

Ahmed Zaid Faizee vs Ex. No. 377/2021 Manoj Rana Vs Ahmed Zaid ... on 17 August, 2022

IN THE COURT OF SHRI GIRISH KATHPALIA,
PRINCIPAL DISTRICT & SESSIONS JUDGE (HQs)
TIS HAZARI COURTS, DELHI.

Ex. No. 377/2021

MANOJ RANA
S/o LATE Shri O.P. RANA
R/o D-14/7, MODEL TOWN-II
DELHI 110009

.... DECREE HOLDER

VERSUS

AHMED ZAID FAIZEE
S/o Shri AHMED FAIZAN FAIZEE
R/o 11A, THIRD FLOOR, SANJAY NAGAR,
GULABI BAGH, DELHI 110007

.....JUDGMENT DEBTOR

Date of filing : 14.09.2021
First date before this court : 15.09.2021
Arguments concluded on : 29.07.2022
Date of Decision : 17.08.2022

APPEARANCE : Shri Ashish Sharma, counsel for DH
Shri Sanjay Kumar Mishra, counsel for JD

Misc Application No. 210/2022

AHMED ZAID FAIZEE
S/o Shri AHMED FAIZAN FAIZEE
R/o 11A, THIRD FLOOR, SANJAY NAGAR,
GULABI BAGH, DELHI 110007

.....APPLICANT

VERSUS

Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee
Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi

Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee

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MANOJ RANA
S/o LATE Shri O.P. RANA
R/o D-14/7, MODEL TOWN-II
DELHI 110009

.... RESPONDENT

Date of filing : 01.04.2022
First date before this court : 01.04.2022
Arguments concluded on : 29.07.2022
Date of Decision : 17.08.2022

APPEARANCE : Shri Sanjay Kumar Mishra, counsel for applicant
Shri Ashish Sharma, counsel for respondent

Misc Application No. 07/2022

AHMED ZAID FAIZI
S/o Shri AHMED FAIZAN FAIZI
R/o 11A, THIRD FLOOR, SANJAY NAGAR,
GULABI BAGH, DELHI 110007

.....APPLICANT

VERSUS

MANOJ RANA
S/o LATE Shri O.P. RANA
R/o D-14/7, MODEL TOWN-II
DELHI 110009

.... RESPONDENT

Date of filing : 24.12.2021
First date before this court : 04.01.2022
Arguments concluded on : 29.07.2022
Date of Decision : 17.08.2022

APPEARANCE : Shri Sanjay Kumar Mishra, counsel for applicant
Shri Ashish Sharma, counsel for respondent

Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee
Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi
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COMMON

ORDER

1. These two applications under Order IX Rule 13 CPC and two sets of objections filed in the execution proceedings are taken up together for disposal on account of similar factual and legal matrix. By way of Ex. 377/2021, the landlord sought execution of the ex-parte decree dated 19.04.2021 and in those execution proceedings the judgment debtor and his father filed their respective objections. By way of Miscellaneous DJ No. 07/2022, the judgment debtor (JD) tenant sought setting aside ex-parte decree dated 19.04.2021. By way of Miscellaneous DJ No. 210/2022, father of the judgment debtor (objector) also sought setting aside ex-parte decree dated 19.04.2021. I heard learned counsel for the DH as well as the JD and the objector.

2. Briefly stated, circumstances leading to these proceedings are as follows.

2.1 The DH claiming himself to be the owner of third floor of premises bearing No. 11A, Sanjay Nagar, Gulabi Bagh, Delhi (hereinafter referred to as "the subject property") filed a suit for recovery of possession of the subject property, pleading that he had inducted the JD as tenant by way of rent agreement dated 21.04.2019 for a period of 11 months at a monthly rent of Rs. 31,000/- exclusive of water and electricity charges; that with effect from 21.07.2019, the JD stopped paying rent, so by way of notice dated 05.12.2019, DH Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 3 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH by GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:36:55 +0530 terminated the tenancy and called upon the JD to handover vacant peaceful possession of the subject property, besides clearing the outstanding financial liability, but despite service of the said quit notice, the JD neither vacated the subject property nor even sent reply to the notice. Hence, the suit.

