

Ex No.88/08

New No.1625/19

15.07.2020

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

Present : None for decree holders

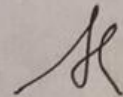
Mr. Ram Kumar, Ld. Counsel for judgment debtor no. 1

Mr. Sanjay Poddar, Ld. Senior Advocate with Ms. Pooja Kalra, Ld. Counsels for judgment debtor no.2 alongwith Mr.V.K. Mantoo, Deputy Law Officer, North MCD and Mr. Vijender Gupta, Section Officer, Land and Estate Department

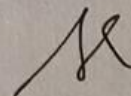
Mr. Ram Singh Parte from Ward 52(4), New Delhi, Income Tax Department

Mr. Manmohan Singh Bisht from Ward 4(2), Income Tax Department

1. The aforementioned officers from the Income Tax Department have e-mailed more data relating to the Income Tax Returns filed by Mr. Jai Singh and Mr. Virendra Singh. The Reader is directed to forward these e-mails to the parties of this case for their information. The Reader is further directed to take a printout of all the e-mails received from the Income Tax Department and place it in the file of the present case so that the record of the case remains complete.
2. The aforementioned officers from the Income Tax Department submit that the income from property disclosed by Mr. Jai Singh and Mr. Virendra Singh in their Income Tax Returns have been shown as their actual income received as rent from these properties and is not the notional rent determined by them.



3. However, they submit that they have not been able to trace the older record of the returns filed by Mr. Jai Singh and Mr. Virendra Singh for the period starting from 11.11.1999. They submit that whatever data was available with them about these two assesses regarding the income from plots no. 1 and 3, Block B, Jhandewalan Estate, Karol Bagh, New Delhi, they have already e-mailed it to the Court.
4. Issue Court notice to the Principle Chief Commissioner, Income Tax, Delhi directing him to disclose the income shown by the assesses Mr. Jai Singh (having PAN Card No. ABAPS9517K) and Mr. Virendra Singh (having PAN Card No. AISPS7856A) from plots no. 1 and 3, Block B, Jhandewalan Estate, Karol Bagh, New Delhi in their Income Tax Returns for the period from 11.11.1999 till 27.12.2019. The Principle Chief Commissioner shall also disclose if these properties were ever assessed by the Income Tax Department for the purpose of determining the notional rent for the period from 1999 till 2020. Endorsement be made on the Court notice that since this information was previously also sought by the Court vide its order dated 10.07.2020 and was not provided by the Income Tax Department, if the Chief Commissioner still does not provide the sought information, proceedings shall be initiated against him for non-compliance of the order of the Court.
5. In the context of the reports received from the Income tax Department, the Ld. Senior Advocate appearing on behalf of judgment debtor no. 2 submits that the income tax returns furnished by the decree holders do not tally with the version given by them about the tenants in plots no. 1 and 3. He also points out that as per the Income Tax Returns, the decree holders did not have any income-actual or notional from plots no. 1 and 3 prior to the assessment year 2015-16 and there is no recoverable/arrears of rent. He also submits that in the schedule to the



Income Tax Returns furnished by Mr. Jai Singh for the financial year 2015-16, he is claiming to be 100% owner of the property.

6. At around 1:20 pm today an e-mail has been received from D.S. Khatri, Ld. Counsel for the decree holders. The following is the e-mail sent by him:-

"Respected Sir,

I am busy taking care of my mother-in-law who has suffered a heart attack and will not be able to appear in your Virtual Court today 15.07.2020.

At the present stage of proceedings, i.e., before the issues have been framed in this inquiry, and considering the present COVID-19 conditions, Decree Holders cannot do anything further without serious risk to their life. Kindly post the case after 2 weeks.

In any case, considering all that has been placed on record, Decree Holders have nothing further to add.

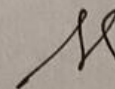
Respectfully submitted,

Regards

D.S. Khatri

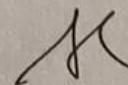
Counsel for Decree Holders"

7. Ld. Senior Advocate appearing on behalf of judgment debtor no. 2 submits that the decree holders have deliberately stop appearing before the Court so as to avoid compliance with the direction given by the Court.
8. Record is perused. On the last date of hearing which was yesterday, on similar grounds, an adjournment was sought. By a speaking order, the Court did not find the reason cited for seeking adjournment to be convincing. However, the Court took a lenient view and adjourned the case without passing any adverse order against the decree holders. Yet again, the decree holders have again sought an adjournment on similar



