

Before G.S. Sandhawalia, J.

DR. NIKHIL NAGPAL—*Petitioner*

versus

DR. PRATIBHA SHARMA AND OTHERS—*Respondents*

CR No.877 of 2020

November 04, 2020

Code of Civil Procedure, 1908 — O.15 Rl. 5 – Order directing Petitioner to deposit lease money failing which his defence was to be struck off and subsequent order striking off defence due to non-payment — Set aside — Application under Order 15 Rule 5 CPC held to be not maintainable — Plaintiffs raised challenge to the rent revenue agreement — Dispute of locus standi of Plaintiffs due to lack of relationship of lessor — lessee — As such, cannot blow hot and cold together and take benefit of Order 15 Rule 5 CPC.

Held, that challenge in the present revision petition, filed by the petitioner/defendant No.1 is to the order dated 18.10.2019 (Annexure P-1) whereby the application filed by respondents No.1 & 2 under Order 15 Rule 5 CPC has been allowed. Resultantly, the petitioner has been directed to pay the lease money at the monthly rate of Rs.50,000/- for the first year, Rs.75,000/- for the second year and Rs.1,00,000/- for the third year, after adjusting the amount of Rs.1,82,586/-, before 18.12.2019, failing which, his defence was to be struck off. He was further directed to regularly deposit the monthly rent throughout continuation of the suit within a week of its accrual, with the same consequential condition. Challenge has also been raised to the subsequent order dated 18.12.2019 (Annexure P-2) whereby the defence of the petitioner was struck off on account of non-payment and the case was fixed for arguments.

(Para 3)

Further held, that the plaintiffs had firstly chosen to lead their evidence without filing the application under Order 15 Rule 5 CPC and thereafter, chose to file the application after a period of more than 1 ½ years on 11.11.2018, only to divest the petitioner from leading his evidence. This aspect has also been brushed aside by the Civil Court on the ground that the application could be filed even before filing of the written statement and therefore the petitioner could not continue in the suit property without making any payment towards the rent. As

has already been noticed that the plaintiffs are not parties of the revenue share arrangement and it was the specific case of the petitioner that there was a fraud and collusion and therefore, once they are not lessors of the property and are not signatories to the revenue sharing arrangement, it would be a moot question as to whether they are liable to claim the said amount and whether the suit itself would be maintainable at their instance.

(Para 16)

Further held, that these aspects have not been kept in mind by the Civil Court while deciding the said application and it has blindly applied the above-said provisions. A reading of the said provisions would also go on to show that the explanation provided that payment is to be done on the entire amount admitted and explanation also talks about the monthly amount due whether as rent or compensation for use and occupation on the admitted rate of rent. Once there is a dispute of the locus standi of the plaintiffs on account of lack of relationship of lessor-lessee, the Civil Court was not justified in coming to the conclusion that the provisions were mandatory and the amount had to be deposited. Reliance can also be placed upon the judgment of this Court in *Satpal Bansal versus SandeepKumar & another 2017 (1) PLR 400* wherein the application had been filed for striking off the defence. There was a dispute between the father and son and the suit was for mandatory injunction to vacate the room given on a licence. The Trial Court had held that there was no relationship of landlord-tenant between the parties and therefore, the provisions of Order 15 Rule 5 CPC would not be attracted. The said order was upheld by this Court by giving due consideration to the explanations provided in the provisions. The said judgment would, thus, be applicable in the above facts and circumstances.

(Para 17)

Further held, that on the issue of maintainability of the application under Order 15 Rule 5 CPC, being raised, this Court is of the opinion that the said provisions would not be applicable. The judgments which have been relied upon and which hold the field pertain to the admitted relationship of lessor-lessee and the amount due and where there is no denial regarding those facts. At the cost of repetition, it is to be noticed that it is the case of the plaintiffs themselves that the rent revenue agreement was executed at their back by respondent No.2 and therefore, they have raised challenge to the same. Thus, they now cannot take benefit of the provisions of

Order 15 Rule 5 CPC as they cannot blow hot and cold at the same time.

(Para 18)

Further held, that resultantly, the impugned orders dated 18.10.2019 & 12.12.2019 (Annexures P-1 & P-2) are not sustainable and the same are quashed. However, since the petitioner himself submitted that a sum of Rs.4,17,414/- had been offered to respondent No.2 but he refused to accept the same, the petitioner is directed to deposit the said amount with the Court, within a period of one month from the receipt of the certified copy of this order. The same shall be kept in fixed deposit receipt during the pendency of the suit and the Civil Court shall be at liberty to issue directions as to whom it is to go, at the conclusion of the trial. Further, directions are issued that the suit be decided within a period of six months and the defendant/petitioner be given reasonable opportunity to complete his evidence. In case of non-deposit within the prescribed period, the impugned orders will come into force.

