

CS No. 8/2011

24.05.2012

**DW-1 On S.A.**

**Statement of Sayed Faisal Huda, S/o S.A. Huda, R/o H-42, Abul Fazal Enclave, Jamia Nagar, Okhla, New Delhi, Occupation – Forensic Expert & Consultant.**

In this case, I have taken the photographs of specimen and disputed documents from the judicial file on 08.02.2012. I have scientifically examined and compared the disputed and specimen Hindi writing including figure and signature, details are mentioned in my report and my definite opinion is that the disputed Hindi writings (including figure) and signatures have not been written by the same person, who has written the specimen Hindi writing and signature. Photographs of specimens of writing is Ex. DW-1/1 and signature is Ex. DW-1/2 and disputed writing, including figure is Ex. DW-1/3 (colly.) and disputed signature is Ex. DW-1/4. The CD of negative is Ex. DW-1/5. My detailed report is Ex. DW-1/6 (colly.), it bears my signature at point A.

**XXXXXX By Ld. Counsel Shri Basant Kumar Gupta, Advocate for plaintiff.**

My educational qualification are B.Sc from Amity University and M.Sc from Agra University.

The specimen writing Ex. DW-1/1 at point E, there is two strokes (*Matras*), in the word “Shri” (*Devanagari Script*) and at second line at point E, there is one stroke (*Matra*), in the word “Shri” (*Devanagari Script*).

**Q:** It is put to you that in word “Radha Rani” at point C in document Ex. DW-1/1, there is a difference between the *Matra* in the first line and the third line on the word ‘*ni*’ and the difference is the *Matra* in teh first line is more in round shape and the *Matra* in the third line is lengthy and does not appear to be rounded, what do you want to say?

**A:** This difference occurs due to presence of natural variations because when a person write his signature or writing again and again, this differences are prominent because our hand is not a rubber stamp and this difference shows the genuineness of handwriting.

**Q:** The similar difference as pointed out in my above question, appearing in work '*Mo*', at point F in all the three lines, what do you want to say ?

**A:** I has similar answer and explanation rendered in the previous question.

It is wrong to suggest that the signatures appearing on Ex. PW-1/1 and Ex. PW-1/2 appearing at X-1, X-2 and Y-1 and Y-2 are similar to the specimen signature shown on Ex. DW-1/2. It is correct that the handwriting and signature of a person can differ. It is wrong to suggest that the report Ex. DW-1/6 is prepared by me at the instance of defendant in order to favour her or the same is false.

RO&AC

N

(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

CS No. 288/2010

24.05.2012

**PW-2 On S.A**

**Statement of Shri Akbar Abbas, aged about 52 years, S/o Shri Habib Haider, R/o H-46, Abul Fazal Enclave-I, Jamia Nagar, New Delhi, Occupation – Principal in MCD School.**

I tender my affidavit A-2 as my examination-in-chief, which bears my signature at point S at the place of deponent. I refer and rely upon document Ex. PW-1/1, already tender by other witness and I identify my signature at point X and Y on the said receipt, as a margin witness.

**XXXXXX By Ld. Counsel Shri Sher Afgon, Advocate for defendant.**

I know defendant as the plaintiff has taken me to the defendant's house for payment of property sold by Naseer Ahmed on 15.10.2008. I was not aware / known to defendant prior to 15.10.2008. Anwar Hasan has informed me that defendant is selling his house to me. I am not aware who was the mediator in the said transaction. Property papers were not verified by the plaintiff in my presence at the time of making the payment. (Vol. It was the work of the parties to verify the documents). On 15.10.2008, an amount of Rs. 3,50,000/- was paid to the defendant by the plaintiff. The amount of Rs. 1,50,000/- was given to the defendant by Anwar Hasan through cheque. I am not aware who had issued the said cheque of Rs. 1,50,000/-. I do not know whether the cheque was issued in the name of defendant or not. I came to know through plaintiff that the cheque has been encashed by the defendant but I do not have any personal knowledge of the encashment of the said cheque by the defendant. The agreement dated 15.10.2008 (Ex. PW-1/1) was written at the house of defendant bearing No. F-171, Shaheen Bagh. The agreement

(Ex. PW-1/1) was written by Mohd. Iftikhar Hussain in my presence.

The payment dated 16.10.2008 was also made at the said house of defendant. The receipt dated 16.10.2008 was also written by said Mohd. Iftikhar Hussain in my presence. After 16.10.2008, I never met the defendant but plaintiff often used to meet me.

