



* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Pronounced on: 28th February, 2025*

+ **C.R.P. 319/2023 & CM APPL. 61028/2023**

SAURABH GUPTA

..... Petitioner

S/o Shri Ram Niwas Gupta,
R/o B-5/342, Yamuna Vihar,
Delhi-1100053

Through: Mr. J.M. Kalia, Advocate.

versus

1. **CHANDRESH GAUTAM**

S/o Late Shri Yad Ram,
R/o C-6/23, Yamuna Vihar,
Delhi-110053

..... Respondent No. 1

2. **D.G.M. YAMUNA POWER LTD.**

Through Ashutosh Tripathi,
C-6, Yamuna Vihar, BSES Office,
Delhi-110053

..... Respondent No. 2

Through: Mr. Kartar Singh, Advocate for R-1.
Mr. Moksh Arora, Advocate for R-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

J U D G M E N T

NEENA BANSAL KRISHNA, J.

1. The present Civil Revision Petition under Section 115 of the Code of Civil Procedure, 1908 (*hereinafter referred to as "CPC, 1908"*) has been filed on behalf of Saurabh Gupta, Petitioner (Defendant No. 2 in the main



Civil Suit No. 626/2022) to challenge the Order dated 07.07.2023 *vide* which his Application under Order VII Rule 11 read with Section 151 of CPC, 1908, has been dismissed by the learned Additional Senior Civil Judge, Delhi.

2. *Brief facts* are that Respondent No. 1 (Plaintiff) had filed Civil Suit No. 626/2022 for *Permanent and Mandatory Injunction* to restrain the Defendant No. 2/Petitioner from creating third-party interest in the Property bearing Shop No. A-31/11M, Khasra No. 379, land measuring area 20 sq. yards, Shastri Marg, Village Maujpur, Delhi (*hereinafter referred to as* “subject property”) and *not to dispossess* the Respondent No. 1/Plaintiff without due process of law. The *Mandatory Injunction* was also sought for directing Yamuna Power Ltd. /Defendant No. 1 to install his Electricity Meter and restore the electricity connection in the subject property.

3. According to the Chandresh Gautam, Respondent No. 1/Plaintiff, he had purchased the subject property from *one Smt. Sudesh vide* registered documents. He has been renting the subject property to different tenants from time to time, last being rented to Mohd. Riyaz who paid a rent @ Rs. 6,000/- per month.

4. The Respondent No. 1/Plaintiff further asserted that on 06.12.2018, he got an Electricity Meter bearing No. CA15267039 installed in his name through D.G.M. Yamuna Power Ltd., Defendant No. 1 at the subject property. However, he failed to deposit the electricity bills and consequently, the meter was removed on 12.03.2022. The Respondent No. 1/Plaintiff deposited an amount of Rs. 6,794.13/- in the Office of Defendant No. 1/Respondent No. 2 and a new Meter was installed on 16.03.2022.



However, the Petitioner/Defendant No. 2 fraudulently took an Electricity connection in his name in collusion with the Defendant No. 1/Respondent No. 2 without verification of the subject property and without verifying that the Meter already stood installed in the subject property in the name of the Respondent No. 1/Plaintiff. A new Electricity Meter and Connection was given in the name of the Petitioner/Defendant No. 2, while the Electricity Meter of the Respondent No. 1/Plaintiff was removed without any intimation to him.

5. Consequently, he gave Application dated 04.04.2022, 05.04.2022 13.04.2022 along with the ownership documents, to Yamuna Power Ltd./Defendant No. 1, but it refused to install the Electricity Meter in his name.

