
Indian Trust Act, 1882 — Section 8, 12, 13, 14, 34, 46
Protection Of Women From Domestic Violence Act, 2005 — Section 26, 36
Companies Act, 1956 — Section 397

Citation : (2022) 09 DEL CK 0182

Hon'ble Judges : Amit Bansal, J

Bench : Single Bench

Advocate : Dayan Krishnan, Anil Airi, Malvika Rajkotia, Rishabh Sancheti, Pranaya Goyal, Aakashi Lodha, Mudit Ruhella, Dharav Shah, Riya Krishnamoorthy, Akriti Tyagi, Apoorva Kaushik , Dhawal Desai, Kapil Sibal, Anindita Roy Chowdhury, Vatsala Rai, Raghav Chadha, Pradyumna Sharma, Anindita Roy Chowdhury, Vatsala Rai, Rajiv Nayar, Anindita Roy Chowdhury, Vatsala Rai, Raghav Chadha, Pradyumna Sharma, Sanjeev Puri, Anindita Roy Chowdhury, Vatsala Rai, Raghav Chadha, Yuvraj Singh, Rohit Puri

Judgement

Amit Bansal, J

I.A. 3797/2020(u/O-XXXIX R-1 & 2 of CPC), I.A. 3804/2020 (u/O-XXXIX R-1 & 2 of CPC) and I.A. 4683/2021(O-XXXIX R-4 of CPC)

1. By way of the present judgement, I shall decide the applications filed on behalf of the plaintiff under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (CPC) seeking interim injunction against the defendants and the application filed on behalf of the defendant no.1 under Order XXXIX Rule 4 of the CPC.

2. The present suit has been filed seeking relief of perpetual/permanent injunction restraining the defendants from dispossessing the plaintiff and

interfering with the peaceful and continuous enjoyment and possession of the plaintiff in respect of the property situated at 15, Dr. A.P.J. Abdul Kalam Road, New Delhi–110011 and other ancillary reliefs.

3. Vide order dated 4th May, 2020, while issuing summons in the suit, the defendants were directed to maintain status quo with respect to possession and ownership of the properties bearing no. 15, Dr. A.P.J. Abdul Kalam Road and 2 Rajesh Pilot Lane as well as with respect to all services and facilities being presently provided to the plaintiff in and in relation to the plaintiff's residence. I.A.4683/2021 was filed on behalf of the defendant no.1 under Order XXXIX Rule 4 of the CPC seeking vacation of the order passed by this Court on 4th May, 2020. Submissions of the counsels for the parties on the applications under Order XXXIX Rules 1 and 2 and Order XXXIX Rule 4 of the CPC were heard on various dates, on 29th March, 2022, 8th April, 2022, 27th April, 2022, 2nd May, 2022, 11th July, 2022, 13th July, 2022, 18th July, 2022, 26th July, 2022, 3rd August, 2022, and 16th August, 2022, when judgment was reserved in the aforesaid applications. Thereafter, written submissions on the captioned applications have been filed on behalf of the parties.

PLEADINGS IN THE PLAINT

4. In the plaint, the following submissions have been made on behalf of the plaintiff:

(i) Defendant no.1 company is a private limited company, of which the defendant no.5 is the Chairman of the Board of Directors and the plaintiff is a director. The entire shareholding of the defendant no.1 company is held by the defendants no.2 and 3.

(ii) Defendant no.2 is a private limited company of which the entire shareholding is held by the defendant no.3.

(iii) Defendant no.4 is an unlisted public company and is the bearer of expenses of salaries of some of the employees working at the suit property.

(iv) Defendant no.3 is a private and revocable trust settled by the plaintiff and the defendant no.5 under the provisions of the Indian Trusts Act, 1882 vide registered Trust-II Deed dated 12th November, 2010.

(v) Defendants no.5 to 11 along with the plaintiff are the trustees in the defendant no.3 Trust.

(vi) The Trust-II Deed was settled for the purposes of structuring and planning the allocation devolution and functioning of the wealth and assets of the plaintiff and the defendant no.5.

(vii) The plaintiff and the defendant no.5 were also the settlers and beneficiaries of the said Trust and the defendant nos. 9, 10 and 11 were the other beneficiaries under the said Trust Deed.

(viii) As a beneficiary, the plaintiff is entitled to possession and enjoyment of the suit property during her lifetime in addition to 20% beneficial interest in the Trust income.

(ix) Defendant no.5, on multiple occasions, has acknowledged the rights and entitlements of the plaintiff in the suit property as per the Trust Deed.

(x) The suit property comprises of three parts:

(a) The house and area appurtenant thereto occupied by the plaintiff and the defendant no.5 as their matrimonial house at 15, Dr. A.P.J. Kalam Road (formerly known as Aurangzeb Road), New Delhi–110011 ["Part I"];

(b) The house at 2, South End (also known as 2, Rajesh Pilot Marg), New Delhi–110011 is occupied by the defendant no.10 along with her husband, Mr. Sahil Vachani, as their residence ["Part II"]; and

(c) Part of the house utilized by the defendant no.5 as his office at Gate 3, 15, Dr. A.P.J. Kalam Road (formerly known as Aurangzeb Road), New Delhi–110011 ["Part III"].

(xi) All the expenses for the maintenance of the suit property have been borne by the defendants no.1 and 4.

(xii) The plaintiff and the defendant no.5 were married in 1979 and since 1981, the plaintiff has been residing in the suit property as her matrimonial home.

(xiii) Another Trust, Neeman Family Foundation (Trust-I) was also set up on 12th November, 2010, of which the defendant no.5 was the settler while the plaintiff and the defendants no.5, 9, 10 and 11 were the beneficiaries.

(xiv) From 2012 onwards, the defendant no.5 was expanding his business in South Africa and frequently travelled to South Africa. On 16th July, 2017, the defendant no.5 confessed to the plaintiff that he was in a relationship with a South African lady. This came as a complete shock to the plaintiff.

(xv) A notice dated 23rd June, 2019 was issued by the defendant no.5, unilaterally revoking the Trust-I Deed. This was disputed by the plaintiff by issuing letters dated 1st July, 2019 and 16th July, 2019.

(xvi) Subsequently, the defendant no.5 appointed himself as the Chairman of the Board of Directors of the defendant no.1 company and also appointed his close associates as directors of the said company so as to take control of the Board of the defendant no.1 company. This was done in a manner so as to take control of the suit property and oust the plaintiff from the said property in violation of the provisions of the Trust-II Deed.

PLEADINGS IN THE WRITTEN STATEMENTS

5. In the written statement filed on behalf of the defendant no.1, it has been pleaded that:

(i) The suit does not disclose any cause of action against the defendant no.1.

(ii) Ownership of the suit property vests with the defendant no.1 company in terms of the Conveyance Deed dated 9th October, 2006.

