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IN THE HIGH COURT OF DELHI AT NEW DELHI***Reserved on: 15th April, 2026******Pronounced on: 21st May, 2026***

+ TR.P.(C.) 50/2025 & CM APPL. 19171/2025

MUKESH KHURANA

.....Petitioner

Through: Mr. Akshat Gupta, Ms. Sakshi Tikmany and Mr. Madhav Aggarwal, Advocates.

versus

RAHUL CHAUDHARY

.....Respondent

Through: Mr. Lalit Gupta, Mr. Vikram Singh Dalal, Ms. Ishita Nautiyal, Mr. Satvik Sharma and Ms. Pooja Sharma, Advocates.

CORAM:**HON'BLE MR. JUSTICE AMIT SHARMA****JUDGMENT****AMIT SHARMA, J.**

1. The present petition under Section 24 of the Civil Procedure Code, 1908, (for short, 'CPC') seeks the following prayers: -

“A. Direct that the Suit bearing CS No. 523 of 2022 titled “*Rahul Chaudhary v. Mukesh Khurana*” be transferred from the court of the Ld. Additional District Judge-03, Patiala House Courts, New Delhi, to the Original Side of this Hon’ble Court; and

B. Any other order(s) that this Hon’ble Court may deem fit and necessary in the interest of justice.”

2. By way of the present petition, petitioner seeks transfer of the subject



suit, CS No.523 of 2022, titled as, “Rahul Chaudhary v. Mukesh Khurana” instituted and pending before the Court of learned Additional District Judge-03, Patiala House Courts, New Delhi, to the Ordinary Original Civil Jurisdiction of this Court. It is the case of the petitioner that subject suit was instituted on behalf of the respondent against the petitioner, *inter alia*, seeking possession of the suit property, *i.e.*, Side Portion of Farm No.10, Ram Mandir Road, Vasant Kunj, New Delhi, and recovery of arrears of rent, damages/mesne profits along with interest.

3. As per the averments made in the present petition, the petitioner had preferred an application under Section 8 of the Arbitration and Conciliation Act, 1996, (for short, ‘A&C Act’) seeking reference of the subject suit to arbitration, which was dismissed by the learned Trial Court *vide* order dated 29.04.2024. The said order was challenged by the petitioner by way of FAO No. 200/2024 under Section 37 of the A&C Act before this Court, which was also dismissed *vide* order dated 09.07.2024. The said order was further challenged by way of SLP No.23980/2024, which was also dismissed by Hon’ble Supreme Court *vide* order dated 18.02.2025.

4. Petitioner filed a counter-claim being Counter-Claim No.44/2023 in the subject suit for declaration of the oral agreement of collaboration between the petitioner-counter claimant and respondent-defendant (in subject suit) for redevelopment of “Khurana Farm No.10” situated at the Side Portion of Farm No.10, Ram Mandir Road, Vasant Kunj, New Delhi, (suit property) as also for specific performance thereof, and alternatively, for damages. Alongwith the aforesaid counter-claim filed by the petitioner herein, an application under



Order VII Rule 10 read with Section 151 of the CPC seeking return of the plaint to the respondent to be presented before this Court was also filed as the combined pecuniary jurisdiction of the subject suit and the counter-claim exceeded the pecuniary jurisdiction of the learned Trial Court.

5. It is the case of the petitioner that the latter's counter-claim was delayed as no notice/summons had been issued by the learned Trial Court although it was filed on 11.12.2023, and on account of the same, the petitioner preferred an application under Order VII Rule 10 read with Section 151 of the CPC before the learned Trial Court on 10.03.2025 seeking return/withdrawal of the counter-claim filed on his behalf with liberty to be presented before the Court of competent jurisdiction. The aforesaid application was allowed by the learned Trial Court *vide* order dated 25.03.2025.

6. In pursuance thereof, the petitioner instituted suit, **CS(OS) No. 208/2025**, before Ordinary Original Civil Jurisdiction of this Court on 01.04.2025 on the same sets of facts and cause of action seeking same reliefs as sought in his Counter-Claim and the same is pending adjudication since then.

7. The present petition also states that the petitioner had also preferred an application, **IA No.408 of 2025**, under Section 151 of the CPC, *inter alia*, seeking direction that the aforesaid suit, **CS(OS) No. 208/2025**, be adjudicated and tried together alongwith the subject suit. It is averred in the present petition that for the grant of this relief, it was necessary and proper



that this Court should first direct transfer of the subject suit from the learned ADJ, Patiala House Courts, to this Court, and therefore, the present petition is filed.

8. Learned counsel appearing on behalf of the petitioner submits that the present petition ought to be allowed as the subject matter of the subject suit and **CS(OS) No. 208/2025** is the same, *i.e.*, the suit property and the two suits are in the nature of cross-suits/claims, and therefore, both ought to be heard and tried together and disposed of together by way of common judgment.

9. *Per contra*, learned counsel appearing on behalf of the respondent has submitted that the present petition is gross abuse of the process of Court, and has been filed with ulterior motive of delaying the proceedings and harassing the respondent. It is submitted that the nature of the two suits are completely different inasmuch as the subject suit, filed by the respondent, is based on previous landlord and tenant relationship, which is an admitted fact and no evidence is required for the same. It is thus submitted that the nature and extent of enquiry necessary in the subject suit filed by the respondent is limited and would not overlap with the evidence to be led in the suit filed by the petitioner. It is further submitted that, during the pendency of the present petition, an application under Order XII Rule 6 of the CPC filed by the respondent in the subject suit has already been allowed *vide* order/judgment/decree dated 24.04.2025, and a decree of possession has already been passed in favour of the respondent. It is further submitted that, by way of the said decree, to a large extent arrears of rent have already been received by the respondent.