6. Aggrieved by the installation of the Electricity Meter in the name of the Petitioner-Saurabh Gupta who asserted himself to be the owner of the subject property, Plaintiff filed the Civil Suit asserting himself to be the rightful owner. He also asserted that he neither sold nor took any loan against the subject property and he continues to be in physical possession of the subject property. *Hence, the Suit bearing No. 626/2022 for Permanent and Mandatory Injunction was filed by the Respondent No. 1/Plaintiff with the following prayers:*

- “A. Pass a decree of permanent injunction thereby restraining the Defendant no. 2 and his associates, agents, attorneys, relatives, legal representatives or any other person acting on their behalf from creating 3rd party interest and dispossess the plaintiff without due process of law as shown in the site plan.*
- B. Pass a decree of mandatory injunction against the*



defendant no. 1 directing the defendant no. 1 to restore the electricity connection of the plaintiff installed vide CA. No. 152677039 and direct the defendant no. 1 to install the electricity meter on the premises of the plaintiff and further direct the defendant no. 1 to remove the electricity meter and connection of the defendant no. 2 from the suit property.

C. *Award the cost of the litigation in favour of the plaintiff and against the defendant, keeping the facts and circumstances of the cases namely Lucknow Development Authority versus M.K. Gupta 1994 SCC (1) 243.”*

7. The **Petitioner/Defendant No. 2** filed an **Application under Order VII Rule 11 of CPC, 1908 for rejection of the Suit on the ground** that the *Plaint does not disclose any cause of action.* It was claimed that the Respondent No. 1/Plaintiff is neither owner nor is he in possession of any part of the subject property. On the other hand, it is the Petitioner/Defendant No. 2, is the owner of the subject property and is in exclusive possession of the Suit property.

8. The Petitioner-Saurabh Gupta has explained that Shri Mahender Singh was the owner of the subject property by virtue of registered Sale Deed dated 16.01.2002. His wife, Smt. Savita, sole Proprietor of *M/s Kuber Enterprises*, had taken the loan from the Central Bank of India, which they were unable to pay and the Loan was declared Non-Performing Asset (NPA). The possession was taken by the Central Bank of India through the Court on 14.08.2019 under the *Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (SARFAESI Act) and since then, the possession was with the Central Bank



of India.

9. The Suit property was sold to Petitioner Saurabh Gupta for a total sale consideration of Rs. 54,00,000/- in the e-Auction and Sale Certificate dated 04.12.2021 was issued in his name by the Central Bank of India, which got registered on 24.12.2021. The possession was handed over to the Petitioner/Defendant No. 2 on 02.02.2022.

10. 10. The Petitioner had further taken the objection that the Mandatory Injunction against Respondent No. 2/Defendant No. 1 for restoration of electricity connection is not maintainable, as the electricity connection can be granted only to the person who is in possession of the subject property. The Respondent No. 1/Plaintiff by making a fraudulent misrepresentation and by submitting forged and fabricated documents, had got the electricity connection installed in the subject property in his name on 06.12.2018, after about 16 years. On the pointing out by the Petitioner Saurabh Gupta that he is the owner of the subject property with the legal and valid title documents, the Electricity Meter in the name Plaintiff, Chandresh Gautam was removed by Yamuna Power Ltd.

11. The Petitioner has asserted that the *Plaintiff, Chandresh Gautam* had filed an earlier ***Civil Suit bearing No. 2/2022*** for *Declaration*, wherein the identical relief of Permanent Injunction against the petitioner, had been sought.

12. The Petitioner/Defendant No. 2 has further asserted that earlier Suit No. 2/2022 is dated December, 2021, while the present Suit has been filed on 10th May 2022. The issues in both the Suits are identical, except that Yamuna Power Ltd has also been impleaded as Defendant No.1 in the



present Suit.

13. The present Suit is, therefore, barred under Order II Rule 2 of CPC, 1908, as it is claiming the same relief. The Respondent No. 2/Defendant No. 1 has been unnecessarily dragged into the litigation, by plaintiff who by misrepresentation, got the Electricity connection installed in the subject property. Moreover, Yamuna Power Ltd., Defendant No. 1/Respondent No. 2 is not a necessary and a proper party in the present case.

