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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Reserved on: April 25, 2022
Decided on: July 08, 2022

+ **CM(M) NO. 51983 OF 2018 IN RFA(OS) NO. 7/2011**

KRANTI ARORA Appellant

Through: Mr. Rajiv Dutta, Senior
Advocate with Mr. Siddharth
Dutta, Advocate.

Vs.

DIGJAM LTD Respondents

Through: Mr. Ramesh Singh, Senior
Advocate with Ms. Bharati
Budeshra and Mr. Sanjiv K.
Jha, Advocates.

O.P. Khaitan (HUF)

Through its Karta
Sh. Gautam Khaitan

..... Applicant

Through: Mr. Ramesh Singh, Senior
Advocate with Ms. Bharati
Budeshra and Mr. Sanjiv K.
Jha, Advocates.

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CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

HON'BLE MR. JUSTICE SUDHIR KUMAR JAIN

JUDGMENT

SUDHIR KUMAR JAIN, J

CM(M) NO 51983 OF 2018 (Application for Impleadment).

1. This order shall decide an application under Order I Rule 10(2) read with Order I Rule 8A and section 151 of the Code of Civil Procedure,

1908 (hereinafter referred to as “**the CPC**”) filed by the applicant O.P.Khaitan (HUF) for impleadment.

2. The factual background as appearing from record and necessary to mention to decide present application is that R.B.S. Basakha Singh was lessee of piece of plot admeasuring 1.398 acres bearing no 6-A, block no. 11, known as 3& 4, South End Road Lane, New Delhi-110001 vide registered perpetual lease deed dated 04.11.1942 effective from 23.04.1929 executed between Governor-General in Council and R.B.S. Basakha Singh. R.B.S. Basakha Singh transferred right, title and interest in respect of said plot along with built up structure thereon in favor of his daughter namely Bibi Barrinder Kaur (now known as Birender Amarjit Singh) vide registered Gift Deed dated 14.04.1947. Birender Amarjit Singh transferred rights, title and interest in respect of one-half share in said plot in favor of her son namely Inder Vijay Singh and two daughters namely Tavleen Singh and Udaya Hardev Singh vide Gift Deed dated 25.03.1971.

3. M/s General Marketing and Manufacturing Company Ltd. (GMMCL) was a tenant in respect of said plot/property. Birender Amarjit Singh entered into an agreement dated 23.07.1971 with GMMCL vide which GMMCL had agreed to vacate said plot/property with condition that after reconstruction of said plot/property, GMMCL would be inducted as tenant in respect of a flat measuring 1800 sq. feet on the 9th floor @ monthly rent of Rs. 1300/- and said agreement was made to be valid for period of 10 years only from the date of handing over of the possession of the flat in the new building complex. Birender Amarjit Singh, Inder Vijay Singh, Tavleen Singh

and Udaya Hardev Singh also entered into a Collaboration Agreement dated 08.09.1979 with M/S Kailash Nath & Associates for building and development of multi-story Group Housing Scheme (Gauri Apartments) on said plot with rights to M/S Kailash Nath & Associates to sell and dispose of residential flats to be constructed on said plot.

4. GMMCL after reconstruction of building initiated legal proceedings against Birender Amarjit Singh & others and entered into an agreement dated 21.08.1984 before the Supreme Court in Civil Appeal No 2684-85 of 1984 whereby Birender Amarjit Singh, Inder Vijay Singh, Tavleen Singh and Udaya Hardev Singh had agreed to hand over a flat measuring 1800 sq. feet to GMMCL and accordingly the Civil Appeal was disposed of vide order dated 21.08.1984. GMMCL entered into Deed of Assignment dated 30.11.1987 with O. P. Khaitan (HUF) i.e. applicant whereby assigned its right in respect of the said flat to the applicant and thereafter, the applicant sublet the flat to the respondent (erstwhile Birla VXL).

5. The appellant claimed to have invested his hard earned money for purchase of a flat in Gauri Apartments and entered into an agreement dated 30.01.1989 with Birender Amarjit Singh, Inder Vijay Singh, Tavleen Singh and Udaya Hardev Singh and partners of M/S Kailash Nath & Associates for purchase of a flat admeasuring 2200 sq. feet (space area). The plaintiff became member of Gauri Apartments and paid update subscription. The appellant also claimed to be allotted flat bearing no 12, 3-4, South End Lane, New Delhi and was occupant in possession of said flat. The appellant also took loan from New Bank

of India, Tolstoy Marg by hypothecated said flat. The appellant also carried out renovation in said flat. The appellant when agreed to purchase a flat in Gauri Apartments from M/s Kailash Nath & Associates was not aware of legal proceeding pending between Barinder Amarjit Singh & others and GMMCL.