10. Further, to demonstrate that the extent of evidence and nature of issues, which may arise in the two suits are completely different, the following points have been highlighted by learned counsel for the respondent in the reply filed to the present petition: -

“a) In his Suit filed before this Hon'ble Court, the Petitioner has propounded merely an oral collaboration contract/ agreement, allegedly entered into on/ around 25.07.2012 (Please see Para 10.3, Page 19).

b) That in order to succeed in his Suit, the Petitioner will have to prove multiple issues and facts.

c) Very heavy burden will lie upon the Petitioner to prove the mere existence of any oral collaboration contract/ agreement.

d) That whether the Suit of the Petitioner is within limitation will also be a big issue in which the Petitioner needs to succeed, given the fact that the Petitioner has filed his Suit vide Complaint dated 24.03.2025, in respect of oral collaboration contract/ agreement, allegedly entered into on/ around 25.07.2012 (after almost 13 years). No such issues arise in the Suit filed by the Respondent.

e) It is relevant to point out that the Petitioner has filed his Suit claiming multiple reliefs of declaration, specific performance, recovery and injunction, limitation whereof is three (3) years.”

11. Similarly, it is pointed out that both suits are at different stages in the following manner: -

“a) The Suit filed by Petitioner has just started and is at the very initial stage. The Suit filed by Petitioner being CS (OS) No. 208 of 2025 titled "Mukesh Khurana vs. Rahul Chaudhary" is listed before the Ld. Joint Registrar on 17.09.2025 for completion of pleadings. True copy of relevant orders passed in CS (OS) No. 208 of 2025 is annexed herewith as Annexure-R1.



b) In the Suit filed by Respondent, decree for possession has already been passed. The Suit filed by Respondent for the relief of possession, arrears of rent, damages, etc. bearing CS No. 523 of 2022 titled "Rahul Chaudhary vs. Mukesh Khurana", was filed vide Complaint dated 16.12.2022. The said Suit is now pending adjudication before the Ld. DJ, Patiala House Courts, New Delhi for framing of remaining issues etc. True copy of relevant orders passed in CS No. 523 of 2022 is annexed herewith as AnnexureR2.”

12. Learned counsel appearing on behalf of the respondent further submits that in the subject suit instituted by the respondent before learned ADJ, Patiala House Courts, following reliefs have been sought: -

- “i. Possession of the Suit Property;
- ii. Recovery of arrears of rent to the tune of INR 78,63,750/- up-to 22.07.2022 (from 15 days after issuance of Legal Notice dated 08.07.2022) alongwith interest@ 18% p.a.;
- iii. Pendente-lite and future use and occupation charges/damages/mesne profits for the use of the Suit Property from 23.07.2022 onwards till the actual date of handing over of the vacant possession of the Suit property, along with interest@ 18% p.a.”

13. In suit, **CS(OS) No. 208/2025**, instituted on behalf of the petitioner, the following reliefs have been sought: -

“(i) Pass a judgement and decree declaring that the oral collaboration contract/ agreement for redevelopment of the Suit Property as detailed in the captioned Suit, to be a legally valid and binding agreement between the parties and further declare that the Defendant's denial/ renegeing of the said oral understanding is illegal and bad in fact and law; and

(ii) Pass a judgement and decree declaring the right, title and interest of the Plaintiff in the Suit Property as being the Developer Allocation, as detailed in Para 5 of the instant Suit, in terms of the oral collaboration agreement for redevelopment of the Suit Property; or



(iii) Alternatively, pass a judgement and decree declaring the right, title and interest of the Plaintiff in the Suit Property as being the Developer Allocation, as detailed in Para 5 of the captioned Suit, in terms of Section 60 of the Easements Act, 1882; and

(iv) Pass a decree of specific performance directing the Defendant to specifically perform his obligations under the abovementioned oral collaboration agreement for redevelopment of the Suit Property, and to execute a registered sale/ conveyance deed in favour of the Plaintiff in respect of the Plaintiff allocation of the Suit Property (i.e. Developer Allocation of land and building), as described above in Para 5, and to come forward and sell the Defendant's allocation of the Suit Property (i.e. the Owner Allocation of land and building) to the Plaintiff herein at the prevailing market rate of Rs. 5 Crores (i.e., one-third of the market rate of the entire property) when the offer was first made for purchase by the Plaintiff to the Defendant i.e. in or around November 2013; or

(v) Alternatively, pass a Judgement and Decree directing the Defendant to pay Rs. 15 Crores as damages to the Plaintiff, along with interest at the rate of 18 % p.a., including pendente lite and future interest, until the date of actual payment; and

(vi) Pass a Judgement and Decree declaring that the Plaintiff has the right to stay in the entire Suit Property in terms of the abovementioned oral collaboration agreement for redevelopment of the Suit Property, subject to payment of use and occupation charges only in respect of the Defendant's allocation of the redeveloped Suit Property (i.e. the Owner Allocation); and

(vii) Pass a decree of injunction, restraining the Defendant from dispossessing the Plaintiff from the Suit Property in terms of the abovementioned oral collaboration agreement for redevelopment of the Suit Property; and

(viii) Cost of the instant proceedings; and

(ix) Pass any such order(s) that this Hon'ble Court may deem fit and necessary in the interest of justice.”

