

Ex No.88/08

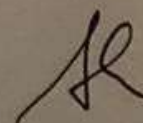
New No.1625/19

10.07.2020

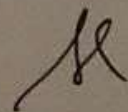
The present matter has been taken up for hearing by way of video conferencing on account of lockdown due to Covid 19.

Present : Dr. Arun Mohan, Ld. Senior Advocate with Mr. D.S. Khatri, Ld. Counsel for the decree holders
Mr. Ram Kumar, Ld. Counsel for judgment debtor no. 1
Mr. Sanjay Poddar, Ld. Senior Advocate with Ms. Pooja Kalra and Mr. Ashutosh Gupta, Ld. Counsels for the judgment debtor no.2

1. The decree holders have filed hard copy of some of the e-mails they had sent to the Court. In particular, they have filed hard copy of Excerpts of Documents, Documents, Excerpts from Judgments, Reply to Court Queries and Submissions, an Application under Section 30 r/w Order 11 Rules 12 & 14 and Section 151 of Code of Civil Procedure dated 01.07.2020 and Special Power of Attorney executed in favour of Mr. Vaibhav Singh. They have also e-mailed Reply-cum-Submission stated to be in compliance of order dated 02.07.2020, more documents and Affidavit in support of reply to court queries and submissions dated 01.07.2020.
2. The judgment debtor no. 2 has e-mailed its reply to the answers of the decree holders to the court queries, documents and a video. Let copy be supplied to the decree holders, if it has not already supplied.



3. On asking by the Court today, the Ld. Counsel for judgment debtor no. 1 has submitted that he will not be filing a separate reply to the answers furnished by the decree holders to the Court queries and that he is adopting the reply given by the judgment debtor no. 2.
4. On the last date of hearing, the decree holders were directed to submit hard copy of all their filings. However, they have not submitted the hard copy of the Reply-cum-Submissions, documents and affidavit which they e-mailed to the Court yesterday and today. They have also not submitted the hard copy of the application under Section 151 Code of Civil Procedure for extension of time, application under Section 30, Order 11 Rules 12 & 14 and Section 151 Code of Civil Procedure dated 25.06.2020, evidence by way of affidavit dated 22.06.2020 and different proposed issues which they have been e-mailing to the Court.
5. Despite repeated directions, the decree holders have again not disclosed their earnings from plots no. 1 and 3, Block-D, Jhandewalan Estate, Delhi. This direction was first given to them on 17.06.2020 and today is the fourth date of hearing since then. They were directed to furnish their earnings from these plots for the time period from 11.11.1999 till 27.12.2019. They were also directed to disclose the persons in whose possession these plots have been since 11.11.1999. This has also not been disclosed and a bald averment has been made that these plots are in occupation of several old tenants and ex-tenants besides two relatively new tenants – Mr. Vikram Arora and Bagga Link Services Limited. It has also been stated that in the year 1986, the structures on plots no. 1 and 3 were unauthorized - some semi- pucca, most as semi-kuchha or even kuchha and nothing compared to the solid structure constructed on plot no. 2. The details of the old and ex-tenants have not been disclosed. Old tenants does not necessarily mean tenants paying rent of less than Rs.3,500/- per month. It has also not been disclosed as



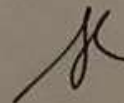
to who was in possession of the property let out to Mr. Vikram Arora, before it was let out to him. The time period and the area let out to Bagga Link Service Limited has also not been disclosed. Even though it is stated that in the year 1986, the structures were all unauthorized, semi – pucca, semi kachha and kachha, it has not been disclosed if the structures on these plots were solid structures for the relevant time period i.e. 11.11.1999 till 27.12.2019. Prima facie, it is unlikely that Bagga Link Service Limited will be paying Rs. 3,30,000 per month to the decree holders for a unauthorized, semi – pucca, semi kachha and kachha constructed premises.