2.2 Initially, the summons of the suit sent to the JD returned with the report that he had refused to accept the same. However, since thereafter the matter had to be adjourned repeatedly on account of covid lockdown, fresh summons were ordered to JD, which were duly served and a counsel filed vakalatnama on behalf of JD, but despite repeated opportunities written statement was not filed and none appeared for JD to seek enlargement of time, so the matter was posted for recording plaintiff's evidence. Ultimately, when none appeared to even cross examine the DH, vide order dated 18.03.2021 JD was proceeded ex-parte. The suit culminated into ex-parte decree dated 19.04.2021 for recovery of possession of the subject property, recovery of arrears of rent and recovery of mesne profits, besides injunction restraining the JD from creating third party interest in the subject property.

2.3 After about five months, on 15.09.2021, DH filed the execution petition, which followed application dated 13.12.2021 of JD for setting aside the ex-parte decree and application dated 30.03.2022 of father of JD for setting aside the ex-parte decree. As mentioned above, JD and his father also filed their respective Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 4 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:37:06 +0530 objections in the execution proceedings. It would be apposite to briefly traverse through the applications and the objections under consideration.

APPLICATION OF JD UNDER ORDER IX RULE 13 CPC

3.1 In his application under Order IX Rule 13 CPC, JD admitted having received the summons of the suit on 17.09.2020 and also admitted having filed vakalatnama on 21.09.2020, but further pleaded that he remained under impression that no adverse orders would be passed in view of covid pandemic. JD also pleaded that evidence of plaintiff was commenced without framing issues and without closing right of JD to file written statement, so ex□parte decree is liable to be set aside. According to JD, he came to know about the ex□parte decree on receiving notice of the execution proceedings. In his application under Order IX Rule 13 CPC, JD also pleaded that the DH had forged and fabricated the rent agreement dated 21.04.2019 and obtained the ex□parte decree by playing fraud on the court.

3.2 In reply to the application under Order IX Rule 13 CPC, DH denied the pleadings of the JD and pleaded that despite repeated opportunities after service of summons and filing of vakalatnama, JD opted not to file written statement and did not even join the proceedings to cross examine the DH, so the application under Order IX Rule 13 CPC is liable to be dismissed. In the reply, DH also Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 5 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:37:21 +0530 denied the averments of facts pleaded in the application as regards the rent agreement being a forged and fabricated document.

APPLICATION OF OBJECTOR UNDER ORDER IX RULE 13 CPC

4.1 In his application under Order IX Rule 13 CPC, the objector father of JD pleaded that the ex□parte decree dated 19.04.2021 was obtained by the DH by playing fraud on this court, so the decree is a nullity; that the subject property is in exclusive possession of the objector applicant since the year 2018, much prior to the alleged rent agreement dated 21.04.2019, so the applicant (father of JD) was a necessary party in the suit but was not impleaded; that the DH and the builder Akhil Nanda had entered into agreement to sell with the applicant and had already received substantial amount of sale consideration, after which the applicant was put in possession of the subject property; that through a property dealer namely Sanjay, he came in contact with Akhil Nanda, who represented that he was constructing flats in premises No. 11A, Sanjay Nagar, Gulabi Bagh, Delhi with his own funds and had a right to sell the portion coming to his share under collaboration agreement with the DH; that believing those representations, the applicant entered into agreement to sell dated 16.09.2015 with Akhil Nanda and paid Rs. 34,00,000/□out of total sale consideration of Rs. 75,00,000/□to Akhil Nanda, the balance to be paid on or before execution of the sale deed; that the said amount paid by the applicant Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 6 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH

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2022.08.17 16:37:33 +0530 to Akhil Nanda was Rs. 19,00,000/□by way of four cheques and Rs. 15,00,000/□in cash; that even thereafter, the applicant paid a further amount of Rs. 20,00,000/□to Akhil Nanda, who transferred a sum of Rs. 19,00,000/□to the DH; that the entire construction had to be completed on or before 25.04.2017; that thereafter, the applicant repeatedly asked Akhil Nanda to execute sale deed, but could not succeed, so he requested Akhil Nanda to get the agreement to sell executed with the DH; that an agreement to sell dated 04.09.2018 was executed between the applicant and the DH, on the basis whereof the applicant applied for loan and even paid processing fee of Rs. 84,252/□after which the loan was granted by way of demand draft dated 20.09.2018 in the name of the DH; that the DH further extended the date for execution of sale deed to 02.11.2018, so the applicant purchased stamp duty of Rs. 4,50,000/□on 18.10.2018 and even deposited tax in favour of DH, but the DH did not come forward to execute sale deed on 02.11.2018 and extended the date for execution of sale deed to 06.12.2018 but even on that date, DH did not turn up, so Akhil Nanda informed the applicant about some misunderstanding between the DH and Akhil Nanda due to which transaction was not being completed; that on 06.12.2018, a possession letter was executed whereby Akhil Nanda delivered possession of the subject property to the applicant; that even thereafter, DH did not come forward to execute sale deed despite the applicant having spent Rs. 54,00,000/□ that under these circumstances, the applicant filed a civil suit for specific performance of contract; that the applicant being in possession of the subject