6. The applicant filed an application bearing IA no 1/1990 in Civil Appeal No 2684-85/84 before the Supreme Court for directions to Birender Amarjit Singh & others to hand over possession of the flat admeasuring 1800 sq. feet on first floor of the property bearing no 3 & 4, South End Road, New Delhi in terms of Agreement dated 21.08.1984 and Deed of Assignment dated 30.11.1987. Birender Amarjit Singh also filed an affidavit of Undertaking dated 11.09.1990 in Civil Appeal No 2684-85/84 to keep available vacant possession of flat in compliance of order dated 21.08.1984.

7. The appellant also filed an application bearing IA no 2/1990 for impleadment in Civil Appeal bearing no 2684-85/84 by pleading that Birender Amarjit Singh & others by virtue of consent decree dated 21.08.1984 sold the flat to the appellant for sale consideration of Rs. 11,50,000/- and claimed ownership in respect of the flat and further pleaded that the applicant being alleged assignee of GMMCL can claim possession of the flat as a tenant under the appellant. The application for impleadment was dismissed by the Supreme Court vide order dated 18.11.1992. The appellant as per clause 15 of the Agreement dated 30.01.1989 was compelled to hand over possession

of the flat bearing no 12 to GMMCL through the assignee i.e. the applicant.

8. The respondent filed a petition under section 9 of the Delhi Rent Control Act title as **VXL India Ltd. V Birender Amarjit Singh & others** bearing no 2/1993 for fixation of Standard Rent wherein interim standard rent was fixed vide order dated 19.05.1995 passed by the court of Additional Rent Controller. Thereafter the appellant being aggrieved by order dated 19.05.1995 preferred an Appeal titled as **Kranti Arora V VXL India Ltd. & others** bearing RCA no 50/97 before Rent Controller Tribunal which was decided vide order dated 03.04.1998 whereby order dated 19.05.1995 was set aside. The applicant filed an application under Order 1 Rule 10 CPC which was allowed vide order dated 10.01.2001. The respondent filed an Appeal before the Rent Control Tribunal and vide order dated 24.07.2004, the order dated 10.01.2001 was set aside and the application under Order 1 Rule 10 CPC was ordered to be rejected. The applicant preferred CM(M) bearing no. 1433/04 against order dated 24.07.2004 which is pending before this court.

9. The applicant filed a suit for possession and damages bearing no 62/2001 against the respondent which was dismissed by the court of the Additional District Judge vide judgment dated 29.07.2005. The applicant preferred an Appeal bearing RFA no 650/05.

10. The appellant also filed a civil suit titled as **Kranti Arora V M/S Birla VXL Ltd.** bearing no 1444/1998 for possession and damages against the respondent in respect of flat bearing no 12, 3-4, South End Lane, New Delhi which was contested by the respondent. The

respondent filed an application bearing IA no. 3185/99 under section 50 of the Delhi Rent Control Act read with Article 141 of the Constitution and Order VII Rule 11 CPC which was rejected vide order dated 16.05.2000 passed by learned Single Judge of this court. The respondent filed an application bearing IA no 5528/2003 for impleading O.P. Khaitan (HUF) i.e. the applicant and Birender Amarjit Singh as the defendant no 2 & 3. The application was contested by the applicant. The said application was allowed to be dismissed as withdrawn vide order dated 11.08.2005 passed by learned Single Judge of this court. The title of the respondent in the suit was allowed to be amended from VXL to Digjam Ltd. vide order dated 05.11.2008. The learned Single Judge of this court vide judgment delivered on 07.12.2010 dismissed the suit bearing no 1444/1998 by holding that the suit is not maintainable in view of bar of section 50 of the Delhi Rent Control Act. The appellant being aggrieved filed the present Appeal.