I can identify the signature of witnesses on Ex. PW-1/1 at point A, B and C. The signature at point A belongs to Mohd. Iftikhar Hussain.

It is wrong to suggest that no payment was made to the defendant by the plaintiff in my presence or that Ex. PW-1/1 was not executed by defendant on 15.10.2008 and on 16.10.2008.

Plaintiff and witness Rasul Mohd. do not reside at my house. I do not know whether the defendant is an illiterate person but he has signed in my presence. On Ex. PW-1/1, the defendant has signed in Urdu and in Hindi also. Plaintiff is my friend and Rasul Mohd is my maternal cousin brother.

It is wrong to suggest that the defendant is not residing at the suit property bearing No. F-171, Shaheen Bagh. I have never visited the suit property before 15.10.2008 or after 16.10.2008. The Ex. PW-1/1 also bears the signature of plaintiff.

(At this stage, witness is shown Ex. PW-1/1). Ex. PW-1/1 does not bear the signature of plaintiff.

It is wrong to suggest that Ex. PW-1/1 was not executed in my presence or that is why, I was not aware whether Ex. PW-1/1 bears the signature of plaintiff or not. It is wrong to suggest that I was mediator in the said transaction. It is wrong to suggest that no cheque was issued to the defendant by the plaintiff. It is wrong to suggest that Mohd. Iftikhar is my friend. It is wrong to suggest that Ex. PW-1/1 was a blank paper having signature of defendant at one place only or that Ex. PW-1/1 was lying with me or the same was later on fabricated and concocted by me along with

plaintiff, witness Rasul Mohd and Mohd. Iftikhar Hussain to extort money from the plaintiff.

It is wrong to suggest that I am deposing falsely.

RO&AC

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(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

CS No. 425/2010

24.05.2012

**PW-1 On S.A.**

**Statement of Shri Devi Dayal Garg, aged about 44 years, S/o Late Shri R.D. Garg, R/o 12/19, Pujabi Bagh East, New Delhi-26, Occupation – Business.**

I tender my affidavit A-1 as my examination-in-chief, which bears my signature at point S and at the place of deponent. I tender the document as Ex. PW-1/1, as per the contents of my affidavit A-1.

**Further examination-in-chief is deferred for want of original / official record.**

RO&AC

N

(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

CS No. 425/2010

24.05.2012

Appearance : Counsel for plaintiff.  
Counsel for defendant.

PW-1 Shri Devi Dayal Garg is present, he is partly examined-in-chief and his further examination-in-chief is deferred for want of original / official record.

List on **26.10.2012** for plaintiff's evidence.

(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

N

CS No. 122/2011

24.05.2012

Appearance : Plaintiff with counsel.

Defendant no. 1 in person.

Counsel for defendants no. 2 and 3 with a request that their AR is out of town, being in Agra.

At request, list on **04.08.2012** for admission / denial of documents, subject to appearance of parties personally and for framing of formal issues.

(INDER JEET SINGH)

Addl. District Judge-03, South District,  
Saket/24.05.2012

N



CS No. 262/2011

24.05.2012

Appearance : Ms. Gurmeet Kaur, Advocate for plaintiff.

Shri Parvesh Chaudhary for defendant. Reply to plaintiff's application under order XII Rule 6 is not filed.

Arguments are heard on plaintiff's application under order XII Rule 6 CPC.

List for Orders on **03.07.2012**, as no early date is possible.

(INDER JEET SINGH)

Addl. District Judge-03, South District,  
Saket/24.05.2012

N

CS No. 288/2010

24.05.2012

Appearance : Counsel for plaintiff.

Counsel for defendant.

PW-2 Shri Akbar Abbas is present, he is examined, cross examined and discharged.

List on **08.11.2012** for remaining plaintiff's evidence.

(INDER JEET SINGH)

Addl. District Judge-03, South District,  
Saket/24.05.2012

N

ARB No. 11/2011

24.05.2012

**Recalled**

Appearance : Counsel for petitioner.  
Counsel for respondent.  
Copy of reply is given to counsel for petitioner.  
Arbitration proceedings are received.  
List on **15.09.2012** for arguments.

(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

N

CS No. 8/2011

24.05.2012

Appearance : Plaintiff with counsel.

Defendant with counsel.

Defendant files an application under order XVI Rule 1 CPC along with list of witnesses, copy given to opposite side.

DW-1 Shri Sayed Faisal Huda is present, he is examined, cross examined and discharged.

List on **08.10.2012** for remaining defendant's evidence.