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2022.08.17 16:37:45 +0530 property, the DH and the JD had no authority to enter into the alleged rent agreement dated 21.04.2019, however, it has come to the knowledge of the applicant that under duress, the DH and Akhil Nanda obtained signatures of the JD on some blank papers and converted the same into rent agreement. Therefore, according to the applicant the ex□parte decree dated 19.04.2021 obtained fraudulently is null and void, so liable to be set aside.

4.2 No reply was filed in this case since initially, counsel for the applicant kept taking adjournments to address on maintainability of this application and subsequently, arguments on all the pending applications enlisted above were heard.

OBJECTIONS FILED BY JD IN EXECUTION PROCEEDINGS 5.1 In his objections against execution of the ex□parte decree, JD basically alleged that the ex□parte decree was obtained by playing fraud since JD had no concern whatsoever with the subject property and has never been a tenant therein; that Shri Akhil Nanda and DH had already delivered possession of the subject property to his father Ahmad Faizan Faizi in 2018, much prior to the alleged rent agreement dated

21.04.2019; that he had no right to enter into rent agreement in respect of the subject property with DH; that the DH being owner of the premises No. 11A, Sanjay Nagar, Gulabi Bagh, Delhi entered into collaboration agreement with Akhil Nanda for Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 8 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH by GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:37:55 +0530 constructing four floors in the said premises and thereafter Akhil Nanda entered into agreement to sell with Ahmad Faizan Faizi, father of JD; that after his father paid substantial amount of sale consideration to DH through Akhil Nanda, possession of the subject property was handed over to father of JD in 2018, after which he has been residing there with his wife; that despite having received substantial amount of sale consideration, DH did not turn up for execution of the sale deed in favour of Ahmad Faizan Faizi; that under duress of execution of sale deed, DH got signed from him some blank papers under the pretext of using the same for executing sale deed, but misused the same by fabricating the rent agreement dated 21.04.2019. Since the ex-parte decree was obtained by fraud, the same is liable to be set aside and the execution petition deserves to be dismissed.

5.2 In reply to the objections of JD, it was pleaded by DH that the allegations of fraud leveled by JD are false and not supported by any document; that despite repeated opportunities, JD did not file written statement in the suit and did not appear even to cross examine the witness of DH; that father of the JD never entered into any agreement to sell with DH in respect of the subject property; that no money was paid by father of JD to the DH as consideration towards purchase of the subject property. Therefore, the objections are liable to be rejected and the ex-parte decree deserves to be executed.

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2022.08.17 16:38:06 +0530 OBJECTIONS FILED BY OBJECTOR IN EXECUTION PROCEEDINGS

6.1 In his objections filed in the execution proceedings, father of JD pleaded that the ex-parte decree dated 19.04.2021 was obtained by the DH by playing fraud on this court, so the decree is a nullity; that the subject property is in exclusive possession of the objector since the year 2018, much prior to the alleged rent agreement dated 21.04.2019, so the objector (father of JD) was a necessary party in the suit but was not impleaded; that the DH and the builder Akhil Nanda had already entered into agreement to sell with the objector and had already received substantial amount of sale consideration, after which the objector was put in possession of the subject property; that through a property dealer namely Sanjay, he came in contact with Akhil Nanda, who represented that he was constructing flats in premises No. 11A, Sanjay Nagar, Gulabi Bagh, Delhi with his own funds and had

a right to sell the portion coming to his share under collaboration agreement with the DH; that believing those representations, the objector entered into agreement to sell dated 16.09.2015 qua the subject property with Akhil Nanda and paid Rs. 34,00,000/□out of total sale consideration of Rs. 75,00,000/□to Akhil Nanda, the balance to be paid on or before execution of the sale deed; that the said amount paid by the objector to Akhil Nanda was Rs. 19,00,000/□by way of four cheques and Rs. 15,00,000/□in cash; that even thereafter, the objector paid a further amount of Rs. 20,00,000/□to Akhil Nanda, who transferred a sum of Rs. 19,00,000/□to the DH;