6. Ld. Senior Advocate, appearing on behalf of the decree holders today submits that the earnings from these adjacent plots have not been disclosed since these are not relevant for the purpose of enquiry been conducted by the Court since the judgment debtor no. 2 has been making false claims to the tenants in these plots that it is the judgment debtor no. 2 who is the owner of these plots and as such, the tenants have stopped paying rent to the decree holders. It is further submitted by him that the decree holders are unable to fetch the market rate of rent from the adjacent plots because of the false claim of ownership been made by the judgment debtor no. 2.
7. Merely because the decree holders do not find the information sought by the Court to be relevant is no justification for them to not comply with the order of the Court which has attained finality. It is for the Court to decide whether the information sought is relevant or not. The decree holders cannot refuse to divulge the information merely because they do not find it to be relevant. In the earlier answer to Court queries dated 01.07.2020 e-mailed to the Court, the decree holders had sought more time from the Court for providing the information relating to the earning from plots no. 1 and 3. On the last date of hearing, it was submitted by the Id. Senior Advocate appearing for the Decree Holders that the information could



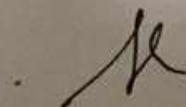
not be provided so far because of the limitations being faced during Covid 19 pandemic. This plea made on behalf of the decree holders was not accepted by the Court and they were granted another opportunity to disclose their earnings. Yet again, they have not disclosed their earning from the plots. Now, in the written submissions e-mailed to the Court yesterday, they are refusing to divulge the information on flimsy grounds. The Hon'ble Supreme Court had directed this court to conclude the present enquiry within a time frame and had also directed the parties to fully cooperate and assist this court in order to arrive at a conclusion. The Hon'ble Supreme Court further ordered that the parties will not seek adjournments. Instead of cooperating with the Court and assisting the Court, the decree holders are concealing the information. They have only furnished little information about these plots which is not sufficient to determine their income from these plots during the relevant time period. The decree holders have stated in their Reply-cum-Submission e-mailed to the Court on 09.07.2020 that if they disclose more details about plots no. 1 and 3, that will enable the North Delhi Municipal Corporation to achieve its objective of causing injury to the decree holders qua their old tenants. This ground taken by the decree holders for not disclosing their earning is not only baseless, but also preposterous.

8. This is an enquiry being conducted by the Court for determining the mesne profits for plot no. 2, Block-D, Jhandewalan Estate, Delhi. The plots adjacent to these plots i.e. plots no. 1 and 3 are purportedly owned by the decree holders. Since these plots are adjacent to the premises in question, these plots are most likely to have similar topography. In the case of Dr. J.K. Bhakthavasala Rao Vs. Industrial Engineers, Nellore AIR 2005 AP 438, it was held that there hardly exists any uniform and standard pattern of assessment for fixing of damages for the use and occupation of the suit building. Besides one license deed pertaining to part of the adjacent plot, the decree holders had initially filed four other



lease deeds and after framing of court questions, have recently filed 49 more lease deeds. They have also filed two different applications for discovery and production dated 25.06.2020 and 01.07.2020, by which they have sought direction from the Court to the judgment debtor no. 2 to file all registered rent deeds of all the premises in Jhandewalan for the period after 11.11.1999. The decree holders want this Court to rely on all the registered rent deeds of Jhandewalan area for a period of more than 20 years to ascertain the market rate of rent, but are concealing their own earnings from the adjacent plots. The decree holders want the Court to take into consideration the lease deeds of properties further away from the premises in question, but despite repeated directions of the Court, are concealing information about the adjacent plots which are owned by them. They are swamping the Court with innumerable documents so that this enquiry does not make headway. They have been putting obstacles before the Court in proceeding further with the enquiry ever since the court enlisted certain questions on which it wanted the Ld. Counsels for the parties to address arguments. Instead of addressing arguments on the queries of the Court, they have been doing endless filings which are not relevant either because these are beyond the jurisdiction of this Court or because the stage has not come for doing these filings.

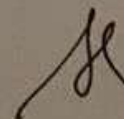
9. After the Court enlisted its queries, first, the decree holders filed an unsigned application under Section 151 Code of Civil Procedure for extension of time. It is stated in paragraph no. 11 of this application itself that the time fixed by the Hon'ble Supreme Court for conclusion of this enquiry stands automatically extended. Yet, by this application, the decree holders sought an adjournment on the pretext that the decree holders wish to move to the Hon'ble Supreme Court for extension of time. It is obvious that the decree holders did not need permission of this Court before approaching the Hon'ble Supreme Court for extending the prescribed time period or for any other relief. Also, it is absurd for this



Court to stall the proceedings of this enquiry till the Hon'ble Supreme Court further extends the time limit, particularly so when the Apex Court had directed this Court to decide this case within a time frame. The decree holders have been seeking repeated adjournments and are not complying with the orders of this Court, even though the time limit fixed for conclusion of this enquiry was only for their benefit.