(iii) Plaintiff has no legal rights in respect of the suit property. A portion of the suit property has been leased by the defendant no.1 company to Max Financial Services Ltd. (MFS) for the residential use of its Managing Director, the defendant no.5. The plaintiff's occupation of the said property is only as a consequence of the marriage to the defendant no.5, being the Managing Director of MFS.

(iv) The suit property is the registered office of various companies, including the defendant no.1 company.

(v) All expenses towards upkeep of the suit property including staff salary and maintenance are paid by the defendant no.1 and MFS.

6. In the written statement filed on behalf of the defendant no.5, it has been pleaded that:

(i) Legal ownership of the suit property vests with the defendant no.1 since 1971.

(ii) Defendant no.5 occupied the portion of the suit property in the capacity of Managing Director of MFS, in whose favour a lease has been granted by the defendant no.1 for residential accommodation of the Managing Director of MFS. Plaintiff is occupying a portion of the suit property, which is part of the leased area.

(iii) Plaintiff cannot claim any rights in the suit property based on Trust-II Deed.

(iv) The defendant no.3 Trust was created only for protection of interest of the beneficiaries and it does not confer title and ownership over the suit property on the beneficiaries. The terms of the Trust Deed are not binding on the defendant no.1.

(v) The suit property cannot be treated as Trust Property.

(vi) The defendant no.5 has no intention to disturb the plaintiff's peaceful enjoyment of the suit property and/or to dispossess the plaintiff from the part of the suit property she currently occupies.

7. In the written statement filed on behalf of the defendant no. 2, it has been stated that the defendant no. 2 is a shareholder of the defendant no.1 company and not the owner of the suit property and that the plaintiff is a director of the defendant no. 2. Therefore, there is no cause of action pleaded against the defendant no. 2.

8. In the written statement filed by the defendant no.4, it has been stated that plaintiff is the Chief Executive Officer of the defendant no.4 company and is involved in selecting the staff which is then further appointed in various

companies, including the defendant no. 1 company. Defendant no. 4 has entered into a Manpower Services Agreement with the defendant no.1 company in terms of which it is it is obligated to provide staff/manpower to the defendant no. 1 company.

9. Defendants no. 9 and 10 have filed their written statements supporting the case of the defendant no. 5. In the written statement of the defendant no.9, it has been stated that the defendant no. 5 has never sought to dispossess the plaintiff from the suit property. It has further been stated that the defendant no. 9 has not been staying in the suit property since 1999.

10. In the written statement of the defendant no. 10, it has been stated that she occupied a part of the suit property, being Part II of the suit property, along with her family on the basis of a lease executed between the defendant no. 1 as the lessor and Max Ventures Industries Limited and Antara Senior Living Limited as the lessee. Defendant no. 10 is the Executive Chairman of Antara Senior Living Limited and her husband is the Managing Director of Max Ventures and Industries Limited.

SUBMISSIONS ADVANCED ON BEHALF OF THE PLAINTIFF

11. Senior counsels appearing on behalf of the plaintiff have made following submissions:

I. THE SUIT PROPERTY IS CENTRAL TO THE TRUST-II DEED AND THE PLAINTIFF HAS EXTENSIVE RIGHTS UNDER THE TRUST-II DEED

(i) A perusal of the terms of the Trust-II Deed would show that the suit property is central to the Trust-II Deed. Reliance is placed on the various provisions of the Trust-II Deed to submit that the plaintiff has full right of use, enjoyment, possession and disposal of the suit property till her lifetime.

(ii) It has been admitted in the written statements filed by the defendants no. 6, 9 and 10 that all decisions with regard to the suit property shall be taken by the settlors alone.

(iii) Defendant no. 3 Trust has direct shareholding of 28.48% in the defendant no. 1 company and an indirect shareholding of 71.52% through the defendant no. 2 company, in which it holds 100% shares. Further, the plaintiff and the defendant no. 5 are significant beneficial owners of the defendant no. 1 company, being the settlors of the defendant no. 3 Trust, in terms of Rule 2(h), Explanation III (iv)(c) of the Company (Significant Beneficial Owners) Rules, 2018.

(iv) Consequently, the defendant no. 1 company is bound by the terms of the Trust-II Deed and cannot raise any interest contrary to the terms of the Trust-II Deed. Reliance in this regard is placed on the letter dated 27th December, 2019 sent by the representative of the defendant no. 1 company requesting signatures of the plaintiff for disclosing her status as a 'significant beneficial owner' in the defendant no. 1 and defendant no. 2 companies.

(v) Based on the provisions of the Trust-II Deed, the position which emerges is as follows:

(a) During plaintiff's lifetime, all decisions in respect of use, enjoyment, possession and disposal/or any manner of dealing with the AZR Property are required to be joint and exclusive decisions of the plaintiff and the defendant no. 5;

(b) The AZR Property cannot be disposed of without the plaintiff's written consent during her lifetime;

(c) Plaintiff is an equal partner in the decisions in respect of the Trust and the AZR Property.

(d) In the event the defendant no. 5 is incapacitated as a trustee, the plaintiff becomes the Managing Trustee and the plaintiff has rights to the AZR Property to the exclusion of all External Trustees;

(e) Devolution of the AZR Property to the children i.e., the defendants no. 9 to 11, has to be jointly decided by the plaintiff and the defendant no. 5.

(vi) Defendant no. 1 company is a family-owned company in nature of a quasi-partnership and therefore, this is a fit case for lifting of the corporate veil. Reliance is placed on the judgment of the Supreme Court in Sangramsinh P. Gaekwad v. Shantadevi P. Gaekwad, (2005) 11 SCC 314.

(vii) The suit property always belonged to the family of the plaintiff's in-laws. The suit property was transferred to the defendant no. 1 company on 30th March, 1971 to hold the same for the family. The said transfer was not for any cash/ consideration, but only in lieu of issuance of shares, which shareholding represented the share of each group of the extended family. In this regard reliance is placed on pleadings of defendant no. 5 in the prior suits, being CS(OS)2844/1998, CS(OS)36/2004 and CS(OS)1673/2006, and the family settlement dated 30th December, 1989.

II. CORPORATE VEIL OF THE DEFENDANT NO.1 COMPANY HAS TO BE LIFTED

(i) Defendant no. 1 company was incorporated as a special purpose vehicle only for holding the suit property and there is no other asset held by it, nor has it performed any function.

(ii) Defendant no. 1 company is merely a puppet in the hands of the defendant no. 5 and therefore, in the written statement filed on behalf of the defendants no. 1 and 2, which has been signed by Mr. Arvind Aggarwal, being a nominee of the defendant no. 3 Trust, a stand contrary to the interest of the defendant no. 3 Trust has been taken.