14. Therefore, the Suit of the Respondent No. 1/Plaintiff was sought to be rejected.

15. The *learned Additional Senior Civil Judge vide impugned Order* dated 07.07.2023 considered the rival contentions of the parties and noted that there are three Civil Suits pending *inter se* the parties as well as one Criminal Complaint No. 5216/2019 under Section 156(3) of the *Code of Criminal Procedure, 1973*. The Respondent No. 1/Plaintiff has already filed the *Civil Suit bearing No. 2/2022 for Declaration of Sale Deed dated 16.01.2022 executed through e-Auction, in favour of Petitioner, to be declared as null and void*.

16. The possession of Respondent No. 1/Plaintiff in the subject property was verified by Yamuna Power Ltd/ Respondent No. 2 before installing the electricity connection which shows that the Respondent No. 1/Plaintiff is in exclusive possession of the subject property since the date of its purchase on 31.05.2000. Moreover, according to the Respondent No. 1/Plaintiff, the possession was never taken by the Central Bank of India.

17. The learned Additional Senior Civil Judge, in the light of aforesaid averments, held that there are triable issues raised by the Defendants which



cannot be considered in an Application under Order VII Rule 11 of CPC, 1908 and thereby, rejected the Application *vide* Order dated 07.07.2023.

18. Aggrieved by the impugned Order dated 07.07.2023, present Revision Petition has been filed on behalf of Saurabh Gupta, Petitioner (Defendant No. 2).

19. *Ld. Counsel on behalf of the Petitioner* has assailed the Order on various grounds. First and foremost, *Respondent No. 1/Plaintiff has failed to disclose the number of the subject property in his Complaint.*

20. Further, the factum of the physical possession of the subject property in the Suit property was confirmed by the Local Commissioner in his Report dated 17.10.2022, who was appointed at the time of consideration of the Application under Order XXXIX Rules 1 and 2 of CPC, 1908 in the present Suit. No objection till date has been filed on behalf of the Respondent No. 1/Plaintiff against the Report of the Local Commissioner.

21. It is submitted that without considering this aspect, the learned Additional Senior Civil Judge has erroneously dismissed the Application under Order VII Rule 11 of CPC, 1908.

22. It is further submitted that the similar Application under Order VII Rule 11 CPC was filed by the Petitioner in the earlier Suit bearing No. 2/2022 of the Plaintiff, which was allowed and Suit has been dismissed with costs of Rs. 20,000/-.

23. It is also submitted that the present Suit, being subsequent to the earlier Suit wherein similar reliefs are claimed, is not maintainable and is liable to be dismissed.

24. It is asserted that there are no triable issues raised by the Defendants



which merit a trial. The documents of the Petitioner/Defendant No. 2 establish that he had acquired the title of the subject property by paying a lawful consideration to the Central Bank of India, which in turn handed over the possession to him.

25. Moreover, the Civil Court has no jurisdiction if the matter falls under the *SARFAESI Act, 2002* which is a complete Code providing expeditious recovery of the dues and any person, who is aggrieved, has a remedy by way of Appeal under Section 17 of the *Recovery of Debts and Bankruptcy Act, 1993 (RDB Act, 1993)* before the Debts Recovery Appellate Tribunal.

26. It is, therefore, submitted that the impugned Order may be set aside and the Suit of the Respondent No. 1/Plaintiff be rejected.

27. *The Respondent No. 1/Plaintiff in his Counter-Affidavit* has denied all the assertions made in the present Revision Petition and submitted that there is no infirmity in the impugned Order of learned Additional Senior Civil Judge and the present Revision Petition is liable to be dismissed.

28. Submissions heard and record perused.

29. Admittedly, Respondent No.1-Chandresh Gautam (Plaintiff in the Suit) had filed an earlier Civil Suit Civil Suit No. 2/2022 to challenge the e-sale auction dated 04.09.2021 and Sale Notice dated 06.09.2021 and for Declaration of Sale Certificate dated 16.01.2022 as null and void.