(Para 19)

Amrita Nagpal, Advocate, for *non-applicant/petitioner*.

Rajinder Sharma, Advocate, for the applicant/respondents No.1 & 3.

Hem Raj Kapila, Advocate, for non-applicant/respondent No.2.

G.S. SANDHAWALIA, J.

CM-7489-CII-2020

(1) Application for preponement of the main case, which is now stated to be fixed for 15.01.2021, is allowed. The main case is preponed from 15.01.2021 to today itself.

(2) CM stands disposed of.

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(3) Challenge in the present revision petition, filed by the petitioner/defendant No.1 is to the order dated 18.10.2019 (Annexure P-1) whereby the application filed by respondents No.1 & 2 under Order 15 Rule 5 CPC has been allowed. Resultantly, the petitioner has been directed to pay the lease money at the monthly rate of Rs.50,000/- for the first year, Rs.75,000/- for the second year and Rs.1,00,000/- for the third year, after adjusting the amount of

Rs.1,82,586/-, before 18.12.2019, failing which, his defence was to be struck off. He was further directed to regularly deposit the monthly rent throughout continuation of the suit within a week of its accrual, with the same consequential condition. Challenge has also been raised to the subsequent order dated 18.12.2019 (Annexure P-2) whereby the defence of the petitioner was struck off on account of non-payment and the case was fixed for arguments.

(4) The Civil Court (Jr. Divn.) Panipat had vide the first order, directed the payment after coming to the conclusion that here was no dispute regarding the title of the plaintiffs to the suit property since they were owners as per sale deed dated 15.02.2008. The execution of the rent revenue agreement dated 29.04.2016 (Annexure P-3) whereby the property was given on lease was also kept in mind along with the statement recorded of defendant No.2, Dr. Jitender Sharma that he had no objection if the outstanding amount was paid to the plaintiffs. It was the claim of the petitioner that the said agreement was a lease for 5 years and would have to be compulsorily registered under Section 17(1)(d) of the Registration Act, 1908. The said claim was rejected as the plaintiffs had specifically mentioned that minimum rent was payable irrespective of any income/profits by holding that the averments were denied evasively and such denials were no better than admissions although their effect was to be seen after conclusion of the trial. A finding was recorded that prima facie minimum rent was indeed payable though the petitioner had claimed that he had derived no income since January, 2017.

(5) The issue whether the profits could not be generated since January, 2017 and that it was due to the acts of defendant No.2 as the property had been sealed, was held not to be ascertainable, at that stage. The amount if any could be adjusted if the Court came to the finding after appreciation of evidence and upon conclusion of the trial that it was the owners who were at fault. The objection regarding the delay in filing the application by the plaintiffs was rejected as Order 15 Rule 5 CPC was an enabling provision to enable the plaintiffs to receive the unpaid admitted rent even before filing of the written statement and therefore, the payment had to be made. The judgment in *Gurjit Singh Gill versus Major Paramjit Singh Gothra*¹ was relied upon to observe that it was mandatory and therefore, the petitioner was liable to pay the rent as claimed by the plaintiffs. The said provisions of Order 15 Rule 5

¹ 2004 (3) PLR 474

CPC having been held to be mandatory thereafter in *Satpal Singh versus Balwant Kaur Garewal*² and *Jagdev Singh versus Balwant Kaur Garewal*³ were also kept in mind.

(6) However, the issue is that whether the petitioner's relationship of a lessee in the premises with the plaintiffs has been admitted and whether the amount of rent payable to them has been admitted. Whether there is a collusion between the plaintiffs and defendant No.2-respondent No.3 herein, Dr. Jitender Sharma, is an aspect which the Trial Court has failed to notice. The said provisions cannot be used as a weapon to shut the defence of the defendant-petitioner once the relationship itself is denied by the plaintiffs since the agreement inter se is also on rent revenue sharing basis with respondent No.3 which would be clear from the facts as enumerated below.

(7) Respondents No.1 & 2/plaintiffs who are mother and daughter filed the suit for possession by way of ejection from the three-story building as detailed in the head-note for the property situated at Panipat and for recovery of Rs.4,92,414/- for use and occupation from April, 2016 upto March, 2017. Claim for the rent @ Rs.75,000/- per month w.e.f. 01.05.2017 upto the date of vacation of the suit property was also made. Defendant No.2 who is arrayed as respondent No.3 herein is the husband of plaintiff No.1. As per the plaint, the property was jointly owned by them vide sale deed dated 15.02.2008. The building had been constructed after getting the site-plan sanctioned from the Municipal Corporation on 27.04.2012. However, notices had been issued that the building had not been constructed as per the sanctioned site-plan and the matter had not been settled. It was alleged that respondent No.2 had induced the petitioner to carry-on a hospital and was not bound by the said agreement. The dispute had arisen between both the defendants that the record had not been shown to respondent No.2, who had been thrown out of the suit property forcibly and illegally and a criminal case had also been registered against the petitioner and his brother.