(INDER JEET SINGH)

Addl. District Judge-03, South District,  
Saket/24.05.2012

N

CS No. 202/2011

24.05.2012

**Recalled**

Appearance : Counsel for plaintiff.

None for defendant.

Report of Reader and Asstt. Ahlmad is perused and defendant failed to file appearance, despite service.

Heard.

List for judgment on **06.07.2012**, as no early date is possible.

(INDER JEET SINGH)

Addl. District Judge-03, South District,  
Saket/24.05.2012

N

M No. 15/2012

24.05.2012

Appearance : None for plaintiff / applicants.

Respondent no. 2 is present with counsel Shri Sunil Chaudhary with Shri Ashok Kumar, Advocates for respondents / non-applicants, while appearing with an application. They are served with applicants' application under order XXXIX Rule 2A CPC and under order XXVI Rule 9 CPC.

List on **04.07.2012** for reply and arguments.

(INDER JEET SINGH)

Addl. District Judge-03, South District,  
Saket/24.05.2012

N

**Ashok & Ors. vs. Vijay Pal & Ors.**

24.05.2012

Fresh application under order XXXIX Rule 2A CPC is filed under the signature of Shri Sanjay Kumar (defendant no. 2 in the main suit). Let it be checked, registered and report accordingly.

Appearance : Counsel for applicants / defendants.

Matter is subjudice today in M. No. 15/2012, which has been filed by the applicants / plaintiffs.

Therefore, notice on this application is to be served on the non-applicants / plaintiffs Ashok Kumar & Ors., on filing of PF, Registered AD / Speed Post. An extra copy is also retained, so that it may be given to the non-applicants.

List on **04.07.2012** for reply and arguments.

(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

N

24.05.2012

**ORDER**

(on plaintiff's application dated 23.08.2011 under order XXXIX rule 1 and 2 CPC)

Appearance: Sh. Nagender Singh, AR of plaintiff.

Counsel for defendants.

1.1 This is second application under order XXXIX rule 1 and 2 CPC by the plaintiff (after withdrawal of first application on 30.04.2012 originally filed in support of suit) seeking injunction against the defendant No. 1 Sh. Ajay Tiwari to restrain him from continuing his employment/association of defendant No. 2 and to further restrain the defendant No. 1 for his association/employment to any other company/firm etc., directly or indirectly dealing with similar trade as of plaintiff company, since the main suit is for recovery of damages, mandatory, prohibitory and permanent injunction.

1.2 The defendant No. 1 applied for the post of Manager Sales, he was interviewed, he was shortlisted and selected for the post of Manager, Sales and Marketing (International) by the plaintiff vide letter of confirmation dated 19.03.2009. The defendant No. 1 after due diligence and understanding the terms of agreement, entered into an agreement for employment dated 31.03.2009, which contains terms and conditions of employment inter alia non-disclosure clause No. 12, wherein, the defendant



No. 1 agreed to maintain confidentiality of information, customers, vendors, research and development activities, ideas or projects of the plaintiff during employment or otherwise. However, not only the defendant No. 1 failed to perform minimum target. He was also served with inter office memo dated 19.08.2009. The plaintiff spent about Rs. 15,00,000/- to expose the defendant No. 1 to international market and countries, there was lock in period of 5 years, which defendant No. 1 undertook to remain bound. The plaintiff did not bother to the office memo. The plaintiff also later on got to know that because of ill motives, he accepted the contractual obligation to seek experience of international market on the behest of plaintiff company expenditure.

1.3                      The defendant No. 2 M/s Keventer Agro Limited is dealing with similar product and services being offered by plaintiff marketing and offering services of similar product as of plaintiff company. The defendant No. 2 is the competitor of plaintiff. The defendant No. 1 left the association of plaintiff and joined the association and employment of defendant No. 2 company; as per the knowledge of plaintiff the defendant No. 1 has disclosed trade secrets, list of clients, due diligence report, agreement, working affairs and further information, per se confidential, to the defendant No. 2 and its official; which defendant No. 1 had gained during his employment with the plaintiff. The actions of defendant are causing dilution of plaintiff's established goodwill and reputation in the

market, besides damages/loss of business. The defendants were sent legal notice dated 05.09.2010 but no result. The defendant No. 1 has illegally terminated the contractual agreement and committed breach of confidentiality. That is why the suit for damages and injunction and defendant No, 1 is required to be restrained forthwith, otherwise the plaintiff will suffer irreparable losses, which cannot be compensated in terms of money.