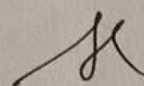
grounds. Even if Mr. D.S. Khatri, Ld. Counsel could not appear today, some other Counsel of the decree holders or atleast Mr. Vaibhav Singh could have been present. It is not that they had to appear physically. These proceedings are being conducted through video conferencing. It has been stated in the e-mail of Mr. D.S. Khatri sent to the Court today that since issues have not been framed and due to the Covid 19 pandemic, the decree holders cannot do anything further without risking their life. This Court has repeatedly held in its orders which have attained finality that before framing of issues, details of the plots adjacent to plot no. 2 are required from the decree holders. The decree holders have disclosed that one of the occupants of plot no. 3 i.e. Bagga Link Services Limited is paying a rent of Rs.3,30,000/- per month. The Court had asked the decree holders to provide the area which has been let out to Bagga Link Services Limited, so that the rate of rent could be calculated. Even if the decree holders and their representatives did not want to go outdoors due to the Covid 19 pandemic, the decree holders could have atleast complied with the direction of the Court to disclose the area let out to Bagga Link Services Limited. They could have also atleast deposited the costs imposed by the Court. To facilitate the depositing of Court, on instructions of the Court, the staff of the Court also provided the bank account details of the Delhi Legal Services Authority in which the amount could have deposited through internet banking. Several other directions given by the Court could have been complied with by the decree holders without going outdoors in the prevalent Covid 19 pandemic. None of this has been done by the decree holders. The conduct of the decree holders which indicate that they are intentionally concealing material particulars from the Court has been elaborated in the orders of this Court dated 10.07.2020 and 14.07.2020.

9. Repeated opportunities have been granted to the decree holders for disclosing details of tenancies in the adjacent plots which are also owned



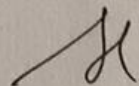
by them. They earlier kept seeking time for furnishing the information and later refused to divulge the same on frivolous grounds. The Court was left with no option but to seek the details regarding the tenancies in the adjacent plots from the Income Tax Department. The submissions made on behalf of the decree holders regarding the tenancies in the adjacent plots are in contradiction to the data received from the Income Tax Department. Despite the Court granting them an opportunity to give clarification in this regard, they have not come forward with any explanation. Rather, they have stated that they have nothing further to add.

10. Ld. Senior Advocate appearing on behalf of the judgment debtor no. 2 points out that the decree holders have themselves relied upon a license deed pertaining to the adjacent plot bearing no. 1 and therefore, agree that the plot no. 1 is similarly situated as is the premises in question for the purpose of determining the mesne profits. He submits that since the decree holders have relied upon the license deed of plot no. 1, the decree holders agree that the market rate of rent of plot no. 1 can be taken for the purpose of determining the market rate of rent of the property in question i.e. plot no. 2. He submits that as such, all parties to this case want that the market rate of rent of the adjacent plots be taken into account for the purpose of determining the mesne profits of the property in question i.e. plot no. 2. He, however, states that for various reasons like difference in the size of plots, difference in the value of plots keeping in mind the purposes for which the plots can be used, etc., the market rate of rent of the adjacent plots will have to be reduced for the purpose of calculating the market rate of rent of the property in question i.e. plot no. 2.
11. He submits that the Court cannot look only at the license deed filed by the decree holders since it may be a license deed having the highest rate of rent amongst all the tenancies in the adjacent plots. He submits

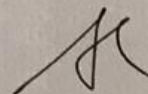


that the decree holders are avoiding to file details of the other tenancies/licenses in the adjacent plots including the one with Bagga Link Services Limited, since they may be having a lesser rate of rent.

12. He submits that the decree holders have themselves requested the Court to not confine itself to one lease agreement for determining the market rate of rent and have stated that an average is to be taken of the rates of rents calculated from various lease deeds. He submits that as such, it is imperative for the Court to have details of the other leases and licenses in the adjacent plots so that an average can be taken and correct market rate of rent can be calculated.
13. He submits that now that the decree holders are concealing the tenancies in the adjacent plots, the judgment debtor no. 2 will obtain copy of all the registered lease deeds from the office of the concerned Sub-Registrar having jurisdiction over plots no. 1 and 3 and will file it before the Court. He submits that since the decree holders are concealing the details of tenancies in these two plots, a Local Commissioner may be appointed to visit these two properties for the purpose of obtaining details of all tenancies and licenses. He submits that the judgment debtor no. 2 will pay the fees of the Local Commissioner for now, and subject to outcome of this case, later recover it alongwith other expenses from the decree holders.
14. Since the decree holders are deliberately concealing information about the tenancies in plots no. 1 and 3, an adverse inference in this regard shall be made by the Court against them and the version of the judgment debtors that the rate of rent provided in the other lease agreements pertaining to these plots is lesser than the rate prescribed in the license deed dated 26.04.2016, shall be accepted to be correct. However, it needs to be determined as to by what amount the other leases agreement have a lesser rate of rent.

