
(2020) 06 DEL CK 0008

In the Delhi High Court

Case No : Civil Miscellaneous (Main) No. 1491 Of 2007

S.G.S. Construction & Developers Limited

APPELLANT

Vs

Subhash Chander Pahwa & Ors

RESPONDENT

Date of Decision : 01-06-2020

Acts Referred:

Citation : (2020) 06 DEL CK 0008

Hon'ble Judges : Sanjeev Sachdeva, J

Bench : Single Bench

Advocate : Saket Sikri, Ajay Pal Singh, Gaurav Malhotra

Final Decision : Disposed Of

Judgement

Sanjeev Sachdeva, J

CM APPL.11057/2020 (filed on behalf of petitioner seeking early hearing of CM No.31133/2018)

For the reasons stated in the application, the application is allowed. CM No.31133/2018 is taken up for consideration.

CM No.31133/2018

1. The hearing was conducted through video conferencing.
2. By this application, petitioner seeks release of the amount deposited by the petitioner towards use and occupation charges in terms of order dated 15.09.2009.
3. Subject property i.e. property No.10 in R Block (R-10), Green Park, New Delhi admeasuring 200 sq.yards was owned by respondent No.1.
4. Property was let out to respondent No.3, M/s. Scooter India Ltd. On the plea that the said property had been sub let by M/s. Scooter India Ltd to respondent No. 2 Sh. V.S. Singhal eviction proceedings were filed by the Respondent No. 1.

5. The eviction petition filed against respondent No. 2 and 3 was dismissed by the Additional Rent Controller by order dated 16.07.1987. The Rent Control Tribunal in appeal filed by Respondent No. 1 allowed the appeal and passed an eviction order on 30.03.1991. Second appeal was filed by the Respondent No. 3 against the eviction order dated 30.03.1991.
6. Subject property was conveyed by a registered sale deed dated 10.12.2001 in favour of M/s. Cahill Palace (P) Ltd. The sale deed was executed in the name of Sh. Subhash Chander Pahwa -Respondent No. 1 by Mrs. Divya Pahwa, w/o Mr. Pramod Pahwa on the basis of a General Power of Attorney dated 05.03.1986.
7. Subsequently, by registered sale deeds both dated 29.04.2005 M/s. Chail Palace (P) Ltd transferred the subject property in favour of the petitioner.
8. A civil suit was filed by respondent No.1 on 20.02.2006 seeking declaration and cancellation of General Power of Attorney dated 05.03.1986 on the basis of which the sale deed was registered by Mrs. Divya Pahwa, w/o Mr. Pramod Pahwa.
9. On 04.04.2006, this court dismissed the second appeal filed by the Respondent No. 3, however, left the inter-se dispute to be decided in accordance with law.
10. In execution proceedings, Respondent No. 2 filed an application offering to pay a sum of Rs. 15,000/- per month as user charges to continue in possession of the ground floor of the subject property. The ARC by order dated 08.10.2007 directed Respondent No. 2 to deposit Rs. 50,000/- per month.
11. Petitioner impugned the said order dated 08.10.2007, by the subject petition.
12. By a detailed order dated 15.09.2009, this petition was disposed of, however the Court noticed that there was a dispute with regard to the title of the property inter-se petitioner and respondent No.1 which was raised by respondent No.1 by filing a civil suit for declaration impugning the General Power of Attorney dated 05.03.1986.
13. By order dated 15.09.2009, this Court noted the contention of the petitioner that the property could fetch rent of approximately Rs.2,50,000/- per month and also that he was willing to deposit the said amount in Court subject to the outcome of the suit for declaration filed by respondent No.1.
14. Consequently, by order dated 15.09.2009 petitioner was handed over possession of the ground floor of the subject premises on the condition that he shall deposit a sum of Rs. 7,50,000/- as a security deposit and also deposit of a sum of Rs.2,50,000/- per month.
15. As per the petitioner, petitioner has continued to deposit the said amount of Rs.2,50,000/- per month on monthly basis.
16. Learned counsel for the petitioner submits that Mr. V.S. Singhal, respondent No.2 had also filed a Special Leave Petition impugning the order dated

15.09.2009. Said Special Leave Petition (C) No.27412/2009 was dismissed on 08.10.2001. Consequent to dismissal of the Special Leave Petition, Mr. V.S. Singhal handed over the physical vacant possession of the premises in question to the petitioner.