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that the entire construction had to be completed on or before 25.04.2017; that thereafter, the objector repeatedly asked Akhil Nanda to execute sale deed, but could not succeed, so he requested Akhil Nanda to get the agreement to sell executed with the DH; that an agreement to sell dated 04.09.2018 was executed between the objector and the DH on the basis whereof the objector applied for loan and even paid processing fee of Rs. 84,252/□after which the loan was granted by way of demand draft dated 20.09.2018 in the name of the DH; that the DH further extended the date for execution of sale deed to 02.11.2018, so the objector purchased stamp duty of Rs. 4,50,000/□on 18.10.2018 and even deposited tax in favour of DH, but the DH did not come forward to execute sale deed on 02.11.2018 and extended the date for execution of sale deed to 06.12.2018 but even on that date, DH did not turn up, so Akhil Nanda informed the objector about some misunderstanding between the DH and Akhil Nanda due to which transaction was not being completed; that on 06.12.2018, a possession letter was executed whereby Akhil Nanda delivered possession of the subject property to the objector; that even thereafter, DH did not come forward to execute sale deed despite the objector having spent Rs. 54,00,000/□ that under these circumstances, the objector filed a civil suit for specific performance of contract; that the objector being in possession of the subject property, the DH and the JD had no authority to enter into the alleged rent agreement dated 21.04.2019, however, it has come to the knowledge of the objector that under duress, the DH and Akhil Nanda obtained signatures of the JD on some blank papers and converted the Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 11 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH KATHPALIA Date:

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same into rent agreement; that since the objector is in exclusive possession of the subject property, the decree cannot be executed. Therefore, according to the objector the ex□parte decree dated 19.04.2021 obtained fraudulently is null and void, so liable to be set aside and the execution petition

deserves to be dismissed.

6.2 In reply to the objections, the DH pleaded that the objections are not sustainable in the eyes of law as the objector has no right, title or interest in the subject property, owner whereof is admittedly the DH through registered sale deed dated 06.12.2013; that with his earnings and savings, the DH had redeveloped the entire premises and constructed four floors through the contractor Akhil Nanda; that the DH never entered into any agreement to sell the subject property in favour of the objector; that the objector has not explained in what capacity he is occupying the subject property; that the possession letter on the basis whereof the objector claimed his exclusive possession over the subject property from 06.12.2018 was neither executed nor signed by DH and Akhil Nanda had no authority to issue any possession letter in respect of the subject property owned by the DH; that there is no documentary evidence to show that JD or his father were put in possession of the subject property by the DH; that no collaboration agreement was ever executed between the DH and Akhil Nanda; that the alleged agreement to sell between Akhil Nanda and the objector is illegal and void ab initio; that there was no occasion for the objector to make any payment, as alleged to Akhil Nanda; that DH never executed any agreement to sell dated Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 12 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH by GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:38:54 +0530 04.09.2018 with the objector; that the DH did not receive any money towards sale consideration from the objector; that the objector and his son illegally entered into the subject property in connivance with Akhil Nanda and thereafter in order to avoid dispossession, son of the objector executed a rent agreement pertaining to the subject property with the DH. Therefore, the objections are liable to be rejected.

DOCUMENTS FILED BY OBJECTOR (FATHER OF JD)

7. In support of his application for setting aside ex parte decree and of objections to execution, the applicant/objector filed original agreement to sell dated 16.05.2015 allegedly executed between him and Akhil Nanda pertaining to the subject property, original receipt dated 16.09.2015 allegedly executed by Akhil Nanda and original possession letter dated 06.12.2018 allegedly signed by Akhil Nanda. Besides, the applicant/objector also filed photocopies of an agreement to sell dated 04.09.2018 allegedly executed between him and the DH pertaining to the subject property and photocopies of documents regarding the applicant/objector having applied for loan and having purchased the stamp paper and photocopies of suit filed by the applicant/objector against Akhil Nanda and DH for specific performance.

ARGUMENTS ADVANCED

8. During arguments, learned counsel for DH, learned counsel for JD and learned counsel for the objector took me through Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 13 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022

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2022.08.17 16:39:11 +0530 their above described respective case. Learned counsel for JD and the objector contended that the ex parte decree is liable to be set aside and the execution petition deserves to be dismissed. On the other hand, learned counsel for DH argued that neither the JD nor the objector has brought any case which calls for setting aside of the ex parte decree and dismissal of execution.