14. It is submitted that, in similar circumstances, learned Single Judge of



this Court *vide* order dated 13.09.2013 in CS(OS) No. 1280/2013 titled as, **“M/s Spearhead Digital Studio Pvt. Ltd. v. H.K. Mitroo”**, on an application filed under Section 24 of the CPC for transfer and consolidation of suits, had passed the following order: -

“In my view, there is merit in the submissions of learned counsel for the defendant. The nature of the suit itself indicates that the plaintiff is indulging in multiple litigations. Earlier he filed a suit for injunction. When stay was not granted, the present suit has been filed claiming specific performance of an oral agreement to sell. A mere look at the nature of submissions made by the plaintiff shows that it is make belief. It is *prima facie* difficult to accept that any owner of a valuable estate will enter into such an Agreement to Sell as propounded by the plaintiff. It appears *prima facie* that this suit is filed only as a counter blast to delay the suit of the defendant for possession and to harass the defendant.

The suit filed by the defendant earlier has already progressed and evidence of plaintiff is being recorded. The present suit is at the initial stage and consolidating two suits is bound to cause delay in disposal of prior suit filed by the defendant.

Even otherwise, the nature of transactions in the present case and that in the earlier case at District Court Saket are substantially different. In the present suit, the plaintiff has to prove existence of an oral agreement to sell and their readiness and willingness to perform the said oral agreement to sell. On the other hand, in the suit filed by the defendant in the District Court, Saket, the defendant has to prove existence of tenancy, termination of tenancy and the rate at which mesne profit can be claimed. Clearly, different issues arise in these two suits. Merely because there is similarity in the subject matter i.e., the suit property, it would not be sufficient for consolidating and trying the suits together.

Reference may be had to a judgment of the Supreme Court in the case of *Chitivalasa Jute Mills (supra)*. There the Court noted that the cause of action alleged in the two plaints referred to the same period and same transactions i.e., the supply of jute bags between the period 7-1-1992 and 31-12-1993. It is further noted that what is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. It was further



noted that almost the same set of oral and documentary evidence would be needed.”

15. The aforesaid order was challenged before learned Division Bench by way of an appeal, **FAO (OS) 450/2013**, titled as, “**M/s Spearhead Digital Studio Pvt. Ltd. v. H.K. Mitroo**”, and the same was dismissed by learned Division Bench by observing as under¹: -

“2. The learned single Judge has examined the matter in detail and has also noticed that the appellant had earlier filed a suit for injunction being suit no. 85/2010 before the civil Judge, New Delhi. Initially in that suit an ex parte injunction had been granted in favour of the appellant. However, the application under Order 39 Rule 1&2 CPC was ultimately dismissed by an order of the civil Judge on 01.12.2010. In the said order dated 01.12.2010 the learned civil Judge had observed that the appellant herein had approached the court in the capacity of a vendee and not in the capacity of a lessee and that it had built up its case on an oral agreement for purchase of the suit property and had averred that part of the sale consideration had already been paid by him. The civil Judge also noted that the relief sought by the plaintiff therein and the appellant herein was not on the basis of the lease agreement dated 1.4.2000 and in essence the appellant herein had filed the said suit seeking protection under the doctrine of part performance under section 53A of the Transfer of Property Act, 1882. The learned civil Judge, however, observed that the appellant had an alternate remedy available to it and therefore an injunction could not be granted in its favour in view of the provision of section 41(h) of the Specific Relief Act, 1963. Consequently, the learned civil Judge was of the view that the appellant herein had not been able to establish its prima-facie case and therefore the application under Order 39 Rule 1&2 CPC was dismissed by the said order dated 01.12.2010. Shortly thereafter, the appellant herein withdrew the said suit no. 85/2010.

3. The respondent had filed the suit for possession and mesne profits in 2011. The present suit was filed by the appellant two years later in 2013. Taking into consideration these circumstances, the learned single Judge observed as under:-

¹ 2013 SCC Online Del 4032



“In my view, there is merit in the submissions of learned counsel for the defendant. The nature of the suit itself indicates that the plaintiff is indulging in multiple litigations. Earlier he filed a suit for injunction. When stay was not granted, the present suit has been filed claiming specific performance of an oral agreement to sell. A mere look at the nature of submissions made by the plaintiff shows that it is make belief. It is prima facie difficult to accept that any owner of a valuable estate will enter into such an Agreement to Sell as propounded by the plaintiff. It appears prima facie that this suit is filed only as a counter blast to delay the suit of the defendant for possession and to harass the defendant.

The suit filed by the defendant earlier has already progressed and evidence of plaintiff is being recorded. The present suit is at the initial stage and consolidating two suits is bound to cause delay in disposal of prior suit filed by the defendant.”

We feel that the learned single Judge was entirely correct in dismissing the application of the appellant under section 24 CPC.”

16. Attention of this Court was also drawn to a judgment rendered by learned Single Judge of this Court in **Sunil Kapoor v. Himmat Singh & Ors.**², and by placing reliance on paragraph Nos.11, 12, 15, 16, 21 thereof, it has been contended that there is no common question involved in the previously instituted suit for possession of property, recovery of arrears of rent, damages/mesne profits, and interest, and the subsequently, instituted suit for declaration of oral collaboration agreement as binding, as also for a decree for specific performance.