11. The applicant in application under disposal besides mentioning factual background as detailed hereinabove also stated that the applicant and the respondent arrived at a settlement in RFA no. 650/2005 on terms and conditions as mentioned in joint application bearing IA no 29926/2018. The application was allowed vide order dated 01.08.2018 passed by learned Single Judge of this court and RFA bearing no 650/2005 was ordered to be disposed of. The terms and conditions of settlement are reproduced verbatim as under:-

i. Both the Appellant(*applicant herein*) and the Respondent would have equal beneficial interest in the property being

Flat No. 12, Gauri apartments, 3-4 Rajesh pilot Lane (formerly known as South End Lane), New Delhi in the ratio of fifty-fifty (equal share)

ii. The property would be sold to the buyer giving the highest value for the property/ beneficial parties' interest, subject to the outcome of the litigation between Respondent herein and Kranti Arora.

iii. Considering the litigation pending between the Respondent and one Sh. Kranti Arora, if any amount is to be paid to Kranti Arora out of the disposed of the Beneficial interest in the said property by the parties hereto then the same would be paid in equal proportion by the Appellant and the Respondent,

iv. Both the Appellant and the Respondent would endeavor to get the buyer for the property/Beneficial interest in the said property at the earliest and till such time the Respondent would continue to remain in possession and take care of the property.

V. Both the parties would make endeavor to bring an end to the litigation being RFA (OS) No. 7/2011 between the Respondent herein and Sh. Kranti Arora before Hon'ble High Court.

12. The applicant further stated that the applicant is having substantial interest in the property in question which is subject matter of present RFA and as such the applicant is a necessary party. The outcome of present proceedings shall have direct effect on the rights and interest of the applicant. The respondent earlier had moved an application seeking impleadment of the applicant and the applicant had opposed said application on the ground that impleadment of the applicant was being sought to avoid ejection of the respondent from the flat in question in legal proceedings already instituted by the applicant. The presence of applicant in present proceedings is proper and necessary. The outcome of present appeal shall affect the right of the applicant

and no proper adjudication can be done without impleadment of the applicant. The applicant is lawful owner of property/flat bearing no 12 situated at 3-4 South End Lane, New Delhi. No prejudice shall cause to the parties by adding the applicant to the array of parties. It was prayed that the applicant be impleaded as a party in the present appeal.

13. The appellant contested the application and filed the reply. The respondent in **preliminary objections** stated that the application is gross abuse of the process of law and has been filed with ulterior motives and *mala fide* intention to grab the flat in question owned by the Appellant. The applicant has not appeared with clean hands and has not disclosed true and correct facts. The applicant did not have substantial interest in the flat in question. The applicant is in connivance with the respondent. The respondent earlier filed an application bearing IA No5528/2003 in CS(OS) No. 1444/1998 for impleading the applicant and Birender Amarjit Singh in the suit. The applicant filed a reply to the application. The said application was ordered to be dismissed as withdrawn vide order dated 11.08.2005 passed by the learned Single Judge of this court. The civil suit was filed in year 1998 and finally decided in year 2011 but the applicant never initiated any legal proceedings for his impleadment and opposed his impleadment during trial of the case. The respondent preferred an application bearing SR No 2/1993 titled **VXL India Ltd. V Birender Amarjit Singh & others** before the court of Additional Rent Controller, Delhi for fixation of Standard rent in respect of the flat in question. The applicant in said proceedings had filed an application for impleadment under Order 1 Rule 10 Civil Procedure Code, 1908

which was allowed vide Order dated 10.01.2001. The respondent challenged the Order dated 10.01.2001 in the court of Rent Control Tribunal and the application for impleadment was rejected vide Order dated 24/7/2004 passed by the court of the Rent Control Tribunal and order dated 10.01.2001 was set aside. The applicant had preferred C.M.(M) NO 1433/04 which has been dismissed by the learned Single Judge of this Court vide Order dated 15.03.2012. The presence of applicant is neither necessary nor proper in present appeal. The respondent and the applicant are hand in glove with each other and are enjoying possession of flat which is reflecting from fact that the applicant and the respondent entered into a settlement in RFA No. 650 of 2005 which was allowed vide Order dated 01.08.2018. The appellant is a lawful owner of the flat which cannot be sold or transferred without his consent. The appellant thereafter filed an application bearing C.M. No 35214/2018 for restraining the respondent from entering into sale agreement, or parting with possession or creating any third party interest or from transferring any kind of rights in respect of flat and the respondent made a statement that the respondent has no intention to sell or part with possession or create third party interest in the flat in question which was recorded vide proceedings dated 31.08.2018. The appellant on **reply on merit** also denied other contents as mentioned in reply.

14. The respective learned Senior Counsels for the appellant and the applicant advanced arguments in line with averments as stated in application under disposal and reply and also submitted oral arguments which are considered in right perspective.