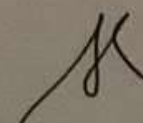
10. In the e-mails being sent on behalf of the decree holders, it has been contended that no notice or link of virtual hearing is being provided to them. It has also been stated on their behalf that they have no information of the order being passed by this Court.

11. The details required for joining the court proceedings in every case and the orders passed by this Court are being regularly uploaded on the website of the District Courts. Also, the said information and orders of the Court are being sent to the Ld. Counsel for the decree holders on WhatsApp. As per the report dated 22.06.2020 of the Ahlmad of this Court sent by e-mail, he had even contacted the Ld. Counsel for the decree holders to ascertain his e-mail address. However, the Ld. Counsel did not disclose his email address and stated that he will get back to him after consulting with his Senior. The Ahlmad has reported that the Ld. Counsel never got back to him to provide his e-mail address and thereafter even stopped taking his phone calls. Since no one had appeared before the Court on 17.06.2020, this Court by a speaking order, enlisted certain queries that it had and on which it wanted the Ld. Counsels for the parties to address arguments. The queries were enlisted so that the Ld. Counsels come prepared to address arguments on the same and so that not even a single date of hearing is wasted. This Court has been making all efforts to comply with the direction of the Hon'ble Supreme Court that this case is to be decided expeditiously. Despite the order dated 17.06.2020 being served upon the Ld. Counsel



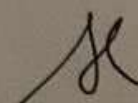
for the decree holders through WhatsApp, no one again appeared on their behalf on 22.06.2020. During the court proceedings being conducted through video conferencing on 22.06.2020, the Ld. Senior Advocate appearing for judgment debtor no. 2 informed the Court that the mobile phone of another Counsel for the decree holders whom he had contacted is switched off. Interestingly, he was referring to a Counsel for the decree holders whose name was mentioned in the filings done on behalf of the decree holders just a few minutes prior to the start of virtual court proceedings on 22.06.2020. The decree holders complain about not being provided with link for joining court proceedings and when details required for joining are individually provided to their counsel, either they do not appear or just seek adjournment.

12. Instead of complying with the order dated 17.06.2020 by addressing arguments and revealing information about plots no. 1 and 3, the decree holders have been doing repeated filings. Different proposed issues have been filed thrice by the Decree Holders. These were filed on 16.03.2020 and by email on 25.06.2020 and 01.07.2020. Issues have also not been framed as yet and without even knowing the issues in the present case, the decree holders have already filed their evidence by way of affidavit by sending it on email on 22.06.2020. They also filed two different applications under Section 30 r/w Order 11 Rules 12 & 14 and Section 151 of Code of Civil Procedure, two sets of written arguments on the Court queries and documents running into more than 1200 pages. They also want to bring on record all the registered lease deeds of 20 years of Jhandewalan area.
13. Instead of fairly assisting the Court in order to arrive at a conclusion on the quantum of mesne profits, the decree holders are raking up issues related to title of the land over which the superstructure is built and the open courtyard. All courts including Hon'ble High Court and Hon'ble Supreme Court have also refused to comment on the issue of title in



proceedings of this case. In the written arguments e-mailed to the Court by the decree holders yesterday, a new and innovative argument has been raised that even the open courtyard in Plot no. 2 is a built up area and therefore, the eviction order dated 11.11.1999 is also for the open courtyard. Even today, during the course of arguments, the Ld. Senior Advocate appearing for the decree holders stood by this new ground and on questioning by the court admitted that this claim has never been made before in the proceedings of the eviction petition and the execution petition which followed. He further stated that till date, the eviction order of the year 1999 remains unexecuted since possession of the built up structure which includes the open courtyard has not been handed over to the decree holders.