17. Apart from the above, learned counsel for the respondent further draws attention of this Court to the conduct of the petitioner, disentitling him to the relief sought in the present petition by highlighting the same in the reply as

² ILR (2010) II DELHI 616



under: -

“17. The conduct of the Petitioner has been most malafide since inception:-

a) Notably, CS No. 523 of 2022 was filed by Respondent on 16.12.2022 and registered on 19.12.2022.

b) Petitioner entered appearance and filed his written statement on 27.04.2023. However, after nearly eight (8) months, the Petitioner filed a counter claim vide Counter Claim No. 44 of 2023 on 11.12.2023. Vide the said counter claim; the Petitioner sought similar reliefs as sought in the Suit now filed before this Hon'ble Court being based upon oral collaboration.

c) No such Suit based upon oral collaboration was ever filed till such time the owner/ Respondent sued the Petitioner for possession and recovery of arrears of rent etc. Clearly, the Suit by Petitioner is a mere after thought and a counter blast, to somehow save his illegal possession.

d) The Petitioner initially tried to delay the proceedings before the Ld. DJ by filing an Application under Section 8 of the Arbitration and Conciliation Act, 1996 (as amended up to date). The said Application was dismissed by the Ld. DJ on 29.04.2024. The Petitioner challenged the said order before this Hon'ble Court vide FAO No. 200 of 2024. The said Appeal bearing FAO No. 200 of 2024 was dismissed on 09.07.2024. Thereafter, the said order dated 09.07.2024 was challenged before the Hon'ble Apex Court vide SLP(C) No. 23980 of 2024. The said SLP was also dismissed vide order dated 18.02.2025.

e) The Petitioner was well aware that the counter claim filed by him was not maintainable before the Ld. DJ inter-alia on account of pecuniary jurisdiction of the Ld. DJ in terms of proviso to Order VIII Rule 6A (I) of the Code of Civil Procedure, 1908. Due to this reason, no summons/ notice were issued in the Counter Claim No. 44 of 2023.

f) Despite being aware of this fact, the Petitioner waited for another 16 months i.e., till 10.03.2025 to move an Application before the Ld. DJ to withdraw the counter claim. This was done after dismissal of SLP(C) No. 23980 of 2024 vide order dated 18.02.2025.



g) It is noteworthy that in the Written Statement filed by the Petitioner in CS No. 523 of 2022, the Petitioner had contended, though falsely, that the Lease was orally renewed twice for a period of three (3) years each. As per the Petitioner, the said oral extension ended on 31.03.2025. Therefore, after 31.03.2025, the Petitioner had no entitlement to remain in possession of the Suit Property even as per the best case pleaded by the Petitioner in his Written Statement, though all these pleas were false.

h) Pertinently, the Respondent had filed an Application under Order XII Rule 6 of the Code of Civil Procedure, 1908 before the Ld. DJ which was finally listed for arguments on 03.04.2025.

i) To stall the adjudication of the Application under Order XII Rule 6 the Code of Civil Procedure, 1908 on 03.04.2025, the Petitioner filed CS (OS) No. 208 of 2025 titled "Mukesh Khurana Vs. Rahul Chaudhary" before this Hon'ble Court in the last week of March, 2025. Alongwith this Suit, the Petitioner filed an Interlocutory Application under Section 151 of the Code of Civil Procedure, 1908, being IA No. 8408/2025, with the following prayer:

"In view of the facts and circumstances stated above, it is most humbly prayed that this Hon 'ble Court may be pleased to:

i. Direct that the captioned Suit be adjudicated and tried together along with the Civil Suit bearing CS No. 523 of 2022 titled "Rahul Chaudhary vs. Mukesh Khurana" pending before Patiala House Courts, New Delhi;

ii. During the pendency of the instant Application, direct ad interim ex-parte stay of the proceedings in the Civil Suit bearing CS No. 523 of 2022 titled "Rahul Chaudhary vs. Mukesh Khurana" before the Ld. Additional District Judge-03, Patiala House Courts, New Delhi; and

iii. Pass any other order(s) that this Hon 'ble Court may deem fit and necessary in the interest of justice. "

j) The said CS (OS) No. 208 of 2025 was first listed before the Ld. Joint Registrar on 01.04.2025. No interim orders could be secured by the Petitioner.

k) As such, the Petitioner filed the captioned Transfer Petition dated 31.03.2025 and got it listed on 02.04.2025. However, the Petitioner was



unable to secure any interim orders.

l) The Petitioner herein sought adjournment before the Ld. DJ on 03.04.2025, as clearly recorded in the order sheet. Request for adjournment was declined. Arguments were heard on the application under Order XII Rule 6 the Code of Civil Procedure, 1908 and order was reserved for pronouncement on 16.04.2025.

m) Even thereafter, the Petitioner filed another application dated 15.04.2025 before the Ld. DJ thereby inter alia praying for deferment of passing of orders on the application under Order XII Rule 6 the Code of Civil Procedure, 1908. The said application was dismissed by the Ld. DJ vide order dated 16.04.2025.

n) Thereafter, the Petitioner filed CM Application No. 23194/2025 in the present Transfer Petition wherein an alternative relief to defer the proceedings before the Ld. DJ was sought. However, vide order dated 22.04.2025, the said application was also dismissed by this Hon'ble Court.

o) It is clear that the sole intent of the Petitioner was to somehow not let the order be pronounced on the Application under Order XII Rule 6 the Code of Civil Procedure, 1908.”