8.1 Learned counsel for JD argued that there is no document on record reflecting any rent ever paid by JD to DH and that shows that the rent agreement was a sham document and never acted upon;

that according to documents submitted by the objector, on 06.12.2018 itself possession of the subject property was delivered to the objector by the DH, so there was no occasion for the JD to execute rent agreement dated 12.04.2019 with the DH and consequently the ex parte decree was obtained by playing fraud on court; that the DH had executed sale deeds of remaining floors of the said property and in those sale deeds, Akhil Nanda signed as a witness, which establishes connection between the DH and Akhil Nanda; that DH concealed in the plaint that Akhil Nanda was only a private contractor and not a builder; that DH concealed having given possession of the subject property to the objector in the year 2018 and had he disclosed so, the objector would have been necessary party and would have disclosed the truth; and that the objector had also applied for loan and had purchased the stamp papers by spending substantial money to execute a sale deed and when the same was not done, the objector filed a civil suit.

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8.2 Learned counsel for JD argued only to the extent that the

JD remained under mistaken impression that on account of covid pandemic, no adverse orders would be passed by the court, otherwise he would have filed a detailed written statement, disclosing the truth.

8.3 On the other hand, learned counsel for DH argued that admittedly DH is the owner of the subject property; that Akhil Nanda, with whom the objector allegedly executed the agreement to sell, was neither owner nor authorized by the owner to enter into such agreement with regard to the subject property; that even the possession letter dated 06.12.2018 was admittedly not signed by the DH; that it was for the JD and the objector to produce some documentary record in support of their allegation that the DH had executed a collaboration agreement with Akhil Nanda; that JD has failed to set up any cogent reason for not having filed written statement insofar as even during the covid period, the courts were functioning fully; that since JD failed to file written statement, now in execution this court cannot be taken behind the decree; that original agreement to sell dated

04.09.2018 allegedly executed between the DH and the objector has never been produced and photocopy thereof is a forged one, so cannot be looked into.

8.4 In the course of arguments on 30.03.2022, learned counsel for JD contended that the JD is not in possession of the subject property and in view of that submission, statement of JD was Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 15 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:39:51 +0530 recorded on oath, in which quite evasively he stated that he is "not in possession" of the subject property but in the same breath also stated that he is residing in the subject property in capacity as son of the objector.

8.5 On 30.03.2022, it was also recorded that earlier adjournments were being granted to JD to file the original agreement to sell allegedly executed between the DH and the objector, but on that day counsel for JD submitted that the original agreement had been deposited in the bank and the bank stated that they did not preserve the same.

DISCUSSION & ANALYSIS

9. To summarize, the ex[□]parte decree is sought to be set aside by JD on the ground that he was under impression that no adverse orders would be passed during the covid period and objections to the execution are that the DH obtained the ex[□]parte decree by playing fraud on court to the extent that the rent agreement dated 12.04.2019 was fabricated on the blank papers bearing signatures of JD, while father of JD had already been put in possession of the subject property by DH by way of possession letter dated 06.12.2018 under an agreement to sell.

10. As mentioned above, it is nobody's case that JD was never served with summons of the suit. Rather, according to the Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 16 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA Date:

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records, when for the first time summons were sent to the JD returnable on 18.03.2020, the same returned with the report of the process server that the JD not only refused to accept the summons but also threatened the process server that he would lodge complaint against the latter. On 18.03.2020, on the basis of an advisory dated 16.03.2020 of the Hon'ble Delhi High Court, the matter was adjourned to 28.04.2020 for further proceedings. Thereafter, on account of covid lockdown the matter had to be adjourned. On 07.08.2020, the matter was taken up through videoconferencing and fresh summons were ordered to the JD, which were served on 17.09.2020 and JD filed vakalatnama on 25.09.2020. But till 09.12.2020, JD did not file written statement and

none appeared for JD, so matter was posted for recording plaintiff's evidence on 24.12.2020. On 24.12.2020, in compliance of order of the Hon'ble Delhi High Court, recording of evidence was adjourned to 10.02.2021. On 10.02.2021 also none appeared for JD though counsel for DH was present and it was recorded that : "Now that the Hon'ble Delhi High Court has permitted commencement of evidence recording, list for plaintiff's evidence on 26.02.2021". On 26.02.2021, matter was taken up in physical hearing and when despite two calls none appeared for JD, matter was adjourned in the interest of justice for recording plaintiff's evidence on 18.03.2021. On 18.03.2021 also when none appeared for JD, chief examination of DH as PW1 was recorded and cross examination was deferred awaiting the JD; but till 02:05 pm none appeared for JD, so JD was proceeded ex□parte and counsel for DH closed plaintiff's evidence, so Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 17 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:40:11 +0530 matter was posted for ex□parte arguments on 14.04.2021, which was later declared holiday, so matter was taken up on 17.04.2021 and after conclusion of ex□parte arguments, matter was posted for orders on 19.04.2021. Despite such circumstances, JD opted to ignore the suit proceedings. Even the execution petition was filed after five months on 15.09.2021 but JD kept sleeping over.