14. An answer to the Court queries enlisted in order dated 17.06.2020 will enable the Court to narrow down the matters in issue on which evidence has to be led. As has already been noted in the order passed on the last date of hearing, even the Delhi High Court Rules provide that some time spent by the Court at the outset in studying and elucidating the pleadings may save several days if not weeks in the later stages of the trial. The decree holders have filed more than 1200 pages of documents and seek production of innumerable registered rent deeds of Jhandewalan area of a period of more than 20 years. All these documents may not be required to be proved in evidence and will also curtail cross-examination, depending on the findings of the Court on the enlisted queries.
15. In view of the order dated 07.11.2019 passed by the Hon'ble Supreme Court, this Court was required to conclude the enquiry by 29.03.2020. This time frame was later extended by the Hon'ble Supreme Court vide its order dated 06.03.2020, as per which, this Court was required to conclude the enquiry that 29.06.2020. However, due to the Covid-19 pandemic and the lockdown, the Courts were shut for a substantial period of time. This Court has been making endeavours to conclude the



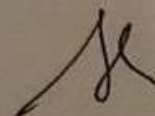
enquiry at the earliest. However the decree holders are putting hurdles in the same.

16. For not complying with the direction of the Court to provide information about earnings and possession of plots no. 1 and 3 for the time period from 11.11.1999 till 27.12.2019 and the aforementioned conduct of the decree holders, a cost of Rs.50,000/- is imposed upon the decree holders to be deposited with DLSA. This amount of cost is imposed keeping in view the finding of the Hon'ble Supreme Court in the case of Ramrameshwari Devi & Ors. Vs. Nirmala Devi & Ors. Civil Appeal No. 4912-4913 of 2011 dated 04.07.2011 that realistic costs should be imposed by the Court. Even previously, costs were imposed upon the decree holders. However, that did not improve their conduct.
17. To facilitate the depositing of costs, the Reader of this Court will provide the bank account details of Delhi Legal Service Authority, Central District to the Ld. Counsel for the decree holders.
18. The proof of depositing the cost shall be positively furnished to this Court by the next date of hearing.
19. At this stage, Ld. Senior Advocate for the judgment debtor no. 2 has submitted that even the previous cost of Rs.20,000/- imposed by the Court upon the decree holders is yet to be paid to the judgment debtor no. 2. The Ld. Senior Advocate appearing on behalf of the decree holders undertakes to even pay the previous cost of Rs.20,000/-.
20. The decree holders are again directed to disclose their earnings from these plots and possession of the plots for the aforementioned time period, by the next date of hearing. They will file a site plan disclosing the constructed portions and vacant land on these plots, indicating the possession of various persons in these plots for the aforementioned entire time period. They will disclose all details of the tenancies in these



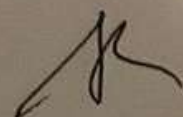
plots for the aforementioned time period. They will file all rent deeds pertaining to these two plots. The decree holders will also disclose as to who had inducted the tenants and other occupants in these plots. Even if the rent is not being paid, the decree holders ought to disclose the rate of rent. They will also disclose the area that has been let out to Bagga Link Services Limited and the period when the lease commenced. Copy of the lease deed executed with Bagga Link, if any, be also filed. The decree holders will also disclose the nature of construction in these plots for the aforementioned time period. The decree holders shall also disclose as to when the constructions were carried out in these plots and the age of the building. They shall also disclose the portions of these two plots which have been in their possession or in the possession of their ancestors at various points of time during the said time period.

21. In the license deed executed in favour of Mr. Vikram Arora, it is claimed by the decree holders that they are owners in actual physical possession of property measuring 5000 sq. feet in plot no. 1, Block D, Jhandewalan Estate, Karol Bagh, New Delhi. By this deed, they gave only about 540 sq. feet to Mr. Vikram Arora on license at the rate of Rs.50,000/- per month commencing on 26.04.2016. The license fee was to increase by 5% after every 12 months.
22. From the coloured photographs of plots no. 1 and 3 e-mailed to the Court on 9.07.2020, it is evident that substantial part of plot no. 1 and 3 have constructions over it. It is evident from the license deed executed in favour of Mr. Vikram Arora that the entire portion in possession of the decree holders was not given on license to Mr. Vikram Arora. As such, the decree holders ought to have paid tax on the notional rent calculated for the vacant constructed portion in their possession.
23. On direction of the Court, it has been disclosed today that the owners of plots no. 1 and 3 are the decree holders Mr. Jai Singh and Mr. Virender