1.4                      During the course of oral arguments, Ld. Counsel Sh. Naveen Sharma, Advocate has gone through the agreement dated 31.03.2009, particularly, clause 12 and 14 and defendant's undertaking dated 08.07.2010 that the defendant No. 1 had undertaken to comply clause 12 of the agreement and despite that the defendant No. 1 has been continuing in the employment/association of defendant No. 2 and he is parting with valuable and classified information to the defendant No. 2, which is not only peril to the affairs and business of plaintiff; it is required to be stopped forthwith by injunction order.

2.1                      The defendant not only opposed the suit but also opposed the application, by detailed and para-wise written statement and reply, while denying all allegations, referred/compiled in paragraph 1 above. Neither the plaint has been supported with certificate of incorporation nor there is authorization in favour of signatory of the plaint. The suit is hit by section 41 and 14(1)(a) of Specific Relief Act that when there is claim of

compensation OR relief is performance of contract of personal service, suit for injunction is not maintainable. Neither the defendant No. 1 acquired or retained any trade secret and list of clients during the course of employment nor there was occasion to part with such information to defendant No. 2. The defendant No. 1 was employed by the plaintiff initially on probation, his services were confirmed but he was asked to sign certain standard format at later point of time, which defendant No. 1 did, however, the same cannot be construed under mutual consent but because of undue influence and misrepresentation, particularly in the light that plaintiff has not placed on record the letter of appointment dated 19.03.2009. Therefore, the suit is also hit by provisions of section 15, 16, 17, 18 and section 14 of Indian Contract Act. The so called terms and conditions of agreement are void ab initio and they are also hit by other provisions of Indian Contract Act like section 27, 29 vis a vis article 19(f) of Constitution of India.

2.2                   The defendant No. 1 resigned on 07.07.2010, he was relieved from services by accepting his resignation, therefore, the said agreement dated 31.03.2009, although hit by various provisions of Indian Contract Act, has no consequences. The defendant No. 1 is entitled of Rs. 1,22,075/- along with earned leave encashment, which plaintiff has yet to clear.

2.3                   The defendant No. 1 states that he through a friend came to know that defendant No. 2 was in need of a marketing and sales person,

accordingly he applied and defendant No. 1 was found suitable by the defendant No. 2 and then he accepted the employment. Similarly defendant No. 1, in his written statement, states that it is leading concern for agro products, it does not believe in competition but focuses primarily on customer's services and quality of its products. The defendant No. 1 was selected as per qualification but not on the consideration as alleged by the plaintiff, nor the defendant No. 1 has anything divulged to the defendant No. 2 with regard to affairs of the plaintiff company.

2.4 During the course of oral arguments, similar contentions have been advanced that neither there is prima faice case nor balance of convenience in favour of plaintiff nor there is occasion for irreparable losses to the plaintiff and it is but natural that the defendant No. 1 has qualification and skill in his filed of marketing, he would always opt for that field but it does not mean that by opting similar portfolio, it amounts to dilute of reputation of plaintiff nor it can be inferred that he had parted with the information, in fact he had no secret information of the plaintiff, question does not arise delivery of those information to the others. Ld. Counsel for defendant No. 1 further fortifies his contentions while relying upon following cases:-

1. American Express Bank Ltd. vs Ms. Priya Puri MANU/DE/2106/2006 - While discussing section 27 of Indian Contract Act and order XXXIX rule 1 and 2 CPC with regard to enforcement of post employment contract to restrain the defendant from using information and data regarding wealth of customer of plaintiff bank, held, that mere

knowledge of names and addresses and even the financial details of a customer would not be material, as the consent of the customer and his volition as to with whom, to bank was of prime importance. Further rights of an employee to seek and search for better employment are not to be curbed by an injunction even on the ground that she had confidential data, it makes out balance of convenience in favour of defendant. The injunction application was rejected. Further held, routine day t day affairs of the employer which were in the knowledge of many and were also commonly known to others cannot be called trade secrets. Trade secret could a formula, technical knowhow or a peculiar mode or method of business adopted by an employer, which were unknown to others.