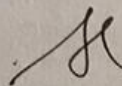


15. Since it is an enquiry being conducted by the Court for determination of the mesne profits, it is the duty of the Court to find out all material information and need not confine itself merely to the lease agreements filed by the parties.
16. The judgment debtor no. 2 has volunteered to file the registered lease deeds and license deeds pertaining to plots no. 1 and 3. The judgment debtor no. 2 shall file the deeds for the entire period from 11.11.1999 till 27.12.2019 atleast one day before the next date of hearing.
17. With regard to the appointment of Local Commissioner, it has been requested on behalf of the judgment debtor no. 2 that any Advocate may be appointed by the Court, other than the Ld. Counsel who was earlier appointed in the present case, since a small argument had taken place with him during the execution of the commission.
18. Order 26 Rule 9 of Code of Civil Procedure provides that the Court may issue a commission for making a local investigation for elucidating any matter in dispute, ascertaining market-value of any property and amount of mesne profits. Therefore, in compliance with the direction of the Hon'ble Supreme Court that an enquiry is to be conducted for determination of mesne profits, a Local Commissioner is appointed for the purpose of determining the rate of rent of plots no. 1 and 3, Block No. B, Jhandewalan Estate, Karol Bagh, New Delhi for the period from 11.11.1999 till 27.12.2019. Ms. Jayati Jaidka, Advocate, Chamber no. 393, Patiala House Courts, New Delhi having mobile no. 9711528112 is appointed as Local Commissioner. Her fee is fixed at Rs.30,000/- which shall be paid by the judgment debtor no. 2. The Local Commissioner shall visit these two plots on 17.07.2020 at 10:30 am. The parties to this case and/or their authorized representatives shall remain present at these plots on the said date and time. The representatives of judgment



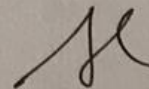
debtor no. 2 shall pay the fees to the Local Commissioner immediately on the reaching of the Local Commissioner at the spot. Then the Local Commissioner shall proceed to enquire from all occupants of these two plots as to under what authority they are in possession of these plots. In case the occupants disclose that they are tenants or licensees in these two plots, the Local Commissioner shall take all details of the tenancies/license including the amount of rent/license fee paid by them, the area for which that amount is paid and the duration of the lease/license. The Local Commissioner will also enquire as to who had inducted them in the premises as tenants/licensees and will obtain copy of the rent deeds/license deeds and receipts of payments.

19. The Local Commissioner may find that part of plot no. 1 is in possession of one Mr. Vikram Arora, a licensee. Since the details of this license executed in favour of Mr. Vikram Arora is already on record, the Local Commissioner need not bother taking down details of the license in favour of Mr. Vikram Arora.
20. The decree holders have disclosed that part of plot no. 3 has been rented out to Bagga Link Services Limited and the current rate of rent is Rs.3,30,000/- per month. The decree holders have not disclosed other details of this tenancy. The Local Commissioner shall find out the area and the lease period of this tenancy. She will also obtain copy of the lease agreement from Bagga Link Services Limited.
21. In case any person has been in possession of any part of these plots in pursuance of successive agreements, the Local Commissioner shall not obtain only the latest agreement, but all the agreements for the period starting from 11.11.1999. For the purpose of understanding of the Local Commissioner, she is informed that this exercise of taking details of the occupants in these two plots is being carried out because this Court has to ascertain the mesne profits of plot no. 2 which is adjacent to plots no.

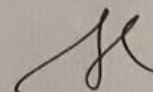


1 and 3 and all these three plots are stated to be under the ownership of the decree holders in the present case. Infact, this information may be provided by the Local Commissioner to the occupants so that they are not hesitant in cooperating with the Local Commissioner and divulging all the sought information. The Local Commissioner may also inform the occupants that they are bound by law to give answers to all queries of the Commissioner and are required to furnish all documents sought by her since she is acting on behalf of the Court, failing which there shall be consequences. So that the occupants cooperate with the Local Commissioner and disclose all the relevant information truthfully, the Local Commissioner will make it clear to the occupants that none of the truthful information provided to her can be used against them and that even if they have not paid rent/license fee, it will be of no consequence in this enquiry.

22. The Local Commissioner shall have photographs taken of these two plots showing possession of various persons. If deemed fit, a video may also be made. The Local Commissioner will also have a site plan prepared which discloses the constructed and vacant portions on these two plots and indicating the various persons in possession.
23. The Local Commissioner will also enquire from the occupants as to when construction was carried out in these two plots and the age of the building. The Local Commissioner will also enquire as to what portions of these two plots have been in possession of the decree holders Mr. Jai Singh and Mr. Virendra Singh sons of Late Sh. Lala Bharat Singh.
24. The Local Commissioner will also make efforts to find out all the tenancies/licenses in these two plots for the entire period from 11.11.1999 till 27.12.2019.