11. The above mentioned dates through which the suit proceedings traversed clearly show that the stand taken by the JD qua mistaken impression that due to covid pandemic no adverse orders would be passed is completely flimsy. By way of administrative Office Order dated 15.08.2020, the Hon'ble Delhi High Court had directed the Subordinate Courts not to pass any adverse order in non□urgent/routine matters where the concerned advocate/litigant was unable to join the proceedings through videoconferencing till the time physical functioning of the courts was resumed. But those administrative directions were reviewed and by way of subsequent administrative Office Order dated 17.11.2020, the Hon'ble Delhi High Court modified those directions to the extent that if an advocate/litigant stayed from the virtual proceedings after being intimated that the case would be taken up on a particular date, it be left to the discretion of the court to proceed further in the matter depending upon the urgency and/or the other attending circumstances.

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12. In the present case, as mentioned above, the JD never filed written statement. Even during partial lockdown, pleadings were being regularly filed through email and by dropping the same in the petition boxes kept in all court rooms. On 10.02.2021,

taking note of the situation, where the Hon'ble Delhi High Court had permitted commencement of evidence recording, the matter was posted to 26.02.2021. Even on 26.02.2021 in physically held court since none appeared for JD even in two calls, keeping in mind the interest of justice, matter was again adjourned to 18.03.2021. On 18.03.2021 also, the matter was passed over till 02:05 pm awaiting the JD but none appeared. Even thereafter till 19.04.2021 i.e. more than one month after closure of ex-parte evidence, JD opted not to appear. During the entire relevant period, copies of all orders were duly uploaded on website of this court on day to day basis.

13. The JD has failed to set up any case to show that his failure to file written statement and to join the proceedings in the suit was on account of any factor beyond his control. Therefore, I find absolutely no merit in his application under Order IX Rule 13 CPC.

14. As regards contention of the JD that no formal order was passed, closing his right to file written statement, the contention is rejected because after the 2002 amendment to the Code of Civil Procedure, the defendant has a right to file written statement only within 30 days after service of summons and thereafter, it is a matter of discretion of the court to grant enlargement of time to file written Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 19 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:40:31 +0530 statement, so on expiry of 30 days from service of summons, right to file written statement automatically stands closed and no formal order for that purpose is required.

15. Not just the JD, even the objector, who is father of JD and both of them are residing in the subject property, opted to remain silent. If the DH was playing fraud with the court, it remains unexplained as to why the objector opted not to immediately move appropriate proceedings in this court during pendency of the suit, as it cannot be even imagined that JD would have kept his father in dark about the suit. It is clear that the JD and the objector, who is father of JD deliberately kept looking the other side while the suit was proceeding so that they could thwart the proceedings at crucial juncture.

16. Claim of the objector in the application under Order IX Rule 13 CPC as well as his objections have also to be examined from the angle of the alleged fraud played on the court. As mentioned above, the fraud allegedly played on this court by the DH was that the ex-parte decree was obtained on the basis of rent agreement fabricated on blank papers signed by JD under duress subsequent to the objector having been put in possession of the subject property by the DH by way of possession letter dated 06.12.2018 under an agreement to sell.

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17. Admittedly, owner of the subject property is the DH and not Akhil Nanda. According to the JD and the objector, the said Akhil Nanda is a builder who entered into collaboration agreement with the DH for construction and development of the entire premises.

On the other hand, according to DH, the said Akhil Nanda is an independent building construction contractor with whom no collaboration agreement was entered into. Not even a shred of document was produced by the JD or the objector to show the status of Akhil Nanda as a builder who allegedly entered into collaboration agreement with the DH. Not only this, as mentioned above, despite repeated opportunities, during pendency of suit neither written statement was filed by JD nor any impleadment was sought by the objector father of JD, pleading that there was collaboration agreement between the DH and Akhil Nanda.

