

IN THE HIGH COURT OF DELHI AT NEW DELHI

SUBJECT : MODIFICATION OF THE ORDER

IA No.6305/2007 in CS(OS) No.39/2006

Order reserved on : 5th November, 2007

Date of decision : 19th November, 2007

SMV AGENCIES PVT. LIMITED PLAINTIFF

Through: Mr. V.P. Singh, Senior Advocate,
Mr. R.M. Aggarwal,
Mr. Ravi Kumar Aggarwal,
Ms. Ritika Sethi, Advocates.

Versus

CH. AJAY LATYAN DEFENDANT

Through : Mr. Anil Sapra and Mr. Rajesh Pathak
Advocates for D-1.
Mr. Kirti Uppal and Mr. Ranjeet Singh,
Advocates for D-2 to 4.

HON'BLE MS. JUSTICE ARUNA SURESH

ARUNA SURESH, J.

1. This is an application filed by the defendant for modification/variation of the order dated 10th January, 2006 whereby ex-parte ad-interim injunction order was passed against the defendant restraining him, his servants, agents etc. from parting with possession and selling or alienating the suit property bearing No. E-22, New Delhi South Extension Part-II Market, New Delhi in favour of any other person except the plaintiff or creating any third party interest and also directing the Central Bank of India to handover the possession of the said property to the plaintiff.

2. Defendant seeks modification of this order on the plea that on one floor of the premises M/s. Mehraons Jewelers are running their business vide Agency

agreement dated 27th June, 2006 entered into with the defendant and the defendant is working as an agent. However, he is not satisfied with the income which he is deriving as an agent and wants to let out other two floors lying vacant to different tenants with an undertaking that the tenant shall vacate the premises in case any adverse order is passed by the court against the defendant.

3. This application is contested by the plaintiff. In para 3 of the reply, the plaintiff alleged that defendant has not disclosed the names and addresses of the proposed tenants and the market rate of rent per sq. ft. which he is likely to charge from the proposed tenants, period of proposed Lease and proposed area to be let out floor wise and other important terms and conditions of the Lease. According to the plaintiff these omissions are deliberate and therefore the application deserves dismissal.

4. Defendant accordingly filed an affidavit giving four names of different companies with whom he is negotiating or intends to negotiate to let out the said two floor of the property. This affidavit is also controverted by the plaintiff. It is pointed out that at this stage, the plaintiff has no right to know about the proposed area to be leased out, consideration of rent, etc. and purpose of lease, duration of lease and how the vacant possession of the suit property shall be handed over to the proposed tenants as one floor of the property is in possession of M/s. Mehrasons Jewelers.

5. Present suit has been filed by the plaintiff for specific performance of Memorandum of Understanding (MOU) dated 14th December, 2004 The plaintiff paid a sum of Rs.50,00,000/- in pursuance of the said MOU and the property was to be sold for a total consideration of Rs.17,25,00,000/-. Admittedly, the defendant has not been put in possession of the suit property and the possession of the same still remains with the plaintiff. The property is situated in a prime locality of South Delhi and one of the floors is already being used for commercial purposes by M/s. Mehrasons Jewelers. Defendant therefore is suffering loss in terms of the rent as two floors are lying vacant. Income as disclosed from the Agency Agreement with M/s.Mehrasons Jewelers in the application clearly indicates that defendant is not getting adequate return of the property because of the pendency of the present suit. Under these circumstances, the plaintiff will not suffer any irreparable loss if the order dated 10th January, 2006 is modified.

6. Accordingly, ex-parte ad-interim injunction order dated 10th January, 2006 granted to the plaintiff is modified in the following terms :- (i) Defendant is allowed to deal with the property by leasing it out to any of the tenants as named in the affidavit dated 22nd October, 2007 for a fixed period of two years by way of a registered Lease Deed. (As the case is at its initial stage and no evidence has so far been recorded). (ii) Defendant shall ensure that the Lease Deed contains a clause to

the fact that tenant so inducted in the premises shall be bound by the outcome of the present suit or any other order which may be passed by the court during the pendency of the suit and that tenant shall not claim any equity. (iii) Defendant shall place on record certified copy of the Lease Deed so executed within 30 days from its execution alongwith his affidavit as well of the tenant to the fact that he shall vacate the premises when ordered by the court and shall be bound by the final outcome of the present suit and also he shall not have any right of equity, claim or interest in the property (2000 VII AD (DELHI) 1032, "Misha Vadera and Anr. Vs. Ravi Kumar and Ors" referred to). (iv) Defendant shall also give an undertaking that he shall get the premises immediately vacated subject to the final decision in this case and shall also adhere to the order of this court dated 31st August, 2007.

7. Application is accordingly allowed and stands disposed of accordingly.
CS(OS) No.39/2006

Renotify on 19th November, 2007 before the Joint Registrar for recording of the evidence of the parties.

NOVEMBER 19, 2007 ARUNA SURESH
vk (JUDGE)