15. The learned Senior Counsel for the applicant argued that the applicant had acquired absolute statutory tenancy rights in respect of flat bearing no 12 vide Deed of Assignment dated 30.11.1987 executed between the applicant and GMMCL and thereafter, the applicant has let out the flat no 12 to the respondent vide agreement dated 20.06.1989. The presence of applicant in present proceedings is not only proper but also necessary as any decree passed in the present suit/appeal would affect the rights of the applicant. The applicant on earlier occasion opposed its impleadment in the suit on application filed by the respondent. The objections as raised by the appellant are misconceived. It was argued that the applicant be allowed to be impleaded as necessary party. The counsel for the applicant cited Sadashiv Shyama Sawant (dead) through LRs and others V. Anita Anant Sawant, (2010) 3 SCC 385.

16. The learned Senior Counsel for the appellant argued that the applicant is neither an owner nor a tenant in respect of the flat no 12 and is claiming through original tenant GMMCL. The applicant allegedly sublet the flat no 12 to the respondent. The applicant and the respondent are allegedly occupying the flat no 12 and are guilty of trespassing the flat no 12. The present application for impleadment is filed with mala fide intention. The judgment cited by the counsel for the applicant has no relevance under given facts and circumstances of the case. The application is liable to be dismissed.

17. Order I of the Civil Procedure Code, 1908 deals with parties to the suit. Rule 10(2) deals with power of court to strike out or add the parties. It reads as under:-

10. -----

(2) Court may strike out or add parties.—The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added.

18. *Dominus litis* is the person to whom a suit belongs and is master of a suit and is having real interest in the decision of a case. The plaintiff being *dominus litis* cannot be compelled to fight against a person against whom he does not claim any relief. The plaintiff in a suit is required to identify the parties against whom he wants to implead as defendants and cannot be compelled to face litigation with the persons against whom he has no grievance. A third party is entitled to be impleaded as necessary party if that party is likely to suffer any legal injury due to outcome of the suit. The doctrine of *dominus litis* should not be over stretched in impleading the parties. The court can order a person to be impleaded as necessary party if his presence is required to decide real matter in dispute effectively. Merely because the, plaintiff does not choose to implead a person is not sufficient for rejection of an application for being impleaded. The provisions of Order 1 Rule 10(2) CPC are having wide amplitude in operation. The Supreme Court in various decisions had interpreted scope and ambit of legal provisions as contained in Order I Rule 10(2) CPC. The Supreme

Court in **Ramesh Hirachand Kundanmal V Municipal Corporation of Greater Bombay**, (1992) 2 SCC 524 interpreted legal provision as contained in Order I Rule 10(2) CPC and held as under:-

Sub-rule (2) of Rule 10 gives a wide discretion to the Court to meet every case of defect of parties and is not affected by the inaction of the plaintiff to bring the necessary parties on record. The question of impleadment of a party has to be decided on the touchstone of Order 1 Rule 10 which provides that only a necessary or a proper party may be added. A necessary party is one without whom no order can be made effectively. A proper party is one in whose absence an effective order can be made but whose presence is necessary for a complete and final decision on the question involved in the proceeding. The addition of parties is generally not a question of initial jurisdiction of the Court but of a judicial discretion which has to be exercised in view of all the facts and circumstances of a particular case.

19. The Supreme Court in **Anil Kumar Singh V Shivnath Mishra**, (1995) 3 SCC 147 interpreted Order 1 Rule 10(2) CPC and held as under:-

By operation of the above-quoted rule though the court may have power to strike out the name of a party improperly joined or add a party either on application or without application of either party, but the condition precedent is that the court must be satisfied that the presence of the party to be added, would be necessary in order to enable the court to effectually and completely adjudicate upon and settle all questions involved in the suit. To bring a person as party- defendant is not a substantive right but one of procedure and the court has discretion in its proper exercise. The object of the rule is to bring on record all the persons who are parties to the dispute relating to the subject-matter so that the dispute may be determined in their presence at

the same time without any protraction, inconvenience and to avoid multiplicity of proceedings.

20. The Supreme Court in Mumbai International Airport (P) Ltd. V Regency Convention Centre and Hotels (P) Ltd.,(2010) 7 SCC 417 while interpreting Order I Rule 10(2) CPC observed as under:-

The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against the wishes of the plaintiff. But this general rule is subject to the provisions of Order 1 Rule 10(2) of the Code of Civil Procedure (“the Code”, for short), which provides for impleadment of proper or necessary parties.