III. CONDUCT OF THE DEFENDANTS SHOWS THAT THE SUIT PROPERTY BELONGS TO THE TRUST AND THAT THE PLAINTIFF HAS RIGHTS IN RESPECT OF

THE SAME

(i) Defendant no. 5 has acknowledged on various occasions that the suit property belongs to the Trust and that the plaintiff has rights in the said property. In this regard, reliance is placed on various emails exchanged between the parties.

(ii) Defendant no. 5 resorted to using the defendant no. 1 company as a cloak to defeat the rights of the plaintiff only after the defendant no. 5 failed to coerce the plaintiff to agree to the amendments in the Trust Deed.

(iii) Defendant no. 5 has stated in his written statement that he does not intend to disturb the plaintiff's possession/enjoyment of the suit property. Even the defendants no. 9 to 11 have not raised any dispute with regard to the rights of the plaintiff in the suit property.

IV. BALANCE OF CONVENIENCE

(i) At present, there are four occupants of the suit property, the plaintiff and the defendant no. 11 (living together), the defendant no. 10, and the defendant no. 5. Therefore, the plaintiff and the defendant no. 11 (living together) are entitled to 50% of the total constructed area, which would be about 17,500 square feet. The area currently occupied by the plaintiff and defendant no. 11 is 15,000 square feet, which is less than 50%. Defendant no. 10, with the consent of the plaintiff, is occupying 15,000 square feet area of the suit property shaded in yellow in the site plan.

(ii) Defendant no. 5 is in occupation of 4,500 square feet of the suit property. However, the defendant no. 5 spends most of his time in South Africa. In any case, the defendant no. 5 occupies the property at 1, South End Lane with built up area of 7,500 square feet, which is contiguous with the suit property but not part of the suit property.

(iii) Insofar as the lawns and common places/quarters in Part I of the suit property are concerned, the same are used by all the members of the family and plaintiff does not have any objection to access of the said lawns by the other family members, except for holding parties in the said lawns. The lawn in Part II of the suit property is in exclusive possession of the defendant no. 10.

(iv) Out of the total staff of forty-five members employed for Part I of the suit property occupied by the plaintiff and the defendant no. 11, only seven staff members are exclusively for the benefit of the plaintiff and rest of the members cater to the family and help in maintenance of the suit property.

V. ADMISSIONS MADE BY THE DEFENDANTS IN THEIR RESPECTIVE PLEADINGS

(i) Defendants in their written statements admitted that the plaintiff has been in occupation/possession of the suit property for the last forty years and the defendant no. 1 has always maintained the suit property. Further, the defendant no. 5 has no intention to dispossess the plaintiff from the suit property.

(ii) Defendant no. 5 is the Managing Trustee of the defendant no. 3 Trust. The stand taken by the defendant no. 5 in his written statement is contrary to Sections 12, 13, 14, 34 and 46 of the Indian Trust Act, 1882. Defendant no. 5 has failed to protect the title of the suit property, which is the property of the Trust, as per Section 13 of the Indian Trust Act, 1882.

(iii) It is the plaintiff who is protecting the interest of the Trust. The defendants accepted summons in the suit on behalf of the defendant no.3 Trust but have failed to file a written statement on behalf of the Trust and the Trust has been proceeded against ex parte. Therefore, the present suit is in the nature of a derivative action on behalf of the Trust.

VI. RELIEF UNDER THE PROTECTION OF WOMEN FROM DOMESTIC VIOLENCE ACT, 2005 (DV ACT)

(i) The plaintiff is entitled to claim remedies available under the DV Act in pending civil suits in terms of Section 26 of the DV Act.

(ii) The provisions of the DV Act are in addition to any remedies available under any law. Reference in this regard is made to Section 36 of the DV Act. Therefore, the fact that the plaintiff has invoked her rights under the Trust-II Deed would not bar her from seeking reliefs under the DV Act.

(iii) The suit property has been the matrimonial home of the plaintiff for forty years and therefore, the plaintiff cannot be dispossessed therefrom.

(iv) The relationship of the defendant no. 5 with another woman has caused 'emotional abuse' to the plaintiff in terms of the DV Act, as it erodes the dignity of the plaintiff.

(v) It is the defendant no. 5 who has gotten into an extra-marital relationship, which has shaken the foundations of the marriage between the plaintiff and the defendant no. 5. He cannot be allowed to take advantage of his own wrong. Under the provisions of the DV Act, the plaintiff has a right of residence in the shared household, which is the suit property.

SUBMISSIONS ADVANCED ON BEHALF OF THE DEFENDANT NO.1

12. Senior counsel appearing on behalf of the defendant no. 1, has made the following submissions:

I. OWNERSHIP OF THE SUIT PROPERTY IS WITH THE DEFENDANT NO.1

(i) There is no prayer in the suit that has been sought in respect of the defendant no.1 company, which is admittedly the owner of the suit property. In the entire suit, no cause of action has been disclosed against the defendant no. 1 company.

(ii) The reliefs claimed in the interim application are beyond the reliefs claimed in the main suit.

(iii) Defendant no. 10 is in occupation of Part II of the suit property by virtue of lease deeds executed in favour of companies in which the defendant no. 1 is the Managing Director.

II. PLAINTIFF HAS TAKEN SHIFTING STANDS THROUGHOUT IN THE PRESENT SUIT

(i) While on one hand, the plaintiff has stated that the suit property is her matrimonial home, on the other hand, the plaintiff claims rights over the suit property on the basis of the Trust-II Deed. The case of the plaintiff based on the Trust-II Deed is destructive of the plaintiff's case based on the suit property being her matrimonial home.

(ii) The submission made on behalf of the plaintiff with regard to lifting of the corporate veil is not supported by pleadings/prayers in the suit. None of the ingredients for lifting of the corporate veil, including fraud, have been pleaded in the plaint.

(iii) Reliance of the plaintiff on the pleadings in the previous suits are misplaced and out of context for the purposes of the present suit.

III. SHAREHOLDER IS NOT THE OWNER OF THE ASSETS OF THE COMPANY-MISPLACED RELIANCE ON PROVISIONS OF COMPANIES ACT, 2013.

(i) Provisions of Companies Act cannot be made applicable to Trust created under the Indian Trust Act.

(ii) In a company, shareholders' beneficial interest is restricted to the shares held by the shareholder of a company. A shareholder cannot claim the company's property to be the shareholder's property.

(iii) Even if the Trust holds shares of the defendant no. 1 company, based on such shareholding, ownership of suit property does not vest with the Trust, let alone the Trustees or beneficiaries thereunder. Reliance in this regard is placed on the judgment in Bacha F. Guzdar v. Commissioner Of Income-Tax, AIR 1955 SC 74 and Vodafone International Holdings v. Union of India & Anr., (2012) 6 SCC 613.