(8) It was further alleged that the petitioner was running a hospital in the name and style of Divine Care Hospital on rent cum revenue sharing basis which was without the consent of the plaintiffs. The rent was to be paid @ Rs.50,000/- per month for the first year, Rs.75,000/- for the second year and Rs.1,00,000/- for the third year,

² 2012 (2) CCC 827

³ 2012 (4) CCC 640

subject to maximum 20% of the profit (gross receipt less expenses) and the minimum rent was payable also if there was no income earned by the petitioner. It was further alleged that the petitioner had made permanent structural changes in the suit property without written consent and unauthorized construction had been made. Some portion had been sub-let to chemists and for X-ray purpose and only Rs.1,82,586/- had been paid and therefore, the amount was claimed along with subsequent rate @ Rs.75,000/- per month. The agreement itself dated 29.04.2016 was stated to be having no value in the eyes of law and merely was a piece of paper and it was for more than one year and could have no force in the eyes of law and therefore, the possession of the defendant No.1/petitioner was stated to be without consent and permission.

(9) The said suit was contested by filing written statement taking the plea that it was filed with mala fide intention and collusion. The respondent No.2, husband had been impleaded as perform respondent with motive to get a admitted written statement and to deny the rights of the petitioner. The agreement was for 5 years and the same had been executed by respondent No.2 who was the owner of the property to the best knowledge of the petitioner. He had inducted the petitioner in the suit property for the purposes of hospital and the petitioner had been kept in dark and they were bound by the agreement dated 29.04.2016. The relationship of the parties was stressed and the fact that they were all living together under the same roof and therefore, the whole story was false regarding the fact that they were not aware of the agreement. A suit had also been filed for permanent injunction by respondent No.2 and he had tried to dispossess the petitioner from the suit property and interfered in the peaceful functioning of the hospital with the help of gunda elements. The local police was also helping him in his illegal mission under political pressure of the local leaders of the political parties.

(10) It was stated that the petitioner had spent more than Rs.1 crore on the interior of the hospital building to make the building fit for running a nursing home and installed medical equipment's by spending lakhs of rupees. The chemist shop was existing in the hospital which was essential for running of proper nursing home and hospital ad there was no necessity to take permission from the plaintiffs to install any X-ray machine. The building had been sealed by the MC in collusion of the plaintiffs and defendant No.2 illegally on 03.08.2016 which was got reopened after removing the seals from the premises with great efforts

of the petitioner on 17.10.2016 and therefore, respondent No.2 could not claim rent for the period from 03.08.2016 to 17.10.2016. The incomplete work was completed by the petitioner from his own funds and the hospital was inaugurated on 07.11.2016. The liability to pay Rs.4,92,414/- was also contested on the ground that the occupation was from April, 2016 upto April, 2017 and the amount would be payable @ Rs.50,000/- per month which would come to Rs.6 lakhs and only Rs.4,17,414/- was payable after adjusting a sum of Rs.1,82,586/- which the defendant No.2 had refused to accept. The relationship of landlord and tenant was between respondent-defendant No.2 and the present petitioner and not between the plaintiffs. The agreement had not been registered since respondent No.2 had not asked the petitioner to get it registered and he had himself got typed the said agreement. It was held that there was no relationship of landlord and tenant, lessor and lessee between the plaintiffs and the petitioner and a fraud and forgery had been committed. It was alleged that the suit for permanent injunction had been filed by the petitioner against respondent No.2 and another suit had been filed earlier against Uttar Haryana Bijli Vitaran Nigam Ltd. regarding the electricity connection and the pendency of the said suits had been concealed.