18. *In rejoinder*, learned counsel appearing on behalf of the petitioner, however, submitted that the similar contentions had been raised by the respondent at the time of arguments in **CS(OS) 208/2025**, however, despite the same, summons had been issued to the respondent. It is further pointed out that the order dated 24.04.2025 passed by learned District Judge, Patiala House Courts, on the application filed by the respondent-plaintiff in **CS No.523/22** under Order XII Rule 6 read with Section 151 of the CPC has been stayed by learned Coordinate Bench of this Court in an appeal, **RFA 511/2025**, preferred on behalf of the petitioner *vide* order dated 17.11.2025. It is submitted that the said order was passed after extensive hearing and after citing the same judgments which have been cited today at the bar, and therefore, the said order will not come in the way of present transfer petition.



It is, again, reagitated that the evidence to be led in both the suits would be common in nature, and therefore, would be overlapping, and thus, giving rise to multiplicity of proceedings. To demonstrate the same, attention of this Court has been drawn to following averments made in paragraph 5 of the plaint filed in the suit, **CS (OS) No.208 of 2025**, instituted by the petitioner in Ordinary Original Civil Jurisdiction of this Court: -

“****

5. Accordingly, on or about 25.07.2012, the Parties entered into an oral collaboration agreement for the re-development of the Suit Property, wherein specific plans for the re-development were agreed upon by the Parties, and the Parties also orally agreed on the specifics of the configuration of construction/ redevelopment of the Suit Property as well as the extent what has actually been carried out, and which is exactly what has actually been carried out at the site. The key aspects of the aforesaid oral collaboration agreement and contract for redevelopment of the Suit Property are:

(vii) The Plaintiff would redevelop the entire Suit Property as per the mutually agreed layout/ configuration inter alia being construction of a new building admeasuring about 14,500 sp. ft. approximately comprising of ground floor, first floor, second floor, terrace, 6 servant quarters, outhouse comprising of home-theatre, steam, sauna, jacuzzi and massage room, and 2 powder room/ toilets/ and a deck with swimming pool beautification/ landscaping of common areas, creation of passageway/ driveway along with 6 parking spaces, and fixing of main gate.

(viii) While the Defendant's contribution in this collaboration was by way of land (i.e. the underdeveloped Suit Property land), the Plaintiff's contribution would be to bear all the expenses of the redevelopment of the Suit Property. “

19. It is the case of the petitioner that on the basis of the oral collaboration agreement, he is also claiming retention of possession, and therefore, his defence in the subject suit filed by the respondent is his cause of action in the



suit filed at his instance. Learned counsel appearing on behalf of the petitioner has placed reliance on judgment of Hon'ble Supreme Court in **Chitivalasa Jute Mills v. Jaypee Rewa Cement**³, in particular, on the following paragraph: -

“9. On the facts averred in the two complaints filed by the two parties before two different courts, it is clear that the parties are substantially the same. Jaypee Rewa have alleged and Willard India or Chitivalasa Jute Mills do not deny that Chitivalasa Jute Mills is nothing but a division of Willard India Limited. The fact remains that the cause of action alleged in the two complaints refers to the same period and the same transactions i.e. the supply of jute bags between the period 7-1-1992 and 31-12-1993. What is the cause of action alleged by one party as foundation for the relief prayed for and the decree sought for in one case is the ground of defence in the other case. The issues arising for decision would be substantially common. Almost the same set of oral and documentary evidence would be needed to be adduced for the purpose of determining the issues of facts and law arising for decision in the two suits before two different courts. Thus, there will be duplication of recording of evidence if separate trials are held. The two courts would be writing two judgments. The possibility that the two courts may record findings inconsistent with each other and conflicting decrees may come to be passed cannot be ruled out.”

20. Learned counsel further draws attention of this Court to a judgment of learned Single Judge of this Court in **Karan Kapoor v. Madhuri Kumar**⁴, in particular, to the following paragraph: -

“22. The suit for specific performance filed by the appellant is no impediment for the Trial Court to proceed with the suit filed by the respondent herein for possession. (Ref : CM(M) 1215/2007, Sunil Kapoor v. Himmat Singh, decided on January 29, 2010), wherein in Para 20, the Court held as under:

³ (2004) 3 SCC 85

⁴ 2021 SCC OnLine Del 5627



“20. Though the aforesaid two judgments of the Division Bench of this Court are on injunction application in suits for specific performance, but the principles laid down therein would apply here. The jurisdiction, if any, to stay eviction pending a suit for specific performance is of the court where the suit for specific performance is pending and the court where the suit for ejectment/eviction is pending ought not to restrain its hands merely because the suit for specific performance has been filed.””

21. It is the submission of learned counsel appearing on behalf of the petitioner that the aforesaid judgment passed by learned Coordinate Bench of this Court, relying upon **Sunil Kapoor v. Himmat Singh & Ors (supra)**, was challenged before the Hon’ble Supreme Court and *vide* judgment in **Karan Kapoor v. Madhuri Kumar**⁵, the Hon’ble Supreme Court passed the following judgment: -

“34. In our view, for the purpose of Order 12 Rule 6, the said admission is not clear and categorical, so as to exercise a discretion by the court without dealing with the defence as taken by defendant. As we are conscious that any observation made by this Court may affect the merit of either side, therefore, we are not recording any finding either on the issue of tenancy or with respect to the defence as taken by the defendant. We are only inclined to say whether the judgment and decree passed in exercise of the power under Order 12 Rule 6CPC is based on clear and categorical admission. In our view, the facts of the case in hand and the judgment in S.M. Asif [S.M. Asif v. Virender Kumar Bajaj, (2015) 9 SCC 287 : (2015) 4 SCC (Civ) 589] are altogether similar, therefore, the ratio of the said judgment rightly applies to the present case.