17. Learned Counsel for the Petitioner has pointed out that the civil suit filed by respondent No.1 impugning the General Power of Attorney dated 05.03.1986 was dismissed in default for non prosecution as well as for non appearance on 02.11.2015. He submits that thereafter no further proceedings were initiated by Respondent No. 1.

18. Learned counsel further submits that in view of the above, the challenge to the title of the petitioner to the subject property no longer survives and accordingly the petitioner is the recorded owner of the subject property and as such the direction to petitioner to deposit a monthly amount subject to the outcome of the dispute between the petitioner and respondent No.1 is not required to be continued and the amounts deposited consequent to order dated 15.09.2009 are liable to be refunded.

19. Mr. Gaurav Malhotra, Advocate appearing for respondent No.3, M/s. Scooter India Ltd submits that the tenancy of M/s. Scooter India Ltd also stands extinguished and he has instructions to submit that M/s. Scooter India Ltd has no objection in case the amount is released in favour of the petitioner and respondent No.3 does not have any claim or right surviving against the subject property or the tenancy rights.

20. Notice in the subject application was issued to respondent No.1. Orders dated 20.12.2019 and 20.02.2020 record that respondent No.1, Sh. Subhash Chander Pahwa as well as his General Power of Attorney, Mr. Sidharth Pahwa could not be served as they were no longer traceable at the given address and further that Mr. Subhash Chander Pahwa had already been declared a proclaimed offender.

21. Petitioner had taken steps to serve them by way of publication in newspaper "Hindustan Times" and "The Pioneer" published from New Delhi and Lucknow consequent to order dated 21.11.2019. The publication has duly been affected and the report as well as the newspapers have already been placed on record. None has appeared for respondent No.1 to oppose the application.

22. Subject application has been filed by the petitioner seeking release of the amounts deposited by the petitioner consequent to order dated 15.09.2009. Order dated 15.09.2009 records that there was a dispute raised by respondent No.1 qua the title of the petitioner, which, the petitioner was claiming through sale deed registered on the basis of Power of Attorney dated 05.03.1986.

23. The suit filed by respondent No.1 impugning the Power of Attorney dated 05.03.1986 has already been dismissed for non prosecution as far back as on 02.11.2015 and as per the petitioner no further proceedings have been initiated

thereafter by respondent No.1 either to impugn the Power of Attorney or the sale deed dated 10.12.2001 executed in favour of M/s. Chail Palace (P) Ltd and the sale deeds dated 29.04.2005 executed by M/s. Chail Palace (P) Ltd in favour of petitioner.

24. There is no surviving dispute to the title of the petitioner. Accordingly the direction to the petitioner to deposit the use and occupation charges for the subject property can no longer be continued.

25. Accordingly the petitioner is discharged from depositing any further amount towards use and occupation charges for the subject property R-10, Green Park, New Delhi. Further since the petitioner is the recorded owner of the subject property consequent to sale deed dated 29.04.2005, the amounts deposited by the petitioner towards security deposited as also as use and occupation charges for the subject premises consequent to order dated 15.09.2009 to await the outcome of the suit filed by Respondent No. 1 is also liable to be released in favour of the petitioner.

26. The Registry is accordingly, directed to release the entire amount deposited by the petitioner towards security deposit and use and occupation charges along with interest, if any, accrued thereon in favour of the petitioner. Further, since the petitioner is the recorded owner of the subject property and there is no surviving dispute to the title of the petitioner, the embargo on the petitioner imposed by paragraph No.11 of order dated 15.09.2009 with regard to parting with possession, using of the property and carrying out additions, alterations and modifications also cannot be continued and the same is accordingly vacated.

27. The application is accordingly disposed of.

28. Copy of the Order be uploaded on the High Court website and be also forwarded to learned counsel for the Parties through email.