(iv) Without prejudice to the above, even if it is assumed that the Trust is the owner of the suit property, the entitlement of plaintiff cannot be more than 20%, which is the beneficial interest of the plaintiff as per the Trust-II Deed.

IV. MISINTERPRETATION OF THE PROVISIONS OF THE TRUST-II DEED BY THE PLAINTIFF

(i) A perusal of the definitions given in the Trust-II Deed would demonstrate that 'residential property' (which includes the suit property) is not a part of the 'Trust Property'. In terms of Section 8 of the Indian Trust Act, 1882, the suit property cannot be made or treated as the subject matter of Trust-II Deed.

(ii) Since no perpetual lease deed was created in favour of the Trust in respect of the suit property, the plaintiff does not have any right to occupy the suit property and the Trust-II Deed is non-operative to that extent.

(iii) Plaintiff herself has filed a suit, being CS(OS) 195/2022, where the relief sought is for execution of the perpetual lease between the Trust and defendant no. 1. Therefore, the plaintiff is aware that currently, there is no legal relationship between the suit property and the Trust.

V. PLAINTIFF CANNOT BE PERMITTED TO TAKE ADVANTAGE OF HER WRONG

(i) Plaintiff herself is a Director of the defendant no. 1 company and therefore, if the lease deed has not been executed qua the suit property, the plaintiff should also bear responsibility in respect thereof.

VI. WILFUL AND DELIBERATE MISREPRESENTATION OF AREA UNDER OCCUPATION AND OTHER PROPERTIES IN THE SITE PLANS FILED BY THE PLAINTIFF DURING THE COURSE OF THE ARGUMENTS

(i) In the site plan filed with the plaint (Old Map) the unshaded area 'B' was stated to be occupied by the plaintiff. However, in the site plan filed in the course of the arguments (New Map), she has identified the said area as the lawn.

(ii) In the New Map, the driveway shaded in yellow is being depicted by the plaintiff as common area, however in reality, the plaintiff is exclusively using the said driveway.

VII. HUGE COST BEING INCURRED BY THE DEFENDANT NO. 1 IN MAINTAINING SUIT PROPERTY

(i) There is a huge staff of forty-two people being maintained by the defendant no. 1 company for looking after Part I of the suit property, occupied by plaintiff and defendant no. 11. The salary of such staff is paid by defendant no. 1 company.

(ii) All other expenses regarding the portion of the suit property occupied by the plaintiff, such as property tax, electricity bills, water bills, telephone bills, etc. are paid by the defendant no. 1 company.

VIII. BALANCE OF CONVENIENCE

(i) The suit property is the registered office of various companies/Trusts and the occupation of the said property by the plaintiff obstructs the usage of the suit property by the said companies/Trusts.

SUBMISSIONS ADVANCED ON BEHALF OF THE DEFENDANT NO.5

13. Senior counsel appearing on behalf of defendant no. 5 has made the following submissions:

(i) It is an admitted position that the defendant no. 1 company is the owner of the suit property. Defendant no. 5 only occupies the area that has been leased by the defendant no. 1 company to MFS, of which the defendant no.5 is the

Managing Director.

(ii) The entire premise of creating the defendant no.3 Trust was to secure the legacy of the defendant no. 5 and the future of the children of the plaintiff and the defendant no. 5. Therefore, it cannot be the basis for the exclusive possession of the plaintiff.

(iii) The breakdown of marriage between the plaintiff and the defendant no. 5 had occurred long ago and had nothing to do with what was happening in the defendant no. 5's personal life.

(iv) Defendant no. 5 is committed to providing reasonable care, security, maintenance and upkeep to the plaintiff.

(v) The continuation of the status quo order dated 4th May, 2020 means that the plaintiff continues to occupy 17,890 square feet (earlier identified as 1,600 square feet) of the suit property, to the exclusion of the defendants no. 5, 9 and 10.

(vi) The suit property is not part of the Trust Property and neither has any perpetual lease been executed between the defendant no.3 Trust and the defendant no. 1.

(vii) There is no attempt on behalf of the defendant no. 5 to dispossess the plaintiff and all averments made in this regard are misplaced. Defendant no. 5 only proposed equitable distribution, which includes redevelopment of the suit property.

(viii) All averments made in the plaint with regard to the mistreatment or marring the dignity of the plaintiff are completely false.

(ix) The plaintiff does not permit the defendant no. 5 and his staff to use the common areas of the suit property.

(x) Plaintiff has wrongfully made a reference to property at 1, South End Lane, which is not subject matter of the present suit.

(xi) No pleadings have been made in the plaint with regard to provisions of the DV Act invoked in the course of the submissions.

(xii) Under the provisions of the DV Act, the husband is entitled to provide alternative accommodation to his wife and in the present case, the defendant no. 5 has always been ready and willing to provide alternative accommodation of similar area within the vicinity of the suit property, to the plaintiff, as per her stature.

SUBMISSIONS IN REJOINDER

14. In rejoinder, the counsels appearing on behalf of the plaintiff made the following submissions:

(i) Plaintiff was always made to believe by the defendant no. 5 that the defendant no. 1 company had granted a perpetual lease deed in favour of the defendant no. 3 Trust. In any case, the execution of the lease deed was a mere formality and it does not affect the rights of the plaintiff under the Trust-II Deed.

(ii) Defendant no. 1 has failed to rebut the plaintiff's submissions that the defendant no. 1 company is only a family company which is in the nature of a quasi-partnership and merely holds the suit property for the family. Defendant no. 5 is using the defendant no. 1 company to defeat the rights of the plaintiff in the suit property.

(iii) It is wrong to contend that no pleadings have been made by the plaintiff in respect of lifting of the corporate veil. Reference has been made to various pleadings in the plaint as well as the replication.

(iv) The submission of the defendant no. 5 that the suit property is not included in the Trust Property amounts to rendering certain provisions of the Trust-II Deed as redundant.

(v) The proposal on behalf of the counsel for the defendant no. 5 towards redevelopment of the property is nothing but an attempt by the defendant no. 5 to cut off the plaintiff from her home.

ANALYSIS AND FINDINGS

15. I shall now proceed to deal with the rival contentions raised by the counsels appearing on behalf of the parties.

TRUST DEED

16. Since the provisions of the Trust-II Deed form the fulcrum of the submissions advanced on behalf of both sides, it is deemed apposite to set out the relevant provisions of the Trust-II Deed. The settlors of the Trust are the plaintiff and the defendant no.5 and the beneficiaries under the Trust are the plaintiff, defendant no.5 and their children, the defendants no.9 to 11.

17. The recitals of the Trust-II Deed which give the objective of settling the Trust are set out below:

"B. The Settlors intend to structure/restructure and plan the allocation, devolution and functioning of their wealth, assets and interests.