18. Similarly, despite repeated opportunities, JD opted not to file written statement, pleading that under duress he was made to sign blank papers, which were subsequently converted into rent agreement. At the same time, it also remains completely unexplained as to why JD would be called upon to sign any papers, much less blank papers, if an agreement to sell had already been entered into with his father, the objector herein.

19. As regards the alleged agreement to sell, even according to the JD and the objector, there were two agreements to sell allegedly executed in favour of the objector. The first agreement to Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 21 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:40:50 +0530 sell dated 16.09.2015 was allegedly executed between Akhil Nanda and the objector. The original agreement to sell has been filed by the objector. The second agreement to sell dated 04.09.2018 was allegedly executed between the DH and the objector. Despite the DH taking a clear and specific stand that he never executed any such agreement to sell with the objector, the original agreement to sell dated 04.09.2018 never saw light of the day.

20. As regards agreement to sell dated 16.09.2015, admittedly, Akhil Nanda is not owner of the subject property and the said agreement was neither ratified nor even signed by the DH in any manner. It would also be quite significant to note that the agreement to sell dated 16.09.2015 describes Akhil Nanda as collaborator, but does not name any owner of the subject property. If the objector entered into the said agreement to sell without verifying the title or authority of Akhil Nanda, it was to his own peril.

21. Further, the said agreement to sell dated 16.09.2015 mentions that the subject property of that agreement was under

construction and the same was to be as per the specifications mentioned in Annexure A to the agreement. But no such Annexure saw light of the day despite detailed arguments across repeated dates of hearing. Therefore, the original agreement to sell dated 16.09.2015 filed by the objector is an inchoate document, which cannot be relied upon.

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22. As further reflected from the original agreement to sell dated 16.09.2015, at the time of execution of that agreement, the subject property was yet to be constructed and one of the part payment cheques was dated 24.03.2013, which means that some payment allegedly received by Akhil Nanda way back in the year 2013 was being adjusted towards sale consideration in the year 2015. But the DH himself purchased the premises no. 11A, Sanjay Nagar, Gulabi Bagh, Delhi in December 2013 only.

23. Even the receipt dated 16.09.2015 and the possession letter dated 06.12.2018 were executed by Akhil Nanda only and not by the DH. Nothing has been produced by the JD or the objector to show even any semblance of title or authority of Akhil Nanda to execute those documents.

24. As regards the argument of the JD and the objector that the DH concealed the fact that the objector was already in possession of the subject property prior to even execution of the alleged rent agreement, I find substance in the explanation of the DH that since the suit was on the basis of rent agreement, there was no necessity for DH to plead that prior to the rent agreement, JD and his family were in possession of the subject property. Every failure to plead facts does not amount to concealment. Concealment of facts fatal to the suit is failure to plead those facts which had the same been pleaded, the suit would have failed. As explained by DH, initially, the JD and his father illegally entered into the subject property in connivance Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 23 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:41:09 +0530 with Akhil Nanda, and subsequently, in order to avoid dispossession, JD executed rent agreement, so the suit was brought on the basis of rent agreement only. Once the DH brought the suit, pleading tenancy alongwith the original rent agreement and the JD despite repeated opportunities did not file written statement pleading that his father was in possession of the subject property since prior to the rent agreement, it cannot be said that DH concealed any fact from this court, much less a fraud played.

25. Coming to the second agreement to sell dated 04.09.2018 allegedly executed between the DH and the objector, as mentioned above, despite specific denial of DH, original agreement to sell was never produced by the objector or the JD. Even the explanation given by the objector that he had submitted the original agreement to sell in the bank at the time of applying for loan and thereafter, the bank misplaced the same, does not appear to be truthful on account of absence of any certificate to that effect issued by the bank. Quite surprisingly, the objector also did not take any action by way of police complaint or any complaint with higher authorities of the bank regarding the alleged loss of original agreement to sell dated 04.09.2018 despite its significance. Rather, according to one of the email correspondence between the objector and the bank, even in the bank it is only the copy of agreement to sell was submitted and not the original agreement to sell; and even that copy of agreement to sell was not retained in their record by the Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 24 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:41:21 +0530 bank. So, the original agreement to sell dated 04.09.2018 remains elusive.

26. Although genuineness of the photocopied agreement to sell dated 04.09.2018 has strongly been challenged by the DH, I have examined the contents of the same. The said agreement to sell dated 04.09.2018 is completely silent about the earlier agreement to sell dated 16.09.2015 allegedly executed by the objector with Akhil Nanda pertaining to the subject property. The said agreement to sell dated 04.09.2018 also does not make even a whisper that earlier towards sale consideration of the subject property, the objector had already paid Rs. 34,00,000/□to Akhil Nanda under the agreement to sell dated 16.09.2015 or even otherwise. The amount of Rs.