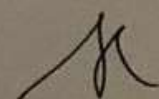


Singh, both sons of Late Sh. Lala Bharat Singh. On direction of the Court, it is disclosed that the PAN card number of Mr. Jai Singh is ABAPS9517K and PAN card number of Mr. Virender Singh is AISPS7856A. Since the decree holder have been concealing their earning from plot no. 3, the Court deems it fit to seek the information from the Income Tax Department. Issue Court notice to the Principle Chief Commissioner, Income Tax, Delhi directing him to disclose the notional rent of plots bearing no. 1 and 3, Block-D, Jhandewalan Estate, Karol Bagh, New Delhi for the period from 11.11.1999 till 27.12.2019 that must have been stated by the decree holders in their income tax returns. The Principal Chief Commissioner shall also disclose if these properties were ever assessed by the Income Tax Department for the purpose of determining the notional rent for the period from year 1999 till 2020. An endorsement be made on the notice that since this is a time bound enquiry being conducted on the direction of the Hon'ble Supreme Court, the Principle Chief Commissioner shall comply with the direction of this Court on priority.

24. The decree holders shall also disclose by the next date of hearing, if they have ever calculated and submitted notional rent of plots no. 1 and 3 to the Income Tax Department and whether these two plots have ever been assessed by the Income Tax Department for the determination of notional rent.
25. The decree holders will also file the site plan accompanying the license deed executed in favour of Mr. Vikram Arora, which they have not filed till now.
26. The decree holders are again directed to submit the hard copy of all their filing done till now, besides an affidavit in support of its Reply-cum-Submission dated 9.07.2020.



27. During the Course of arguments today, Ld. Senior Advocate appearing on behalf of the decree holders has admitted that the amended memo of parties filed by the decree holders on 29.07.2019 is incorrect in as much as Smt. Meena Devi, decree holder no. 3 had died long back.
28. In view of the submission, the decree holders are also directed to file hard copy of the correct amended memo of parties by the next date of hearing.
29. The aforementioned filing will be done by the parties by emailing it to the court at arc1.central4220@gmail.com before 6 pm on the day prior to the next date of hearing.
30. The judgment debtor no. 2 shall also submit hard copy of its reply alongwith supporting affidavit by the next date of hearing.
31. The hard copies shall be submitted in court number 42, Tis Hazari Court complex at any time between 10:30 am and 2 pm.
32. To come up for arguments on the queries of the court on 14.07.2020 at 2 pm. At this stage, the Ld. Senior Advocate appearing for the decree holders requests that the matter be taken up atleast after 10 days since it will take that long for the decree holders to comply with the court directions. This request is not acceded to for the reasons mentioned hereinabove because of which the Court is of the opinion that the decree holders are trying to delay the conclusion of this enquiry. Also, most of the directions given by this order to the Decree Holders were already given to them way back on 17.06.2020 and as such, they should have complied with it by now.
33. The Ahlmad is directed to immediately send copy of this order and



details required for joining court proceedings through video conference on the next date of hearing, to the learned Counsels for parties.



(Shirish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
10.07.2020

M.No. 47/19

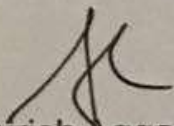
New No. 751/20

10.07.2020

The present matter has been taken up for hearing by way of video confrencing on account of lockdown due to Covid 19.

Present : Dr. Arun Mohan, Ld. Senior Advocate with Mr. D.S. Khatri, Ld. Counsel for the decree holders
Mr. Ram Kumar, Ld. Counsel for judgment debtor no. 1
Mr. Sanjay Poddar, Ld. Senior Advocate with Ms. Pooja Kalra and
Mr. Ashutosh Gupta, Ld. Counsels for the judgment debtor no.2

To come up alongwith connected case on 14.07.2020 at 02:00 PM.


(Shirish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
10.07.2020