C. In furtherance of the aforesaid objectives, the Settlors propose to settle the Settlors Property for their own benefit and for the benefit of the Children (defined hereinafter), on the terms and conditions contained hereinafter."

18. Now, reference may be made to some of the definitions provided in the Trust-II Deed, which are as under:

" "AZR Property" shall mean the land admeasuring 2.684 acres, situated at 15, Aurangeb Road and 2, South End Lane, New Delhi – 110 011, and all the buildings and structures thereon, whether present or future, more particularly described in the map attached in Schedule 2:”

The AZR Property defined above is the suit property.

“ “Residential Properties” shall mean all the properties specified in Schedule 6, as amended by BAS, at his sole and absolute discretion, by way of issuing a notice in writing to all the Trustees and the Beneficiaries;”

Schedule 6, inter alia, includes the suit property/AZR Property.

“ “Settlors Property” shall have the meaning as set out in recital A of this Deed;”

19. Recital A refers to Schedule 1 of the Trust-II Deed and the said schedule does not include the suit property.

“ “Trust Property” shall mean the Settlors Property along with all the rights, benefits and entitlements attached thereto and shall also include, without limitation, any other properties and/or investments of any kind whatsoever which may be acquired by the Trustees or devolve upon them by virtue of operation of law or testamentary dispositions or legacies or otherwise, gifts and bequests, either in cash or kind, which may be received by the Trustees from time to time on behalf of and in connection with this Trust;”

20. Now, a reference may be made to the relevant clauses of the Trust-II Deed, which are set out below:

“2.1 The Settlors hereby create the Trust and declare their unequivocal intention to settle, transfer, assign and convey the Settlors Property along with all rights, title, interests and benefits attached thereto the Trustees to hold, manage and deal with the same upon trust and for the purposes and upon the terms and conditions set forth herein.

2.2 The Settlors shall, immediately after the execution of this Deed, take all necessary steps to cause the transfer of the Settlors Property in the name of the Trustees.

2.3 The Trustees do hereby accept this Trust, as the joint trustees thereof, upon the terms set forth in this Deed.

…

3. VESTING OF THE TRUST PROPERTY

The parties hereby agree and acknowledge that the Trust Property shall vest in the Trustees jointly along with all rights, title, interests and benefits attached thereto.

…

7. THE TRUST PROPERTY & TRUST INCOME

7.1 Subject to Clause 4.2 of this Deed, the beneficial interest in the Trust Property, including the beneficial interest in all income, benefits, receipts, accruals, profits and earnings accruing to, or out of, the Trust Property or any portion thereof, including without limitation, dividends and other income of any nature ("Trust Income") shall be held by the Beneficiaries in the following manner:

(a) BAS : 79.01%

(b) NAS : 20%; and

(c) Each Child: 0.33%

…

8.3.2 Until BAS attains the age of seventy two (72) years:

(a) all decisions in respect of all the affairs relating to the Residential Properties shall be taken by the Settlors, in their sole and absolute discretion, acting jointly and to the exclusion of all the other Trustees. For avoidance of doubt, it is clarified that no decision in respect of disposal of the AZR Property shall be taken without the prior written consent of NAS;

…

13 AZR PROPERTY

13.1 It is understood and agreed between the parties that within ninety (90) calendar days of the execution of this Deed, the Trust shall procure DGHS to grant a perpetual lease of the AZR Property in favour of the Trust.

13.2 Notwithstanding anything contained in this Deed, during the lifetime of the Settlors:

(a) the Settlors shall, in their sole and absolute discretion, have all the rights and powers to use, enjoy, possess, dispose off or deal in any manner with the AZR Property. However, any decision in respect of the disposal of the AZR Property shall require prior written consent of NAS. In the event of any one of the Settlors predeceasing the other, the surviving Settlor shall enjoy all the aforesaid rights and powers.

(b) the Children shall be entitled to use and enjoy the AZR Property only with prior written consent of both the Settlors, which shall not be unreasonably withheld provided, in the opinion of the Settlors, the Children and their respective spouses (if any) demonstrate respect and dignity towards each other, towards other Children and their respective spouses and the Settlors. The Settlors shall be entitled to withdraw such consent at any point of time for whatsoever reason and the respective Child shall have to vacate the AZR Property within sixty (60) calendar days of such withdrawal of consent by the Settlors.

…

13.3 No later than BAS attaining the age of seventy two (72) years and NAS attaining the age of sixty nine (69) years, the Settlors shall, in their sole and absolute discretion, be entitled to decided upon the succession, allocation and future ownership of the AZR Property after their lifetime ("Succession Plan"), broadly based upon the principles of fairness and equity, subject, however, to each of the Child and his/her spouse showing respect and dignity towards each other, towards other children and their respective spouses and the Settlors. …

…

14.1 In respect of governance of the affairs of the entities holding and owning the respective initiatives for the Children and the AZR Property ("Key Entities"), the following procedure shall be followed:

(a) No decision or action in relation to any of the matters relating to the Key Entites shall be taken or caused to be taken by the Trust and/or the Trustees, whether at the meeting of the Board or at the meeting of the shareholders of such entities, through any resolutions by circulation or otherwise, without following the decision making process laid down in Clause 8.3 of this Deed.

…

21.1 Until BAS attaining the age of seventy two (72) years, the Settlors shall, in their sole and absolute discretion, be entitled to revoke the Trust by issuing a written notice to all the Trustees and the Beneficiaries at least seven (7) Business Day prior to the effective date of revocation, which shall be specified in such notice ("Revocation Date")

21.2 Upon revocation of the Trust in accordance with Clause 21.1 above:

(a) The Residential Properties shall be immediately transferred to the Settlors in equal parts. The Trustees shall distribute in Residential Properties amongst the Settlors in an equitable manner, i.e., each of the Settlor shall be entitled to receive 50% share in each of the Residential Properties;"

21. It has been submitted on behalf of the defendant no.1 that the suit property ('AZR Property') is not a part of the 'Trust Property' as provided under the Trust-II Deed. It is further submitted that the Trust Property includes the 'Settlors Property', which does not include the AZR Property. The whole purpose of creating the Trust was to settle/transfer the 'Settlors Property' to the Trustees for the purposes of the Trust. Reliance in this regard is placed on Clauses 2, 3 and 7 of the Trust-II Deed, as set out above. It is further submitted that the grant of perpetual lease of the suit property in favour of the Trust within ninety days of creation of the Trust, as envisaged in Clause 13.1, never occurred. Therefore, the AZR property never became part of the Trust Property.