.....The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the questions involved in the suit. In short, the court is given the discretion to add as a party, any person who is found to be a necessary party or proper party.

A “necessary party” is a person who ought to have been joined as a party and in whose absence no effective decree could be passed at all by the court. If a “necessary party” is not impleaded, the suit itself is liable to be dismissed. A “proper party” is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in dispute in the suit, though he need not be a person in favour of or against whom the decree is to be made. If a

person is not found to be a proper or necessary party, the court has no jurisdiction to implead him, against the wishes of the plaintiff. The fact that a person is likely to secure a right/interest in a suit property, after the suit is decided against the plaintiff, will not make such person a necessary party or a proper party to the suit for specific performance.

Let us consider the scope and ambit of Order 1 Rule 10(2) CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suomotu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule 10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and caprice.

21. The Supreme Court in **Bibi Zubaida Khatoon V Nabi Hassan**, (2004) 1 SCC 191 laid down broad principles which should govern disposal of an application for impleadment which are as under:

1. The Court can, at any stage of the proceedings, either on an application made by the parties or otherwise, direct impleadment of any person as party, who ought to have been joined as plaintiff or defendant or whose presence before the Court is necessary for effective and complete adjudication of the issues involved in the suit.
2. A necessary party is the person who ought to be joined as party to the suit and in whose absence an effective decree cannot be passed by the Court.

- 3. A proper party is a person whose presence would enable the Court to completely, effectively and properly adjudicate upon all matters and issues, though he may not be a person in favour of or against whom a decree is to be made.**
- 4. If a person is not found to be a proper or necessary party, the Court does not have the jurisdiction to order his impleadment against the wishes of the plaintiff.**
- 5. In a suit for specific performance, the Court can order impleadment of a purchaser whose conduct is above board, and who files application for being joined as party within reasonable time of his acquiring knowledge about the pending litigation.**
- 6. However, if the applicant is guilty of contumacious conduct or is beneficiary of a clandestine transaction or a transaction made by the owner of the suit property in violation of the restraint order passed by the Court or the application is unduly delayed then the Court will be fully justified in declining the prayer for impleadment.**

The Supreme Court in **Vidur Impex and Traders Private Limited & others V Tosh Apartments Private Limited & others, (2012)8SCC384** referred the above mentioned decisions.

22. It is reflecting from perusal of record that R.B.S. Basakha Singh was original lessee of plot now bearing no 3& 4, South End Road Lane, New Delhi-110001. Birender Amarjit Singh, Inder Vijay Singh, Tavleen Singh and Udaya Hardev Singh are successor in interest of R.B.S. Basakha Singh by virtue of Gift Deed dated 14.04.1947 and Gift Deed dated 25.03.1971 respectively. GMMCL was a tenant in respect of said plot/property and in terms of settlement had agreed to vacate said plot/property with condition that GMMCL would be inducted as a tenant in flat measuring 1800 sq. feet after reconstruction of said plot/property. Birender Amarjit Singh, Inder Vijay Singh,

Tavleen Singh and Udaya Hardev Singh entered into a Collaboration Agreement dated 08.09.1979 with M/S Kailash Nath & Associates for building and development of multi-story Group Housing Scheme (Gauri Apartments) on said plot. GMMCL entered into an agreement dated 21.08.1984 with Birender Amarjit Singh & others in Civil Appeal No 2684-85 of 1984 before the Supreme Court whereby Birender Amarjit Singh, Inder Vijay Singh, Tavleen Singh and Udaya Hardev Singh had agreed to hand over a flat measuring 1800 sq. feet to GMMCL. GMMCL assigned its right in respect of the said flat to the applicant vide Deed of Assignment dated 30.11.1987 and thereafter, the applicant sublet the flat to the respondent (erstwhile Birla VXL). The Appellant also entered into an agreement dated 30.01.1989 with Birender Amarjit Singh, Inder Vijay Singh, Tavleen Singh and Udaya Hardev Singh and partners of M/S Kailash Nath & Associates for purchase of a flat admeasuring 2200 sq. feet (space area) and stated to be allotted flat bearing no 12. The applicant filed an application for Directions bearing IA no 1/1990 in Civil Appeal No 2684-85/84 before the Supreme Court wherein Birender Amarjit Singh filed an affidavit of Undertaking dated 11.09.1990 to keep available vacant possession of flat in compliance of order dated 21.08.1984. The appellant as per clause 15 of the Agreement dated 30.01.1989 handed over possession of the flat bearing no 12 to GMMCL through the assignee i.e. the applicant. The applicant in petition filed by the respondent under section 9 of the Delhi Rent Control Act titled as **VXL India Ltd. V Birender Amarjit Singh & others** bearing no 2/1993 for fixation of Standard Rent filed an application under Order