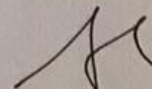


25. In the reports received from the Income Tax Department, the names of certain tenants in plots no. 1 and 3 have been disclosed i.e. D.M. Motors, Federal Auto Works of which proprietor is stated to be Mr. Dinesh Sharma, Amba Motors, Federal Auto Works, Ludhiana Transport Co., Sunil Graphics and Mr. Gurucharan. When the Local Commissioner visits the spot, she shall enquire about the tenancies of these persons and submit a report in this regard.
26. The Local Commissioner shall also give her report on the nature of construction in these two plots i.e. number of floors constructed and whether the construction is semi-pucca, semi-kacha, kacha or a solid structure like what has been constructed at plot no. 2.
27. It is ordered that it shall be the judgment debtor no. 2 who will be making all arrangements for taking of photographs, making video and preparation of site plan, entirely at its own costs, which may be later recovered by it from the decree holders, as per law.
28. The parties of this case are directed to immediately contact the Local Commissioner and coordinate with her about her visit to the premises. Copy of this order be sent by the Reader of the Court through WhatsApp to the SHO of the Police Station having jurisdiction over the aforementioned plots at Jhandewalan with direction that he will depute atleast two police officers including a female officer for ensuring that no untoward incident takes place at the spot during execution of commission and the Local Commissioner is able to smoothly execute the commission issued.
29. It is directed that the parties of this case, their authorized representatives and occupants of plots no. 1 and 3 shall fully cooperate with the Local Commissioner and render all assistance to her for compliance of the directions given by this order. It has been submitted on behalf of the

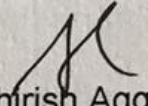


judgment debtor no. 2 that Mr. V.K. Mantoo, Deputy Law Officer, North Delhi Municipal Cooperation having mobile number 9717787857, Mr. Vijender Gupta, Section Officer, Land and Estate Department having mobile number 9811336399 and Mr. Narender Tewatia, Executive Engineer, Auto Department, North Delhi Municipal Corporation having mobile number 9717786842 shall remain present at the spot for the assistance of the Local Commissioner.

30. The Commissioner may contact the aforesaid persons for any assistance in compliance of the directions given by this order. The report of the Local Commissioner shall be prepared at the spot and shall be signed by the parties and/or their representatives and other persons present at the spot. Report shall be filed before this Court by e-mailing it at arc1.central4220@gmail.com and the hardcopy thereof shall be filed in Court Room No. 42 on any working day between 10:00 am to 02:30 pm by 21.07.2020.
31. The Reader of this Court shall immediately send copy of this order to the Local Commissioner on WhatsApp and/or e-mail.
32. Ld. Senior Advocate appearing on behalf of judgment debtor no. 2 has submitted that there are some errors in pagination etc. in the reply sent by the judgment debtor no. 2 to the answers of decree holders to Court queries. He seeks liberty from the Court to correct the errors in the reply.
33. In case the errors in the reply only relate to the pagination, the judgment debtor no. 2 is at liberty to come to the Court and correct the pagination within two days from today. In case there are errors other than in pagination, the judgment debtor no. 2 shall file a fresh reply and supply its copy to the decree holders.
34. To come up on 22.07.2020 at 02:00 pm.



35. The Ahlmad is directed to immediately send copy of this order and details required for joining court proceedings through video conference on the next date of hearing, to the learned Counsels for the parties. The details be also mentioned on the notice being sent to the Principle Chief Commissioner of Income Tax and to the Local Commissioner. The Local Commissioner may take part in the Court proceedings that will take place on the next date of hearing, if she so desires for the purpose of making any submissions regarding execution of the commission.


(Shirish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
15.07.2020

M.No. 47/19

New No. 751/20

15.07.2020

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

Present : None for decree holders

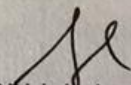
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Mr. Ram Singh Parte from Ward 52(4), New Delhi, Income Tax Department

Mr. Manmohan Singh Bisht from Ward 4(2), Income Tax Department

To come up alongwith connected case on 22.07.2020 at 02:00 PM.


(Shirish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
15.07.2020

E. No.43/16

New No.79480/16

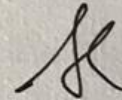
15.07.2020

File is taken up today for hearing by way of video conferencing on account of lockdown due to Covid 19 in view of order bearing no. 22/DHC/2020 dated 29.06.2020 passed by the Hon'ble High Court of Delhi.

Present: None.

No one has appeared through video conferencing.

As such, matter is adjourned for purpose fixed to 19.11.2020.



(Shirish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
15.07.2020

E. No.55/19

New No.411/19

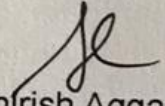
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(Shrish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
15.07.2020

M. No.40/19

New No.582/19

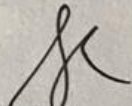
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(Shirish Aggarwal)
ARC-1, Central District
Tis Hazari Courts, Delhi
15.07.2020