(11) After the conclusion of the evidence by the plaintiffs, the application under Order 15 Rule 5 was filed dated 11.11.2018 (Annexure P-6) that the defence be struck off as the rent amount was not being paid. It was pleaded that the minimum rent would be payable as per the agreement. The said application was contested by filing reply (Annexure P-7) taking the plea that it was filed at a belated stage. As per the agreement, no rent was payable to the plaintiffs and the demand was totally illegal and not genuine on account of the atmosphere created by respondent No.2 by involving the petitioner in false and frivolous litigation after January, 2017. The suit property could not be used properly and there was no income from the Divine Care Hospital since January, 2017. There was no agreement between the plaintiffs and the petitioner and there was no relationship of landlord and tenant and lessor and lessee between them and no rent was to be paid between them. The case was at the last stage and therefore, it was pleaded that facts had been concealed that the building in question was owned by three persons and that respondent No.2 was only having 1/3rd share in the same. A fraud had been committed which had been admitted by the plaintiffs who had appeared as PW-1 in the suit. A criminal case had also been registered by lodging FIR No.61 dated 19.01.2017 under Sections 420, 467, 468, 471 IPC against the plaintiffs and respondent

No.2 and they all were on anticipatory bail.

(12) The above pleadings would go on to show that it is the case of the plaintiffs themselves that the petitioner had been inducted to carry- on hospital on share basis without their consent and their knowledge and they were not bound by the said agreement. It is their own case that the suit property was owned by them along with respondent No.2 who is the husband and son-in-law. Thus, apparently, there is no relationship of lessor and lessee between the petitioner and plaintiffs. The agreement which was entered into between petitioner and respondent No.2 provided payment of rent on the amounts which have been mentioned above and which was also subject to minimum rent plus maximum of the 20% of the profits. The first party had the right to look into the monthly finance account as he was a co-partner. The terms and conditions of the said agreement dated 29.04.2016 read as under:

“The agreement is made between

1) Dr. Jitender Sharma s/o Sh. Gopi Chand r/o 126, Sukhdev Nagra, Panipat as the First Party

AND

2. Dr. Nikhil Nagpal s/o Sh. Lok Nath Nagpal r/o 333/15, Patel Nagar, Panipat as the Second Party.

On the following terms and conditions:-

1) Dr. Nikhil Nagpal is a Doctor by profession and he is required a building to carry out his profession on rent/revenue sharing basis.

2) Dr. Jitender has 250 sq. yards triple story building which he wanted to let out or give on revenue sharing basis.

3) The minimum rent for the building shall be Rs.50,000/- per month for first year, Rs.75000/- per month for second year and Rs.100000/- for third year subject to maximum 20% of profit (Gross receipts less all expenses). Minimum rent shall be payable monthly whether or not there is any income earned by Dr. Nikhil Nagpal during the month to Dr. Jitender Sharma on the first day of every month.

4) The first party has full right to look into the monthly finance account because he is a co-partner.

- 5) The agreement shall be effective for 5 years.
- 6) The second party shall furnish the building at his cost and the second party shall be allowed to make temporary partition to carry out medical profession.
- 7) Any change in the building structure of permanent nature shall be done after written permission of the first party.
- 8) Any party can cancel the agreement after issuing notice to the other party only if the rent is not paid by the second party.
- 9) The electricity bill, water supply bill and taxes from administration authorities will be heard by second party.

Witness

First Party

Sd/-**

Sd/-

Sd/-**

(Dr.Jitender Sharma)

29.04.16

Second Party

Sd/-

(Dr.Nikhil Nagpal)”

(13) Thus, it is apparent that the plaintiffs are not the lessors of the building though they might have been the owners. Petitioner was apparently kept in dark regarding this when the agreement was entered into. It is also the specific case of the petitioner that there is no agreement with the plaintiffs and the suit is in collusion filed with mala fide intention and the husband has been impleaded as respondent to get an admission. This fact is apparent also from the fact that respondent No.2 got his statement recorded on 31.07.2019 that he would have no objection if the rent is paid to the plaintiffs which has been noticed by the Civil Court itself. Thus, collusion inter se the family members is apparent. Once there is a fraud, then the issue goes to the root of the matter. Reliance can be placed upon the judgment in *S.P Chengalvaraya Naidu versus Jagannath*⁴ wherein it has been held as under:

“5. The High Court, in our view, fell into patent error. The short question before the High Court was whether in the facts and circumstances of this case, Jagannath obtained

⁴ 1994 (1) SCC 1

the preliminary decree by playing fraud on the court. The High Court, however, went haywire and made observations which are wholly perverse. We do not agree with the High Court that "there is no legal duty cast upon the plaintiff to come to court with a true case and prove it by true evidence". The principle of "finality of litigation" cannot be pressed to the extent of such an absurdity that it becomes an engine of fraud in the hands of dishonest litigants. The courts of law are meant for imparting justice between the parties. One who comes to the court, must come with clean hands. We are constrained to say that more often than not, process of the court is being abused. Property-grabbers, tax-evaders, bank-loan-dodgers and other unscrupulous persons from all walks of life find the court- process a convenient lever to retain the illegal-gains indefinitely. We have no hesitation to say that a person, who's case is based on falsehood, has no right to approach the court. He can be summarily thrown out at any stage of the litigation.