30. In the said Plaint, Respondent No.1/Plaintiff had asserted that he had purchased a shop No.831/11M Shastri Marg, Village Mauj Pur measuring 20 sq. yds. from Defendant No.5 Smt. Sudesh through registered GPA, Agreement to Sell, Affidavit and Receipt. After taking possession of the suit shop, he rented it to tenants from time to time with first being Daya



Chand and the last tenant being Mohd. Riyaz @ Rs.6,000/- per month.

31. He further asserted that Shri Mahender Singh also purchased one shop admeasuring 20 sq. yards in the year 2002 which was adjoining to the shop of the Plaintiff, though both the shops had the same property number. The area of each shop was 20 sq. yds., Shastri Marg.

32. Shri Mahender Singh opened a business in the name of *M/s Kuber Enterprise* proprietorship concern in the name of his wife Smt. Savita. Defendant No.1 and 2 took a loan from Central Bank of India on the basis of registered Sale Deed dated 16.01.2002 in his name. However, the loan was declared NPA by Central Bank of India which initiated the Sale proceedings under *SARFAESI Act* which eventually culminated in the execution of a Sale Certificate dated 24.12.2021, duly registered in the name of Saurabh Gupta/Petitioner.

33. Significantly, same relief has been claimed in this second Suit No.

34. The *basic premise of Plaintiff/Respondent No.1* Chandresh Gautam to claim his ownership in the suit property what that there were two shops each measuring 20 sq. yds. He had purchased one shop of 20 sq. yds *vide* Agreement to Sell, GPA, etc. dated 31.05.2000 from Smt. Sudesh, while second shop was purchased by Sh. Mahender.

35. First and foremost, Plaintiff/Respondent No.1 is asserting his ownership rights on the basis of Agreement to Sell, etc. It is settled law that these documents may create a right to seek Specific Performance, but *per se* do not create any title in the suit property. Admittedly, Plaintiff did not file any Suit for Specific Performance for execution of Sale Deed in his favour.

36. Also, he has asserted that there were chain of sale documents and that



he had purchased it from Ms. Sudesh, but she also had no Sale Deed in her name but only Agreement to Sell, etc. Such chain of documents does not disclose any valid title in the name of Sudesh which she could have transferred to the Plaintiff/Respondent No.1 on the basis of Agreement to Sell etc. Therefore, the claim of the Plaintiff that he was the owner in respect of the 20 sq. yds. shop from the property in question, is not tenable even if the entire set of documents is admitted.

37. The Plaintiff himself has stated that Shri Mahender Singh had acquired ownership rights in the suit property by virtue of a registered Sale Deed dated 16.01.2002 in respect of 40 sq. yds. i.e. the entire property in question. On the basis of this Sale Deed dated 16.01.2002, his wife Smt. Savita who was sole proprietor of *M/s Kuber Enterprises* took a loan from Central Bank of India, which was declared NPA. Thereafter, sale of property was undertaken under *SARFAESI Act* and the Sale Certificate duly executed in favour of the Petitioner.

38. The Plaintiff had filed an earlier Suit No. 2/2022 against Kuber Enterprises, Central Bank of India as well as Saurabh Gupta for Permanent Injunction to restrain the Central Bank of India as well as Saurabh Gupta from creating third party rights in the property in question. A similar Application under Order VII Rule 11 CPC was filed on behalf of Central Bank of India, wherein all these aspects not only were mentioned, but a plea was taken that a Civil Court had no jurisdiction to question the proceedings under *SARFAESI Act* which can be challenged only before the DRT. This Application was allowed and the suit of Shri Chandresh Gautam was rejected.



39. Faced with the rejection of his first Suit, the present Suit No. 626/2022 has been filed, wherein the *first relief claimed is again of restraining Saurabh Gupta from creating third party rights in the suit property*. To sustain such a relief, the Plaintiff was required to show a title better than Saurabh Gupta. However, as mentioned above, he has nothing in his favour to prove his title except GPA, Agreement to Sell, etc. of 31.05.2000. However, this Agreement to Sell does not create any right and title in the nature of ownership in the absence of any Sale Deed in his favour. Pertinently, it is the case of the Plaintiff himself that there was a registered Sale Deed dated 16.01.2002 in favour of Shri Mahender Singh which has not been challenged till date. Though the Plaintiff claims that the Sale Deed was not in his knowledge, but had failed to disclose the date on which this Sale Deed came to his knowledge.