2. Ambiance India Pvt. Ltd. vs Sh. Naveen Jain MANU/DE/0385/2005 - The contract to impose restrain on trade and defendant's joining one of the customers of plaintiff held there is nothing to indicate as to what trade secrets were revealed to plaintiff and the embargo contained in the contract was held void and unenforceable.
3. Jet Airways (I) Ltd. vs Mr. Jan Peter Ravi Karnik MANU/MH/0434/2000 – The plaintiff had sought injunction to restrain the defendant from taking up or continuing any employment until 11.10.2005 (as defendant had agreed to serve the plaintiff for 7 years from 06.02.1998) with any other air lines, the terms and conditions of service as contained in the appointment letter were altered to detriment of defendant with retrospective effect held there would be irreparable loss to defendant in case he was compelled to remain idle and also it would cause not irreparable loss to plaintiff for want of grant of injunction.
4. Percept D'Mark (India) Pvt. Ltd. vs Zaheer Khan and Anr. MANU/SC/1412/2006 - Held under section 27 of Indian Contract Act, a restrictive covenant extending beyond terms of contract is void and not enforceable.

3. **(Findings):** The rival contentions are assessed in the light of feature

of the case, statutory provisions of law and the case law presented. For the following reasons, the application is dismissed:-

- i. The entire application/record is silent as to what was the information or data the defendant No. 1 had access and parted to the defendant No. 2.
- ii. The plaintiff alleges that there were trade secrets or other information with regard to product and services, however, trade secrets are those information which generally remain available at the top level of officials, which is not exposed to other employees and plaintiff has not elaborated how such trade secrets could have been accessed by the defendant No. 1 as defendant No. 1 was appointed at Manager, Sales, which has no nexus with the trade secrets, which are known at the top level.
- iii. There was lock in period of 5 years but simultaneously the defendant No. 1 was served with office memo for want of performance of minimum target and defendant No. 1 resigned, which was accepted by the plaintiff.
- iv. The defendant No. 1 joined the office of defendant No. 2 after his resignation to the office of plaintiff.
- v. In the light of aforementioned reasons (i) to (iv) as well as the law laid down in American Express Bank Ltd. (Supra) and Ambiance India Pvt. Ltd. (supra) no prima facie case or balance of convenience is made out in favour of plaintiff and against the defendant No. 1.
- vi. The plaintiff has estimated liquidated damages of Rs. 10,00,000/-, vis a vis the relief being claimed in the present application is also the relief claimed in the main suit, therefore, not only there is no occasion for irreparable loss to the plaintiff but also it would tantamount to decision in the main suit on the relief being claimed in the injunction application which is not tenable under the law. The reasons given in Jet Airways India Ltd. (Supra), are also applicable in the situation in hand, and
- vii. The other issues raised during the course of arguments in the

application are subject matter of trial.

Accordingly, application stands disposed of. However, any expression given in this order would not tantamount to be any final opinion on the merits of the case.

4. Since pleadings are complete, the following issues emerge for determination, from the pleadings and documents of the parties:-

- 1. Whether Sh. Nagender Kumar is duly authorized person to sign and verify the plaint and to institute the suit? OPP**
- 2. Whether the suit is without cause of action? OPD-1 and 2.**
- 3. Whether the suit is liable to be dismissed against defendant No. 2 for want of privity of contract between the plaintiff and the defendant No. 2? OPD-2**
- 4. Whether the suit is bad for mis-joinder of defendant No. 2? OPD-2**
- 5. Whether the suit is hit by sections 14(1)(a) and 41 of Specific Relief Act and it is liable to be dismissed? OPD-1 & 2.**
- 6. Whether the suit is hit by sections 14, 15, 16, 17, 18, 27 and 29 of Indian Contract Act, if so, its consequences? OPD-1 & 2**
- 7. Whether the plaintiff is entitled for decree of damages Rs. 10 lac against the defendants? OPP.**
- 8. Whether the plaintiff is entitled for decree of further damages against the defendants? OPP.**
- 9. Whether the plaintiff is entitled for pendente-lite and future interest @ 24% p.a.? OPP.**
- 10. Whether the plaintiff is entitled for decree of mandatory injunction against defendant No. 2 as prayed in clause (c) of prayer clause? OPP**
- 11. Whether the plaintiff is entitled for decree of prohibitory**

**injunction against defendant No. 1 as prayed in clause (d) of prayer clause? OPP**

**12. Whether the plaintiff is entitled for decree of prohibitory injunction against defendant No. 2 as prayed in clause (e) of prayer clause? OPP**

**13. Whether the plaintiff is entitled for decree of permanent injunction against defendants as prayed in clause (f) of the prayer clause? OPP**

**14. Relief.**

Case be listed for plaintiff's evidence for **20.10.2012** and plaintiff will provide advance copy of affidavit with list of witnesses to the opposite side at least one month before the date of hearing.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S



CS No. 391/10 & 392/10

24.05.2012

Appearance: Counsel for both sides.