22. It is an admitted position that the AZR Property has been the residential house of the plaintiff and the defendant no.5 and they have been residing

together in the said property since their marriage forty years ago. Since the whole objective of the Trust-II Deed was to create a succession plan for the settlers as well as their children, extensive references have been made in the Trust-II Deed to the AZR Property though it is not a part of the 'Trust Property' as defined in the Trust-II Deed. A reference to the clauses of the Trust-II Deed set out above would show that the AZR Property was the centre point of the Trust-II Deed. Clause 8.3.2 of the said deed provides that all decisions in respect of the affairs relating to the AZR Property shall be taken by the plaintiff and the defendant no.5 in their sole and absolute discretion. It has specifically been stipulated that no decision in respect of disposal of the AZR Property shall be taken without prior written consent of the plaintiff. This position has also been admitted by the defendant no.6 (trustee) and defendants no.9 and 10 (children of the plaintiff and the defendant no.5 and trustees) in their respective written statements. Clause 13.2(a) also provides that notwithstanding anything contained in the Trust-II Deed, during their lifetime, the plaintiff and the defendant no.5 shall have all rights and powers to "use, enjoy, possess, dispose of or deal with in any manner" the AZR Property. The non-obstante clause in Clause 13.2 mandates that the provisions of Clause 13.2 would take effect notwithstanding the perpetual lease of the AZR Property not having been created in favour of the Trust in terms of Clause 13.1.

23. Even with regard to the children of the plaintiff and the defendant no.5, Clauses 13.2(b) and 13.3 of the Trust-II Deed stipulate that the children shall use and enjoy the AZR Property with prior written consent of the plaintiff and the defendant no.5. The entire Clause 13 of the Trust-II Deed is dedicated towards the AZR Property and it deals with the manner in which the said property is to be used by the plaintiff and the defendant no.5 and their children and the succession plan in respect of the said property after the demise of the plaintiff and the defendant no.5. In terms of Clause 21.1 of the Trust-II Deed, upon the revocation of the Trust, the plaintiff shall be entitled to 50% of the AZR Property.

24. Clause 14.1 of the Trust-II Deed goes to the extent of providing that the Trust or the Trustees shall ensure that no decision is taken in the Board Meetings of an entity holding the AZR Property i.e., the defendant no.1 company, otherwise than in accordance with the decision-making process laid down in Clause 8.3. Further, it is incumbent on the Trustees, who are the shareholders or directors of the defendant no.1 company i.e., the plaintiff and the defendant no.5, to ensure that no decision contrary to the terms of the Trust-II Deed is taken in respect of the suit property at any Board/Shareholders Meeting of the defendant no.1 company. In other words, the defendant no. 1 is bound by the terms of the Trust-II Deed and cannot raise any interest contrary to the terms of the Trust-II Deed.

25. The position that emerges from a reading of the provisions of the Trust-II Deed can be summarized as under:

(i) The Trust-II Deed is in the nature of a family arrangement between the members of the family so as to structure and plan the allocation, devolution and functioning of their wealth, assets and interests of the family.

(ii) Even if the AZR Property is not specifically a part of the Trust Property, it is a key element of the Trust-II Deed and therefore, the provisions of the Trust-II Deed in respect of the AZR Property would have to be given due effect.

(iii) All decisions in respect of use, enjoyment, possession and disposal of the AZR Property have to be taken with the consent of the plaintiff.

(iv) The AZR Property cannot be disposed of without the written consent of the plaintiff.

(v) Plaintiff is an equal partner in the decisions in respect of the AZR Property.

(vi) Defendant no.1 company cannot take decisions contrary to the provisions of the Trust-II Deed.

(vii) The execution of the perpetual lease deed in favour of the Trust by the defendant no.1 was a mere formality and would not defeat the various rights created in favour of the plaintiff under the Trust-II Deed.

CORRESPONDENCES EXCHANGED BETWEEN THE PARTIES

26. The defendant no.5, in various communications exchanged with the plaintiff, has acknowledged that the suit property belongs to the defendant no.3 Trust and that the plaintiff has rights in respect of the said property. In the email dated 21st December, 2017, with the consent of the plaintiff, an arrangement was made for the defendant no.10 to live in Part II of the suit property on the condition that no legal documentation is executed in that regard.

27. In response to question no.9 of the questionnaire, attached to the letter dated 23rd June, 2019 sent by the defendant no.5 to the various trustees of Trust 1, including the plaintiff, the defendant no.5 has admitted that the suit property belongs to the defendant no.3 Trust.

28. In the email dated 2nd September, 2019 sent by the Advocate of the defendant no.5 to the sister of the plaintiff, it has also been admitted that the suit property is owned by the Trust.

29. The dispute between the plaintiff and the defendant no.5 arose only when the plaintiff did not agree to amendment in the Trust Deed, as proposed by the defendant no.5. It was only then that the defendant no.5 started to present the defendant no.1 as the owner of the suit property.

PRIOR LITIGATION BETWEEN THE DEFENDANT NO.5 AND HIS FAMILY

30. At this juncture, reference may be made to the pleadings of the defendant no.5 in the previous litigations between the defendant no.5 and his family members.

31. In Civil Suit No.2844/1998 filed by the defendant no.5 herein against his parents and brothers, it was pleaded on behalf of the defendant no.5 that he along with his wife and children, through various entities, including the companies controlled by them, owned immovable properties, which include the suit property. In the said suit, a specific prayer was made to the Court to pierce the corporate veil of the defendant no.1 company, which was arrayed as the defendant no.5 in the said suit. Paragraphs 27 and 28 of the said plaint are set out below:

"27. That in the circumstances of the case, the Hon'ble Court may pierce the corporate veil of the privately held family owned company and it should be held that defendant No.5 is bound by the family arrangement arrived at between the members of the family as mentioned in the Memorandum of family settlement of the said property since the companies are owned by the family. The Defendant No.1 was and is in fact the alter-ego of Defendant No.5 and fully controlled Defendant No.5, and the decisions of Defendant No.5 were and are in fact the decisions of Defendant No.1.

28. That the defendant Nos.1 and 2 and defendant No.5 are not entitled to interfere with the possessions of the Plaintiffs qua the said property on the following amongst other grounds:"

32. In CS(OS) No.36/2004 filed by the defendant no.5 herein against his family members, once again, a similar pleading was made, that the defendant no.5 along with his wife and children, owned the suit property through the defendant no.1 company (defendant no.5 in the said suit). The shareholding pattern of the defendant no.1 herein was given at the relevant point of time and it was pleaded that all the persons having controlling interest in the defendant no.1 company were party to the family settlement and bound by the same.

33. On behalf of the defendant no.5, it has been submitted that the said suits were subsequently withdrawn by the defendant no.5. However, the defendant no.5 has not denied the aforesaid pleadings or explained the aforesaid stand taken in the previous suits. The fact that the aforesaid suits were subsequently withdrawn by the defendant no.5 on account of settlement between the family members would not have any bearing on the averments made by the defendant no.5 in the said suits. In paragraphs 212 to 224 of the judgment in Sangramsinh P. Gaekwad (supra), it has been held that statements/admissions made in legal proceedings stand even at a higher footing and would bind the party making such statements/admissions and consequently, act as estoppel on the party from taking a contradictory stand.