40. Further, in the earlier Civil Suit No. 2/2022 while similar facts had been asserted, an Injunction was sought against Saurabh Gupta.

41. In the present Suit No. 626/2022 as well, there is no relief sought for avoiding the Sale Deed in favour of Shri Mahender Singh, but only the Sale Certificate is sought to be avoided by claiming a superior title on the basis of inchoate documents and is also seeking Injunction against Saurabh Gupta from creating third party rights. However, without having been able to demonstrate any title in the suit property, the Plaintiff cannot seek the Injunction against Saurabh Gupta, as has been claimed by way of the present Suit.

42. Even if the entire averments in the Plaint are admitted, then too, no cause of action is disclosed in the plaint for either declaring the Sale



Certificate as Void or for restraining Saurabh Gupta from creating third party rights in the suit property.

43. In order to overcome first Suit which was rejected under Order VII Rule 11 CPC *vide* Order dated 21.04.2023, the Plaintiff has cleverly included Respondent No. 2 -DGM, Yamuna Power Limited to assert that he had got an electricity meter installed in the suit premises in his name on 06.12.2018, which however, got removed on 12.03.2022. Thereafter, electricity meter in the name of Saurabh Gupta has been installed on 16.03.2022.

44. Pertinently, the Plaintiff can seek the installation of electricity meter in his name provide he has an ownership right or is in possession. As discussed above, he does not have any title documents in his favour and does not have a status of owner in respect of the suit premises. Furthermore, even if he was able to get Electricity connection installed in his name in the Suit property but that was in 2018 i.e. prior to the issue of Sale Certificate in the name of the Petitioner. The sale Certificate got executed in the name of petitioner subsequently, giving him a right to get the Electricity meter installed in his name.

45. In so far as the possession is concerned, a Local Commissioner was appointed on 01.09.2022 during the proceedings by Ld. ASCJ, Shahdara District, wherein a Report dated 17.10.2022 was given by the Local Commissioner confirming the possession of Saurabh Gupta to which till date, no objection has been filed by Chandresh Gautam. It is confirmed that the possession as on date is of the Petitioner Saurabh Gautam.

46. In the light of aforesaid discussion, it is established that neither the



Plaintiff has any title documents in his favour nor is he in possession and therefore, he cannot seek the reliefs against the Petitioner as has been done by way of the present Suit. It may also be noted that earlier Suit No2/2022 where similar relief was sought, has already been rejected, which has not been challenged.

47. The *second relief* against the DGM, Yamuna Power Limited is only a *consequential relief based on his establishing the title and possession* which he has *not been able to establish from his averments as made in the Plaint.*

48. The Apex Court in *ITC vs. Debts Recovery Appellate Tribunal* AIR 1998 SC had observed that clever drafting creating an illusion of cause of action is not permitted in law and a clear right to sue must be demonstrated in the plaint. The Court must also see that the bar in law of the Suit, is not camouflaged in devious and clever drafting of the plaint.

49. In the present case, the Plaintiff/Respondent No.1 despite having filed a Suit No.2/2022 with a similar relief being rejected, has made this second attempt to present the same cause of action under a camouflage of seeking directions for installation of Electricity Meter when in fact, the relief in the two Suits, are similar.

50. It is hereby, concluded that the Suit of the Plaintiff/ Respondent No.1 does not disclose any cause of action and is liable to be dismissed. Accordingly, the impugned Order dated 07.07.2023 rejecting the Application under Order VII Rule 11 CPC, is set aside.

51. The Revision Petition is hereby allowed and the ***Civil Suit No.626/2022 is rejected.***

52. The Revision Petition is accordingly disposed of along with the

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pending Application(s).

(NEENA BANSAL KRISHNA)
JUDGE

FEBRUARY 28, 2025
S.Sharma/va