The plaintiff is intending to file an application under order VI rule 17 CPC, as the application brought today is carrying some flaw.

Advance copy may be forwarded to opposite side.

List on **17.09.2012**.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

CS No. 344/11 & 164/11

24.05.2012

Appearance: Counsel for plaintiff.

Counsel for defendant.

List on **17.09.2012** for filing replication and documents.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

Appearance: Counsel for plaintiff.

None for defendant No. 3, it was served on 09.01.2012, since then none is appearing.

Dasti summons were taken in the name of defendants No. 1 and 2 for publication in the newspaper in terms of order dated 03.03.2012 r/w order dated 31.03.2012.

Dasti summons taken is returned back, it is cancelled.

Fresh summons be issued in the name of defendants No. 1 and 2 in terms of order dated 31.03.2012.

Awaiting defendant No. 3 at 2 pm.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

S

Saket/24.05.2012

At this stage Sh. Bijender Singh appeared for defendant Nos. 1 and 2 M/s Saraya Distilleries, Vakalatnama in favour of Sh. Tarunvir Singh Khehar, Advocate is filed. He is enquired about defendant No. 3 M/s Saraya Industries Ltd. , it is explained that the other two defendants are units of defendant No. 3, appropriate instructions may be taken and Vakalatnama may be filed. They may do the needful.

Copy of plaint and document (two sets) are given to him under acknowledgment. written statement may be filed within stipulated period.

List on **17.09.2012** for further proceedings.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

Appearance: Counsel for plaintiff.

Proxy counsel Sh. Saurav Avasthi, Advocate for Sh. V.K. Malik, Advocate with submission that mother of Ld. Counsel has expired that is why he will not be able to appear today and on the consequent dates i.e., 25.05.2012 and 26.05.2012.

None for Kusum Sharma and Sanjay Sharma.

None from the office of Deputy Commissioner, South.

Considering the submission, 25.05.2012 and 26.05.2012 are cancelled.

List on **03.09.2012**, **04.09.2012** and **05.09.2012** for statement of Smt. Shanta Sharma, thereafter statement of others namely – Ashok Kumar Sharma, Kusum Sharma and Sanjay Sharma will be followed and then statement of Sh. Pradeep Sharma will be recorded.

(The respondents had send notice under order XII rule 8 CPC to the petitioner, the petitioner will comply the same, however, copy of said notice has not been placed on record.)

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

Appearance: Counsel for plaintiff.

Counsel for defendants No. 1, 2 and 3.

None for other defendants No. 4, 5, 6 and 7.

Affidavit of PW1 Sh. Pradeep Kumar with list of witnesses and documents are filed, copies provided to counsel for defendants No. 1, 2 and 3.

List on **18.10.2012** for PE.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

Appearance: None for plaintiff.

Defendant in person.

Awaiting for plaintiff at 11.30 am.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

S

Saket/24.05.2012

Recalled at 11.30 am

Appearance: Plaintiff's husband Sh. Ashok Kumar in person.

None for defendant.

List on **29.09.2012** for ex-parte evidence.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

S

Saket/24.05.2012

24.05.2012

PW2/ON SA

Statement of Sh. Md. Azad age 36 years S/o Late Fateh Mohammad  
(present for further examination).

XXXXXXXXXX by Ms. Promilla Kapoor, Advocate for defendant No. 3/DDA

(The witness has been requested to go through paragraph 9 of the affidavit A1, he has read it.) The expression “ex-facie, arbitrary and fraudulent in nature” has been expressed towards the government and its officials because there were two notifications twice vis a vis the land measuring 1800 bigha was to be acquired but notification was for land measuring about 1000 bigha. The present suit has not been filed for setting aside aforementioned notification of acquisition of land or of award. Our land is less than 1 biswas which has been acquired by the government. I have been claiming  $\frac{1}{5}^{\text{th}}$  of 19 bigha 4 biswas of land in the present suit. The government has not acquired land 19 bigha 4 biswas. It is correct that government never took possession of land measuring 19 bigha and 4 biswas.

Q: It is put to you that you have concern with the land less than 1 biswas acquired by the government. What do you want to say?

A: It is incorrect, I have claimed with regard to whatever rights I have on the land i.e.,  $\frac{1}{5}^{\text{th}}$  share of 19 bigha 4 biswas of land in the present suit.