34. The stand taken by the defendant no.5 in the present suit is completely the opposite of what was taken by the defendant no.5 in his pleadings in the aforesaid suits. In fact, the defendant no.5 had himself sought for the lifting of the corporate veil of the defendant no.1 company on the ground that the defendant no.5 was an alter ego of the defendant no.1 therein. Now that the

defendant no.5 controls the defendant no.1 company, a contrary stand is being taken. The defendant no.5 cannot be permitted to approbate and reprobate. Reliance in this regard may be placed on the judgment of the Supreme Court in Union of India and others v. N. Murugesan and others, (2022) 2 SCC 25. Paragraph 26 of the aforesaid judgment is set out below:

"26. These phrases are borrowed from the Scots law. They would only mean that no party can be allowed to accept and reject the same thing, and thus one cannot blow hot and cold. The principle behind the doctrine of election is inbuilt in the concept of approbate and reprobate. Once again, it is a principle of equity coming under the contours of common law. Therefore, he who knows that if he objects to an instrument, he will not get the benefit he wants cannot be allowed to do so while enjoying the fruits. One cannot take advantage of one part while rejecting the rest. A person cannot be allowed to have the benefit of an instrument while questioning the same. Such a party either has to affirm or disaffirm the transaction. This principle has to be applied with more vigour as a common law principle, if such a party actually enjoys the one part fully and on near completion of the said enjoyment, thereafter questions the other part. An element of fair play is inbuilt in this principle. It is also a species of estoppel dealing with the conduct of a party. We have already dealt with the provisions of the Contract Act concerning the conduct of a party, and his presumption of knowledge while confirming an offer through his acceptance unconditionally."

35. In the family settlement dated 30th December, 1989 entered into between the defendant no.5 and his family members including his parents, brothers and their families, and to which the plaintiff was also a signatory, it has specifically been recorded that the family owns various companies, details of which are given in the Second Schedule, through which the family owns immovable properties. In the Second Schedule, one of the companies listed is the defendant no.1 company. In the Third Schedule of the said Family Settlement, it has been noted that the suit property is owned by the defendant no.1 company, which is a company controlled by the family. This is a clear admission that the family has always owned the suit property through the defendant no.1 company.

DEFENDANT NO.1 IS IN THE NATURE OF QUASI-PARTNERSHIP

36. It is an admitted position that the defendant no.1 has only two shareholders – the defendant no.2 company, which holds 71.52% of the shares and the defendant no.3 Trust, which holds 28.48% of the shares. The defendant no.2 company, in turn, is wholly owned by the defendant no.3 Trust. Therefore, the defendant no.3 Trust holds the entire shareholding of the defendant no.1 company, directly or indirectly. It is not denied that the defendant no.1 company does not conduct any business. In fact, the suit property is the sole asset of the defendant no.1 company. The defendant no.5 is the Chairman of the defendant no.1 company and controls the decision-making of the defendant no.1 company. Further, the defendant no.5 is also the Managing Trustee of the defendant no.3 Trust and yet, under the influence of defendant no.5, the defendant no.1

company has taken a stand which is completely contrary to the interest of the defendant no.3 Trust. Therefore, the defendant no.5 cannot be permitted to defeat the provisions of the Trust-II Deed by taking a plea that defendant no.1 company is an independent corporate entity that owns the suit property.

37. At this juncture, reference may be made to the judgment of the Supreme Court in Sangramsinh P. Gaekwad and (supra). Relevant observations of the judgment are reproduced below:

“225. A company incorporated under the Companies Act is a body corporate. However, in certain situations, its corporate veil can be lifted. (See Kapila Hingorani v. State of Bihar [(2003) 6 SCC 1 : 2004 SCC (L&S) 586] .)

226. The Court, however, has made a clear distinction between a family company, a private company and a public limited company. The true character of the company, the business realities of the situation should not be confined to a narrow legalistic view. (See Needle Industries [(1981) 3 SCC 333] .)

227. It is now well known that principles of quasi-partnership are not foreign to the concept of the Companies Act. For the purpose of grant of relief the principles of partnership have been applied even in a public limited company. (See Loch v. John Blackwood Ltd. [1924 AC 783 : 1924 All ER Rep 200] and Ebrahimi v. Westbourne Galleries Ltd. [(1972) 2 All ER 492 : 1973 AC 360 : (1972) 2 WLR 1289 (HL)])

…

230. Kilpest (P) Ltd. v. Shekhar Mehra [(1996) 10 SCC 696] whereupon Mr Desai placed strong reliance, thus, cannot be said to be an authority for the proposition that for no purpose whatsoever can the principles of quasi-partnership be applied to an incorporated company. The real character of the company, as noticed hereinbefore, for the purpose of judging the dealings between the parties and the transactions which are impugned may assume significance and in such an event, the principles of quasi-partnership in a given case may be invoked.

231. The ratio of the said decision, with respect, cannot be held to be correct as a bare proposition of law, as was urged by Mr Desai, being contrary to larger Bench judgments of this Court and in particular Needle Industries [(1981) 3 SCC 333]. It is, however, one thing to say that for the purpose of dealing with an application under Section 397 of the Companies Act, the court would not easily accept the plea of quasi-partnership but as has been held in Needle Industries [(1981) 3 SCC 333] the true character of the company and other relevant factors shall be considered for the purpose of grant of relief having regard to the concept of quasi-partnership.

38. The principles laid down in Sangramsinh P. Gaekwad (supra) have been followed by me in Sita Chaudhry v. Verinder Singh, 2022 SCC OnLine Del 2235, to hold that the companies involved in the said case, being mere alter egos of the majority shareholders, who were also the family members of the plaintiff

therein, were in the nature of quasi-partnerships. The aforesaid principles of family company/quasi partnership can be applied to the facts of the present case and the Court can look into to the true character of the defendant no.1 company for the purposes of grant of interim relief.

39. On behalf of the defendants, it has been contended that the suit property is the registered office of various companies/Trusts belonging to the family of the defendant no.5. The fact that the suit property is the registered office of various companies/Trusts without any formal arrangement between the said companies/ Trusts with the defendant no. 1 supports the contention of the plaintiff that the suit property has always been treated as a family company and the defendant no. 1 company only owned the suit property on behalf of the family.

40. Senior counsels for the defendants also stated that the plaint does not contain pleadings in respect of the defendant no.1 being a family company or for lifting of the corporate veil. I do not agree. In my view, there are sufficient pleadings in the plaint as well as in the replication with regard to defendant no. 1 company being a family company and lifting of the corporate veil.