35. Consequently, the judgment and decree passed by the trial court, as confirmed by the High Court, only on admission of fact without considering the defence in exercise of power under Order 12 Rule 6CPC is hereby set aside. The matter is remitted back to the trial court to decide the suit as expeditiously as possible affording due opportunity to the parties to record evidence that shall be appreciated by the court on merit.”

⁵ (2022) 10 SCC 496



In view of the above, it is submitted that the reliance placed by learned counsel for the respondent on the judgment of **Sunil Kapoor v. Himmat Singh & Ors** (*supra*) is misplaced.

22. It is the case of the petitioner that and order under Order XII Rule 6 of the CPC cannot be a ground for rejecting the present petition and even otherwise, the said order is under challenge and has been stayed, and therefore, the present petition ought to be allowed. Reliance has been placed on the judgment of Hon'ble Supreme Court in **S.M. Asif v. Virender Kumar Bajaj**⁶, particularly on the following paragraphs: -

“9. In the suit for eviction filed by the respondent landlord, the appellant tenant has admitted the relationship of tenancy and the period of lease agreement; but resisted the respondent-plaintiff's claim by setting up a defence plea of agreement for sale and that he paid an advance of Rs 82.50 lakhs, which of course is stoutly denied by the respondent landlord. The appellant-defendant also filed the suit for specific performance, which of course is contested by the respondent landlord. When such issues arising between the parties ought to be decided, mere admission of relationship of landlord and tenant cannot be said to be an unequivocal admission to decree the suit under Order 12 Rule 6 CPC.

10. Having regard to the stand taken by the parties, in our view, an opportunity has to be afforded to the appellant to put forth his defence and contest the suit and therefore, the matter is to be remitted to the trial court for a fresh hearing, however, subject to the condition that the appellant should pay the arrears of rent @ Rs 44,000 per month within a period of eight weeks. Further the appellant shall pay Rs 1,00,000 per month to the respondent landlord as compensation for use and occupation of the suit premises with effect from 1-8-2015 and the respondent landlord shall issue necessary receipt/acknowledgment for having received the same. The trial court vide its order dated 30-9-2013 while directing the payment of Rs 44,000 per month has stipulated a

⁶ (2015) 9 SCC 287



condition that in the event of the appellant succeeding, the said amount would be adjusted against the balance sale consideration amount under the agreement for sale dated 19-8-2011. Having regard to the said order passed by the trial court, payment of sum of Rs 1,00,000 per month would also be subject to the final outcome of the eviction suit as well as the suit for specific performance.

11. The impugned orders [S.M. Asif v. Virender Kumar Bajaj, 2014 SCC OnLine Del 7564] , [S.M. Asif v. Virender Kumar Bajaj, 2014 SCC OnLine Del 7563] are set aside and the matter is remitted back to the Rent Controller for consideration of the matter afresh and the appeals are allowed on the above terms. The Rent Controller shall dispose of the matter as expeditiously as possible. We make it clear that we have not expressed any opinion on the merits of the matter. No order as to costs.”

23. It is, therefore, prayed by learned counsel for the petitioner that the present petition be allowed, and the subject suit, **CS No.523 of 2022**, pending before learned ADJ, Patiala House Courts, New Delhi, be transferred to this Court, and tried along with suit, **CS (OS) 208 of 2025**.

24. Heard learned counsels for the parties, and perused the record.

25. The power for transfer and withdrawal of suits is provided for in Section 24 of the CPC, which reads as under: -

“24. General power of transfer and withdrawal. —(1) On the application of any of the parties and after notice to the parties and after hearing such of them as desired to be heard, or of its own motion without such notice, the High Court or the District Court may at any stage—

- (a) transfer any suit, appeal or other proceeding pending before it for trial or disposal to any Court subordinate to it and competent to try or dispose of the same, or
- (b) withdraw any suit, appeal or other proceeding pending in any Court subordinate to it, and—



- (i) try or dispose of the same; or
- (ii) transfer the same for trial or disposal to any Court subordinate to it and competent to try or dispose of the same; or
- (iii) retransfer the same for trial or disposal to the Court from which it was withdrawn.

(2) Where any suit or proceeding has been transferred or withdrawn under sub-section (1), the Court which [is thereafter to try or dispose of such suit or proceeding] may, subject to any special directions in the case of an order of transfer, either retry it or proceed from the point at which it was transferred or withdrawn.

[(3) For the purposes of this section,—

- (a) Courts of Additional and Assistant Judges shall be deemed to be subordinate to the District Court;
- (b) “proceeding” includes a proceeding for the execution of a decree or order.]

(4) The Court trying any suit transferred or withdrawn under this section from a Court of Small Causes shall, for the purposes of such suit, be deemed to be a Court of Small Causes.

[(5) A suit or proceeding may be transferred under this section from a Court which has no jurisdiction to try it.]”

26. The main contention of the learned counsel for the petitioner is that the subject matter of both the suits, *i.e.*, the subject property, is same, and both of them are in nature of cross-suits/counter-claims.

27. This Court has perused the prayers sought in both the suits as noted hereinbefore. Suit filed on behalf of the respondent, at the first instance, is for possession of subject property on grounds of termination of tenancy, recovery of rent and *mesne* profits. Petitioner’s suit, on the other hand, filed after withdrawal of his counter-claim in the suit filed by the respondent is for declaration of oral collaboration agreement to be valid, and binding as also for



a decree for specific performance.