As on today where the subject land is located is known by Vishwakarma Colony. I am not aware whether Vishwakarma colony is an unauthorized colony to be approved by the Government. I have not impleaded the other persons, party to the suit whom the remaining  $\frac{4}{5}^{\text{th}}$  portion of land belongs to them. I have not impleaded all the persons who are occupying the land measuring 19 bigha 4 biswas, however, I have impleaded some of them as party to the present suit. It is wrong to suggest that I have no right in the land or  $\frac{1}{5}^{\text{th}}$  right in the land measuring 19 bigha 4 biswas or my suit is without any right in the land. The basis for my  $\frac{1}{5}^{\text{th}}$  claim in the said land is that there are names of five sons in the Khasra Girdawari and that is why I have claimed  $\frac{1}{5}^{\text{th}}$  share therein.

XXXXXXXXXXXX by Sh. Sandeep Garg, Advocate for defendants No. 6,7 and 8.

At the time when suit was filed the Vishwakarma Colony existed there. I had also disclosed to my counsel, at the time of preparing the suit that Vishwakarma colony is existing. I do not know how many blocks are there in Vishwakarma colony. I cannot admit or deny that there are Block A to Block G in Vishwakarma Colony, since I do not know. I usually go to Vishwakarma colony since I have concern with my property. The entire property of F Block is of us. I do not know as to how many houses are there in F Block but there are many vacant plots in the area 2000 sq. yard

approximately. The area other than 2000 sq. yard approx. are either built up houses or plots having boundary wall. I am not able to tell as to how many built up houses there are and the other plots having boundary walls. The F Block is electrified and built up houses have electric connection (Vol. since the year 2003-2004). There is road but the same is not metalled road. I do not know that there are more than 250 houses in F Block. I had narrated to my counsel about existence of road and of electrification of area of F Block and existence of colony of Vishwakarma, at the time of filing of suit in the year 2010. I have sold around 500/700 sq. yard land out of 1/5<sup>th</sup> share of land measuring 19 bigha 4 biswas. (vol. it was sold in 2009 and after 2009). I had also narrated to my counsel that I had sold such land in the year 2009 and after 2009, at the time of filing the suit. I have sold the said land on the basis of relinquishment deed executed in our favour and we sold the land on the basis of power of attorney and other allied papers generally executed at the time of sale of land. I can show for illustration as to how sale was effected by such documents, just now I have no paper but I can show if time is given to me.

Further cross examination is deferred, witness may bring the record if feasible.

RO & AC

(INDER JEET SINGH)  
Addl. District Judge-03, South District,  
Saket/24.05.2012

24.05.2012

Appearance: Counsel for plaintiff.

Counsel for defendant Nos. 1, 2 and 4.

Counsel Ms. Promilla Kapoor, Advocate for defendant  
No. 3/DDA.

Counsel Sh. Sandeep Garg, Advocate for defendants No.  
6 to 8.

Counsel Sh. Jaspreet S. Rai, Advocate for defendant No.  
5 and 6. Vakalatnama is filed now.

Defendants No. 9 and 10 are ex-parte.

Noe for defendant No. 11.

PW2 Mohd. Azad is present, he is cross examined by  
defendant No. 3/DDA and partly cross examined by defendants No. 6 to 8.

List on **27.07.2012** for plaintiff's evidence (in respect of  
further cross examination of PW2).

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

Appearance: Counsel for plaintiff.

Counsel for defendant, cheque of Rs. 10,000/- for payment of cost imposed in CMM No. 499/12.

(There is use of two inks in the cheque, the defendant will exchange it with another proper cheque).

List for replication, if any, by forwarding advance copy and for reply and arguments on application under order VII rule 11 CPC r/w order II rule 2 CPC for **18.08.2012**.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

**Order**

(on plaintiff's application dated 11.01.2012 under order VI rule 17 CPC)

Appearance: Counsel for plaintiff.

Counsel for defendant.

Heard.

1. The plaintiff filed suit for possession and permanent injunction against the defendant Muntiyaz, however, defendant's actual name is Muntiyaz but inadvertently the name was recorded in the pleadings as Mumtaz, secondly there is only one defendant but in the pleadings, it has been mentioned as 'defendants' at various places, thirdly, the plaintiff relies upon documents GPA, Affidavit, Will, receipt dated 08.05.1996 but in paragraph 4, the date was mentioned as 08.05.2011. the proposed amendments are to rectify them at this initial state, otherwise it would not change nature of case. The plaintiff requests to rectify the plaint as well as application under order XXXIX rule 1 and 2 CPC, supporting affidavit and memo of parties. During the course of arguments similar contentions have that the court has also observed in the proceedings while taking cognizance that the name of defendant is in fact Muntiyaz and not Mumtaz. Whereas, the defendant by way of detailed para-wise reply, the defendant (i.e., Muntiyaz) since Vakalatnama and application under order VII rule 11 CPC

has been filed under the name Muntiyaz, had opposed the application vehemently, firstly, it is not a typographical error but in fact the proposed application may change the nature of suit, firstly the suit was filed against Mumtaz, secondly, the date of 08.05.1996, as proposed in place of 08.05.2011, would bring new cause of action and lastly the manner in which the application has been structured will bring a new case which is not permissible under order VI rule 17 CPC. The application is liable to be dismissed.