41. In view of the discussion above, I am of the prima face view that defendant no.1 company is and has always been a family company for the purposes of holding of the family-owned properties and at present, is nothing but an alter ego of the defendant no.5. The defendant no.5, in his capacity as Chairman of the defendant no.1 company, cannot take a stand contrary to the provisions of the Trust-II Deed, of which he is the Managing Trustee, under the garb of the defendant no.1 company being a separate corporate entity. The filing of CS(OS) 195/2022 by the plaintiff for execution of a perpetual lease between the Trust and the defendant no.1 company would not dilute the stand of the plaintiff in the present suit. The defendant no.5 cannot use the cloak of the defendant no.1 company to defeat the rights of the plaintiff and dispossess the plaintiff from the portion of the suit property occupied by her for the last forty years.

ADMISSIONS IN THE WITTEN STATEMENT FILED BY THE DEFENDANT NO.5

42. Defendant no.5, in his written statement, in response to paragraphs 3, 16 and 33 of the plaint, has specifically stated that the defendant no.5 has no intention to dispossess the plaintiff from the portion of the suit property currently under her occupation and the said portion shall be in her possession during her lifetime. The same stand has also been taken by the defendants no.9 and 10 in their respective written statements. In light of the aforesaid statements, the defendant no.5 cannot be heard to say that the plaintiff should shift to alternate accommodation to be provided by the defendant no.5. The right of the plaintiff to continue to occupy the suit property and enjoy the same has been categorically admitted by the defendant no.5.

43. The defendant no.5 has nowhere denied his extra-marital relationship as alleged in the plaint. Therefore, I am of the prima facie view that the sanctity of the marriage has been breached on account of conduct of the defendant no.5

and therefore, the defendant no.5 cannot be permitted to alter the status quo that has prevailed in respect of the suit property for the last forty years. This would amount to permitting the defendant no.5 to take advantage of his own wrong.

44. In view of the fact that an application has already been filed on behalf of the plaintiff under the provisions of the DV Act, at this stage, need is not felt to go into the aspects concerning the DV Act raised in the present suit.

CONCLUSION

45. In view of the discussion above, a prima facie case is made out on behalf of the plaintiff to continue to occupy the portion of the suit property occupied by her. Rights of the plaintiff in respect of the aforesaid property have been created in her favour in terms of the Trust-II Deed. Further, the defendant no.5, in his written statement, has categorically stated that he has no intention of dispossessing the plaintiff from the portion of the suit property currently under her occupation. The balance of convenience also requires that the arrangement which has continued between the parties for a period of forty years not be disturbed till the final adjudication of the suit. In view of the above, the essence of the interim order dated 4th May, 2022 passed by this Court has to be confirmed till the final adjudication of the suit. The only question which needs to be decided is whether any modification/clarification is required in the order dated 4th May, 2020 passed by this Court.

46. The counsel for the defendant no.5 has candidly admitted that Part I of the suit property cannot be sub-divided or redistributed and the only option was to redevelop the property so that all parties can have separate portions without any interference by each other. At the suggestion of the Court, a proposal for interim living arrangement in the suit property along with a site plan was handed over in Court by the counsels for the plaintiff on 3rd August, 2022 and the same was taken on record. A copy of the same was also handed over to the counsels for the defendants.

47. In terms of the aforesaid site plan, the plaintiff, together with the defendant no.11, occupies 15,000 square feet of the suit property (Part I of the suit property shaded in blue colour), whereas another 15,000 square feet of the suit property is in occupation of the defendant no.10 and her husband (Part II of the suit property shaded in yellow colour) and 4,500 square feet is in occupation of the defendant no.5 (Part III of the suit property shaded in brown colour). The green portion of the property comprises of the common areas, which includes (i) the lawns; (ii) the driveway and car parking; and, (iii) common staff living area and utility area (marked as A). The ground floor of the blue portion comprises of common areas, including (i) the dining area (marked as B); (iv) the pets' area (marked as C); and, (iii) the kitchen-cum-pantry and bar (marked as D). The first floor of the blue portion occupied by the plaintiff and the defendant no.11 consists of a prayer room which is accessible to all.

48. In terms of the above, the total built up area of the suit property is 34,500 square feet and the plaintiff and the defendant no.11 would each be entitled to 25% of the said area, totaling 17,500 square feet. It is the contention of the defendant no.5 that the area occupied by the plaintiff and the defendant no.11 is around 17,000 square feet, whereas the plaintiff claims the said area to be 15,000 square feet. Even if the contention of the defendants no.1 and 5 is taken to be correct, that the area occupied by the plaintiff is 17,500 square feet, it would amount to 50% of the built-up area, which the plaintiff along with the defendant no.11 are entitled to occupy. On the other hand, the defendant no.10, along with her family, is already occupying Part II of the suit property admeasuring 15,000 square feet. Defendant no.9, of his own volition, lives in a separate property.

49. The way the Part I of the suit property is built, its usage cannot be altered at this interim stage. The usage can be altered only upon the redevelopment of the suit property, which, in light of the issues raised in the present dispute, can only be done upon the final adjudication of the suit, once the rights of the parties in the suit property are crystallized. It cannot be done at this interim stage. In terms of the provisions of the Trust-II Deed, redevelopment cannot be done of the suit property without the consent of the plaintiff. The suit property as it stands now, has to be used and enjoyed by the plaintiff and the defendant no.5 and their children.

50. As regards the staff employed for Part I of the suit property, it was stated on behalf of the plaintiff that only seven staff members are employed exclusively for the plaintiff and the rest of the staff members serve the entire family and help in maintenance and upkeep of the entire suit property. The defendant no.1 has been paying the salaries for the entire staff throughout. There is nothing placed on record on behalf of the defendants that the cost incurred on the staff employed at Part I of the suit property is causing financial hardship to the defendant no.1.

51. In view of the above, an interim injunction is issued in the following terms:

(i) Status quo with regard to title and possession shall be maintained by the parties in respect of the suit property. It is clarified that all common areas of the suit property, as identified in the proposal for interim living arrangement filed on behalf of the plaintiff on 3rd August, 2022, shall continue to be accessible to all members of the family.

(ii) Status quo shall be maintained by the defendants in relation to the expenses incurred in respect of the suit property, including staff, maintenance and upkeep expenses.

(iii) Status quo shall be maintained by the defendants in relation to the payments of the statutory dues, including property tax, electricity bills, water bills, telephone bills and internet charges in respect of the suit property.

52. The captioned applications are disposed of in above terms.

53. Needless to state, any observations made herein are only for the purposes of deciding the present applications and would have no bearing on the final adjudication of the suit.

CS(OS) 121/2020

54. List on 9th February, 2023.