1 Rule 10 CPC which was finally dismissed by this court. The applicant filed a suit for possession and damages bearing no 62/2001 against the respondent which was dismissed by the court of the Additional District Judge vide judgment dated 29.07.2005 and Appeal bearing RFA no 650/05 has already been disposed of by this court. The appellant filed present civil suit titled as **Kranti Arora V M/S Birla VXL Ltd.** bearing no 1444/1998 for possession and damages against the respondent in respect of flat bearing no. 12 wherein the respondent had filed an application bearing IA no 5528/2003 for impleading O. P. Khaitan (HUF) i.e. the applicant and Birender Amarjit Singh as the defendant no 2 & 3 and said application was contested by the applicant and was allowed to be dismissed as withdrawn vide order dated 11.08.2005 passed by learned Single Judge of this court.

23. The applicant is claiming his right, title and interest in respect of flat no 12 on basis of Deed of assignment dated 30.11.1987 stated to be executed in its favor by original tenant GMMCL in plot no 3-4, South End Lane, New Delhi and thereafter, the applicant sublet the flat to the respondent (erstwhile Birla VXL). The appellant is claiming himself as owner of the flat no 12 on basis of Agreement dated 30.01.1989. There is long history of litigation amongst different claimants of the flat no 12 in different capacity. The applicant was aware of the pendency of present suit between the appellant and the respondent. The applicant also participated in legal and judicial proceedings initiated before the courts of Additional Rent Controller, Rent Control Tribunal and thereafter before this court as detailed

hereinabove. The applicant in past in various litigation between the concerned parties had raised its impleadment which was suitably adjudicated. The application under Order I Rule 10(2) CPC filed by the applicant in petition under section 9 of the Delhi Rent Control Act as detailed hereinabove was finally dismissed by this court.

24. It is pertinent to mention that in present suit the respondent filed an application bearing IA no 5528/2003 for impleading O. P. Khaitan (HUF) i.e. the applicant and Birender Amarjit Singh as the defendant no 2 & 3 but the applicant contested said application which was allowed to be dismissed as withdrawn vide order dated 11.08.2005 passed by learned Single Judge of this court. The issue of impleadment of the applicant as necessary party in present suit as such has already been adjudicated finally and the applicant cannot be allowed to raise issue of impleadment again and again particularly at appellate stage. The applicant can also not be allowed to change its stand regarding impleadment first by opposing application under Order I Rule 10(2) CPC and thereafter by filing application for its impleadment which is under disposal and it would not be in interest of justice. The applicant has already initiated appropriate legal proceedings to establish his right, title and interest in respect of the flat in suit for possession and damages bearing no 62/2001 filed against the respondent which was dismissed by the court of the Additional District Judge vide judgment dated 29.07.2005 and Appeal bearing RFA no 650/05 has already been disposed of.

25. The appellant in plaint is alleging that the respondent is trespassers in respect of flat no 12 and the respondent is using the flat without any

right. The suit bearing no 1444/1998 was filed by the appellant in year 1998 against the respondent which was dismissed vide impugned judgment dated 07.12.2010. The present appeal is being filed to challenge impugned judgment dated 07.12.2010 which is in continuation of suit. The appellant being *dominus litis* is required to establish his right, title and interest in respect of flat no 12. The presence of applicant is not necessary for effective and complete adjudication of the issues involved in present litigation. The applicant as such cannot be impleaded against the wishes of the plaintiff. The application under disposal is also filed after unduly and unexplained delay. The pleas taken by the applicant in application under disposal and the arguments advanced by the learned senior counsel for the applicant in support of the application under disposal are without any legal basis.

26. We after considering every aspect of pleas taken by the applicant and arguments advanced by the learned Senior Counsels for parties are of opinion that application is devoid of merit, hence dismissed.

RFA(OS) NO 7/2011.

List on the date already fixed, i.e. 22.09.2022.

**SUDHIR KUMAR JAIN
(JUDGE)**

**SURESH KUMAR KAIT
(JUDGE)**

JULY 08, 2022/ 'N/KG'