2. The summons were directed against Mumtaz on the eve of filing of suit, however, the same were served through Nafiz S/o Muntiyaz and later Vakalatnama was filed in the name of Muntiyaz. As appears, it may be because of pronouncing the name of plaintiff, being illiterate lady, it was translated in letters Mumtaz in place of Muntiyaz. To bring the actual name of defendant as Muntiyaz on record would not change nature of suit. Secondly, since there is only one 'defendant', therefore, writing 'defendants' in various places in plaint is a typographical error and that for a singular pronoun 'defendant', plural pronoun 'defendants' has been written. In paragraph 4 of the plaint, the date of documents is mentioned as 08.05.2011 but in fact the date is 08.05.1996 and the documents of GPA, agreement to sell, etc., are of 08.05.1996, which were filed in support of plaint; rectification of said date would not change nature of suit.

Accordingly, the plaintiff's application under order VI rule 17

CPC is allowed to amend the paint by mentioning correct name of defendant as Muntiyaz, to replace word 'defendant' in place of word 'defendants' wherever so appears and to rectify date 08.05.1996 at two places in paragraph 4 in place of 08.05.2011. Amended memo of parties may be filed accordingly.

The plaintiff has also requested to amend the affidavit filed in support of application under order XXXIX rule 1 and 2 CPC and the application, however, the affidavit and application are not pleadings, to that extent plaintiff's request is declined. However, considering that, amendment to the plaint has been allowed and amended plaint is taken on record, therefore, the plaintiff may file fresh application under order XXXIX rule 1 and 2 CPC. The application has also been filed in support of amended plaint.

List on **21.09.2012** for written statement and reply to application and arguments on defendant's application under order VII rule 11 CPC and injunction application. Interim order is extended till next date.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

Sh. J.P. Kapoor vs D.D.A

CS No. 120/12

24.05.2012

Fresh suit for recovery is received by way of assignment. Let it be checked, registered and report (Ahlmad will report about the registration of case and record and Reader attached to the court will report about the court fee assessed, paid and payable as per Rule) accordingly.

Appearance: Counsel for plaintiff.

Issue summons to the suit to the defendants on filing of PF, Speed Post/Registered AD for **10.09.2012**.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S



Cyber Media (India) Ltd. vs EXL Fulfillment Ser. Pvt. Ltd.

CS No. 118/12

24.05.2012

Fresh suit for recovery is received by way of assignment. Let it be checked, registered and report (Ahlmad will report about the registration of case and record and Reader attached to the court will report about the court fee assessed, paid and payable as per Rule) accordingly.

Appearance: Counsel for plaintiff.

Issue summons to the suit to the defendant on filing of PF, Speed Post/Registered AD for **11.09.2012**.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

Sh. Bir Singh vs Gyan Chand

CS No. 119/12

24.05.2012

Fresh suit along with injunction application under order XXXIX rule 1 and 2 CPC is received by way of assignment. Let it be checked, registered and report (Ahlmad will report about the registration of case and record and Reader attached to the court will report about the court fee assessed, paid and payable as per Rule) accordingly.

Appearance: Counsel for plaintiff.

Issue summons to the suit and notice on application to the defendants on filing of PF, Registered A/d/speed post for **28.05.2012** and plaintiff is directed to file the deficient court fee on or before next date.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

S

24.05.2012

File is taken up on plaintiff's application under order V rule 20 CPC to serve the defendant by way of substitute services.

Appearance: Counsel for plaintiff.

Heard.

The summons were directed to be issued at new address of defendant of Mayur Vihar, New Delhi – 91 but Assistant Ahlmad had issued the summons at old address. Plaintiff's application under order V rule 20 CPC is kept pending and PF, Speed Post/Registered AD be filed for summons at new address for date fixed i.e., **27.09.2012**.

(INDER JEET SINGH)

Addl. District Judge-03, South District,

Saket/24.05.2012

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