34,00,000/□is by no means a small amount and that too was paid by cheque so it remains unexplained as to why the objector would pay fresh sale consideration to DH under the second agreement to sell dated 04.09.2018.

27. Another unnatural factor found in the agreement to sell dated 04.09.2018 is that the total sale consideration of the subject property was decided to be Rs. 75,00,000/□and in clause (2) of the agreement, that total sale consideration of Rs. 75,00,000/□was agreed to be paid at the time of delivery of possession or execution of sale deed on or before 04.10.2018. There was no payment of earnest money, which is an unusual circumstance. Further, according to clause (6) of the agreement to sell dated 04.09.2018, possession of Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 25 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:41:36 +0530 the subject property was to be handed over to the objector at the time of completion of the sale deed. But as mentioned above, possession of the subject property even according to the objector was handed over to

him by Akhil Nanda and not by DH, that too without execution of the sale deed.

28. In view of the aforesaid, I am unable to find the photocopied agreement to sell dated 04.09.2018 worth any reliance. Rather, I find substance in the submission of learned counsel for DH that the said agreement to sell is a forged document. However, it is clarified that this observation regarding genuineness of photocopied agreement to sell dated 04.09.2018 is not a finding but only an observation related to substance in the submission of learned counsel for DH.

29. Since the objector opted to file the same, I have also perused the photocopy of plaint of the suit for specific performance filed by the objector against the DH and Akhil Nanda. It is observed that the prayer clause of the said plaint is completely silent as to which agreement is sought to be performed. Although according to learned counsel for DH, the said suit is hopelessly time barred, but since the issue is pending before the court of competent jurisdiction, it would not be appropriate for this court to examine this aspect.

30. Even conduct of the JD in court as described above raises suspicion about genuineness of claim of the objector and the Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 26 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:41:47 +0530 JD. As mentioned above, in his statement of oath, JD first stated that he is not in possession of the subject property but in the same breath further stated that he is residing in the subject property in capacity as son of the objector. Such twisted wordplay also raises doubts about truthfulness and reliability of the JD as well as the objector. Besides, it also demolishes the case set up by the JD and the objector for the reason that despite being father and son living in the same premises with no dispute between them, it remains unexplained as to why the objector on getting to know about the suit did not rush to the court with an impleadment application claiming himself to be the occupant of the subject property under an agreement to sell.

31. To recapitulate, the JD has failed to set up any sufficient cause explaining his failure to file written statement within time prescribed by law and his failure to join the proceedings across repeated adjournments; the objector also has failed to explain his failure to seek impleadment in the suit despite having full knowledge about claim of the DH based on rent agreement; the objector has based his claim on the basis of two agreements to sell, one of which was admittedly executed by the person holding no title or authority and the original of the other agreement never saw light of the day, despite vehement and specific denial of the DH as regards genuineness of the same.

32. In view of above discussion, Miscellaneous DJ No. 210/2022 filed by the JD and Miscellaneous DJ No. 07/2022 filed by Ex. No. 377/2021 Manoj Rana vs Ahmed Zaid Faizee Page 27 of 28 pages Misc No. 07/2022 Manoj Rana vs Ahmed Zaid Faizi Digitally signed by GIRISH Misc No. 210/2022 Manoj Rana vs Ahmed Zaid Faizee GIRISH KATHPALIA KATHPALIA Date:

2022.08.17 16:41:56 +0530 the objector father of the JD, both applications under Order IX Rule 13 CPC as well as the objections dated 08.11.2021 filed by the JD and the objections dated 30.03.2022 filed by the objector father of the JD in the execution proceedings are dismissed with total costs of Rs.

20,000/₹ to be paid within one week by the JD and the objector in equal shares to the DH towards the litigation expenses of the DH pertaining to these applications, estimated on conservative side.

33. Files of Miscellaneous DJ No. 07/2022 and Miscellaneous DJ No. 210/2022 be consigned to record room.

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Date:
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Announced in the open court on
this 17th day of August, 2022

(GIRISH KATHPALIA)
Principal District & Sessions Judge (HQs)
Rent Control Tribunal (Central)
Tis Hazari Courts, Delhi

Ex. No. 377/2021
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