28. Therefore, this Court is of the considered opinion that the contention of learned counsel for the petitioner that since the subject matter of both the suits, *i.e.*, the subject property is same, both of them are in nature of cross-suits/counter-claims and therefore are to be tried together, is not tenable. In the suit filed by the petitioner, he has to prove an alleged oral collaboration agreement between the parties, and lead further evidence in support of his claim for decree for specific performance. However, in the suit filed by the respondent, he has to prove existence of tenancy, termination thereof and the rate at which mesne profits are claimed. Thus, both the suits, though with respect to the same subject property, are substantially different in nature.

29. At this stage, a useful reference can be made to the following observations made by learned Single Judge of this Court in **Sunil Kapoor v. Himmat Singh & Ors** (*supra*). In the said case, the petitioner therein was a defendant in a suit pending before learned ADJ and had challenged an order dismissing his application under Section 10 of the CPC. The contention of the petitioner therein was that the respondents/plaintiffs had instituted the aforesaid suit for ejection against him as a tenant; however, prior to the same, he had instituted a suit being **CS(OS) 1018/2004** before this Court against the respondents/plaintiffs for specific performance of agreement to sell of immovable property. The aforesaid judgment notes that the plea taken was that he was defending the suit for ejection and mesne profits filed by the respondents/plaintiffs also on the ground that the respondents/plaintiffs had agreed to sell the premises to him, and thus, common questions of law and



fact arose in the subsequent suit for ejectment and mesne profits and thus, the proceedings in the suit for ejectment be stayed till the adjudication of the suit for specific performance of agreement to sell. Learned Single Judge while dismissing the said petition observed and held as under: -

“11. A mere agreement to sell of immovable property does not create any right in the property save the right to enforce the said agreement. Thus, even if the respondents/plaintiffs are found to have agreed to sell the property, the petitioner/defendant would not get any right to occupy that property as an agreement purchaser. This Court in *Jiwan Das Vs. Narain Das AIR 1981 Delhi 291* has held that in fact no rights enure to the agreement purchaser, not even after the passing of a decree for specific performance and till conveyance in accordance with law and in pursuance thereto is executed. Thus in law, the petitioner has no right to remain in occupation of the premises or retain possession of the premises merely because of the agreement to sell in his favour.

12. Section 53 (A) of the Transfer of Property Act codifies the doctrine of part performance. A purchaser of immovable property, who in pursuance to an agreement to sell in writing has been put into possession of the property, is entitled to so remain in possession. However, in the present case, there is no agreement to sell in writing. The respondents/plaintiffs deny inter alia the averments of the petitioner/defendant of what transpired on 8th July, 2004. Be that as it may, in none of the receipts relied upon by the petitioner/defendant, is there any mention of delivery of possession/constructive possession to the petitioner/defendant of the premises in part performance of the agreement to sell. The express plea of the petitioner/defendant in this regard is also of an oral agreement to that effect on 8th July, 2004. Even if the receipts relied upon by the petitioner/defendant are to be termed as an agreement in writing, the same as per the petitioner/defendant also are executed by the respondents 1 & 2 only. There is no agreement in writing with the respondent no.3. The property admittedly belongs to all three of them and the petitioner is claiming the agreement with all three of them. There is no authority in writing shown of the respondent no.3 in favour of respondent no.1 and/or respondent no.2. The agreement to sell with the respondent no.3 as per the plea of the petitioner/defendant is thus oral only.



15. What follows is that even if the petitioner/defendant were to succeed in his suit for specific performance of agreement to sell, till the execution of a conveyance deed in pursuance to the decree, if any, in favour of the petitioner, the petitioner has no ground in law to save his possession of the premises. The status of the petitioner would continue to be as before i.e. of a tenant whose tenancy has been determined.

16. Once that is found to be the position in law, the defence of the agreement to sell is not a legal defence available to the petitioner in the suit for ejectment. If that be so, there is no common question involved in the previously instituted suit for specific performance and the subsequently instituted suit for ejectment.

21. The contention of the senior counsel for the petitioner of consolidation though attractive is again loaded against the respondents/plaintiffs. In view of the lesser pendency of cases in the courts where, the suit for ejectment filed by the respondents is pending, it can be disposed of within a few months. On the contrary, if it were to be transferred to this Court to be decided along with suit for specific performance and which requires voluminous evidence, the disposal thereof would be undoubtedly delayed. The petitioner/defendant would thereby achieve indirectly what it is otherwise unable to achieve in law. Thus, the said plea cannot also be allowed.”

(emphasis supplied)

30. Learned counsel appearing on behalf of the petitioner had submitted that the aforesaid judgment in **Sunil Kapoor v. Himmat Singh** (*supra*) has been impliedly overruled as Hon'ble Supreme Court in **Karan Kapoor** (*supra*) had set aside the judgment passed by the learned Single Judge of this Court which had relied upon the judgment in **Sunil Kapoor v. Himmat Singh** (*supra*). However, the judgment rendered in **Karan Kapoor** (*supra*)



by the Hon'ble Supreme Court was in reference to an application under Order XII Rule 6 of the CPC, and had observed that the admission in the said case was not clear and categorical so as to exercise the discretion by the Court without dealing with the defense taken by the defendant therein. Similarly, in **S.M. Asif (*supra*)**, the Hon'ble Supreme Court was again dealing with decree passed under Order XII Rule 6 of the CPC. However, for this Court for exercise of power under Section 24 of the CPC, the parameters are different. As noted hereinabove, the issues arising for consideration of adjudication in both the suits are substantially different as reliefs claimed by the parties are substantially different.

31. The Hon'ble Supreme Court in **Kulwinder Kaur @ Kulwinder Gurcharan Singh v. Kandi Friends Education Trust and Ors.**⁷, while providing for factors/broad propositions to be taken into account for transfer of a case, has observed and held as under: -

“**21.** Having considered rival contentions of the parties and having gone through the proceedings of the case, we are of the view that the impugned order deserves to be set aside. So far as the power of transfer is concerned, Section 24 of the Code empowers a High Court or a District Court to transfer inter alia any suit, appeal or other proceeding pending before it or in any court subordinate to it to any other court for trial and disposal. The said provision confers comprehensive power on the court to transfer suits, appeals or other proceedings “at any stage” either on an application by any party or suo motu.

22. Although the discretionary power of transfer of cases cannot be imprisoned within a straitjacket of any cast-iron formula unanimously applicable to all situations, it cannot be gainsaid that the power to

⁷ (2008) 3 SCC 659



transfer a case must be exercised with due care, caution and circumspection.

23. Reading Sections 24 and 25 of the Code together and keeping in view various judicial pronouncements, **certain broad propositions as to what may constitute a ground for transfer have been laid down by courts. They are balance of convenience or inconvenience to the plaintiff or the defendant or witnesses; convenience or inconvenience of a particular place of trial having regard to the nature of evidence on the points involved in the suit; issues raised by the parties; reasonable apprehension in the mind of the litigant that he might not get justice in the court in which the suit is pending; important questions of law involved or a considerable section of public interested in the litigation; “interest of justice” demanding for transfer of suit, appeal or other proceeding, etc. Above are some of the instances which are germane in considering the question of transfer of a suit, appeal or other proceeding.** They are, however, illustrative in nature and by no means be treated as exhaustive. If on the above or other relevant considerations, the court feels that the plaintiff or the defendant is not likely to have a “fair trial” in the court from which he seeks to transfer a case, it is not only the *power*, but the *duty* of the court to make such order.

26. In the case on hand, the High Court without stating anything whatsoever as to allegations and counter-allegations, without considering the reply submitted by the appellant herein and without recording any reason/ground passed the impugned order transferring the case. The learned counsel for the contesting respondent no doubt submitted that the Court has not observed anything since observations by a High Court one way or the other might prejudice one of the parties to the suit. It is true that normally while making an order of transfer, the court may not enter into merits of the matter as it *may* affect the final outcome of the proceedings or cause prejudice to one or the other side. At the same time, however, an order of transfer must reflect application of mind by the court and the circumstances which weighed in taking the action.”

(emphasis supplied)



32. Thus, this Court in exercise of power under Section 24 of the CPC also has to examine, whether transfer of the subject suit would be “in the interest of justice”.

33. In the present case, it is pertinent to note that respondent had filed the suit, **CS No.523 of 2022**, on 16.12.2022, and petitioner had filed his written statement on 27.04.2023, and filed his counter-claim before learned District Judge, Patiala House Courts, on 11.12.2023. It is also a matter of record that the petitioner had filed an application under Section 8 of the A&C Act seeking reference of the subject suit to arbitration which was dismissed by learned Trial Court on 29.04.2024. Challenge against the same before this Court by way of an appeal, **FAO 200/2024**, was again dismissed on 09.07.2024. Thereafter, a SLP No.23980/2024, against the said was also dismissed on 18.02.2025. The petitioner, thereafter, withdrew his counter-claim and filed suit, **CS(OS) 208/2025**, before this Court in March 2025.

34. It is further noted that in the suit filed by the respondent a preliminary decree under Order XII Rule 6 of the CPC has already been passed by the learned District Judge, Patiala House Courts, New Delhi, which is subject matter of challenge in appeal, **RFA 511/2025**, preferred by the petitioner before this Court.

35. The proceedings in the said suit are at an advance stage, and the suit filed by the petitioner herein is at a very preliminary stage. The respondent herein has been diligently pursuing their suit before the learned District Judge,



Patiala House Courts, New Delhi, and, therefore, in these facts and circumstances of the case, as noted hereinbefore, it will not be in ‘interest of justice’, if the said suit is directed to be transferred to this Court by exercising power under Section 24 of the CPC. Even otherwise, this Court is unable to accept the contention raised on behalf of the petitioner that since subject matter of both the suits, *i.e.*, the subject property, is same, and therefore, both of them are in nature of cross-suits/counter-claims and would involve common issues for decision.

36. In **Chitivalasa Jute Mills** (*supra*) relied upon by learned counsel for the petitioner, it is noted that the cause of action in the two plaints referred to the same period, and the same transaction. It was further observed that issues arising for decision would be substantially common, and the same set of oral and documentary evidence was required to be led for the adjudication of the said suits. In those circumstances, Hon’ble Supreme Court was of the view that there would be duplication of recording of evidence, if separate trials are held. In the present case as already noted hereinbefore that the nature of the two suits are substantially different, and even the evidence required to be adduced during the course of trial by the parties would be different.

37. In these facts and circumstances of the present case, no ground for transfer of suit, CS No.523 of 2022, titled as, ‘Rahul Chaudhary v. Mukesh Khurana’ to the Ordinary Original Civil jurisdiction of this Court is made out.

38. The present petition is dismissed and disposed of.



39. Pending applications, if any, also stand disposed of accordingly.
40. Needless to state that, nothing stated hereinabove, shall be construed as an opinion on the merits of any of the suits, which would be decided on their own merits, and any observations made herein are only for the purposes of the present petition.
41. Judgment be uploaded on the website of this Court, *forthwith*.

**AMIT SHARMA
(JUDGE)**

MAY 21, 2026/sn/ns