6. The facts of the present case leave no manner of doubt that Jagannath obtained the preliminary decree by playing fraud on the court. A fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another's loss. It is a cheating intended to get an advantage. Jagannath was working as a clerk with Chunilal Sowcar. He purchased the property in the court auction on behalf of Chunilal Sowcar. He had, on his own volition, executed the registered release deed (Ex. B-15) in favour of Chunilal Sowcar regarding the property in dispute. He knew that the appellants had paid the total decretal amount to his master Chunilal Sowcar. Without disclosing all these facts, he filed the suit for the partition of the property on the ground that he had purchased the property on his own behalf and not on behalf of Chunilal Sowcar. Non- production and even non-mentioning of the release deed at the trial is tantamount to playing fraud on the court. We do not agree with the observations of the High Court that the appellants-defendants could have easily produced the certified registered copy of Ex. B-15 and non-suited the plaintiff. A litigant, who approaches the court, is bound to produce all the documents executed by him which are relevant to the

litigation. If he withholds a vital document in order to gain advantage on the other side then he would be guilty of playing fraud on the court as well as on the opposite party.”

(14) Apart from this, there are various other issues which have been raised by the petitioner that MC had sealed the property at the instance of the respondents and therefore, they are not liable to get rent from 03.08.2016 to 17.10.2016 as it could not be used and the hospital was only inaugurated on 17.11.2016.

(15) Order 15 Rule 5 CPC (as amended by the States of Punjab, Haryana and Chandigarh amendments) reads as under:

“Order XV Rule 5 CPC Striking off defence for failure to deposit admitted rent, etc.-

(1) In any suit by a lessor for the eviction of a lessee after the determination of his lease and for the recovery from him of rent or compensation for use and occupation, the defendant shall, at or before the first hearing of the suit, deposit the entire amount admitted by him to be due together with interest thereon at the rate of nine per cent per annum and whether or not he admits any amount to be due, he shall throughout the continuation of the suit regularly deposit the monthly amount due within a week from the date of its accrual, and in the event of any default in making the deposit of the entire amount admitted by him to be due or the monthly amount due as aforesaid, the Court may, subject to the provisions of Sub- rule (2), strike off his defence.

Explanation 1.- The expression "first hearing" means the date for filing written statement for hearing mentioned in the summons or where more than one of such dates are mentioned, the last of the dates mentioned.

Explanation 2.- The expression "entire amount admitted by him to be due" means the entire gross amount, whether as rent or compensation for use and occupation, calculated at the admitted rate of rent for the admitted period of arrears after making no other deduction except the taxes, if any, paid to a local authority in respect of the building on lessor's account and the amount, if any, paid to the lessor acknowledged by the lessor in writing signed by him and the amount, if any, deposited in any Court.

Explanation 3.- (1) The expression "monthly amount due" means the amount due every month, whether as rent or compensation for use and occupation at the admitted rate of rent, after making no other deduction except the taxes, if any, paid to a local authority, in respect of the building on lessor's account.

(2) Before making an order for striking off defence, the Court may consider any representation made by the defendant in that behalf provided such representation is made within 10 days of the first hearing or, of the expiry of the week referred to in Sub-section (1), as the case may be.

(3) The amount deposited under this rule may at any time be withdrawn by the plaintiff:

Provided that such withdrawal shall not have the effect of prejudicing any claim by the plaintiff disputing the correctness of the amount deposited: Provided further that if the amount deposited includes any sums claimed by the depositor to be deductible on any account, the Court may require the plaintiff to furnish the security for such sum before he is allowed to withdraw the same."

(16) The plaintiffs had firstly chosen to lead their evidence without filing the application under Order 15 Rule 5 CPC and thereafter, chose to file the application after a period of more than 1 ½ years on 11.11.2018, only to divest the petitioner from leading his evidence. This aspect has also been brushed aside by the Civil Court on the ground that the application could be filed even before filing of the written statement and therefore the petitioner could not continue in the suit property without making any payment towards the rent. As has already been noticed that the plaintiffs are not parties of the revenue share arrangement and it was the specific case of the petitioner that there was a fraud and collusion and therefore, once they are not lessors of the property and are not signatories to the revenue sharing arrangement, it would be a moot question as to whether they are liable to claim the said amount and whether the suit itself would be maintainable at their instance.

(17) These aspects have not been kept in mind by the Civil Court while deciding the said application and it has blindly applied the above- said provisions. A reading of the said provisions would also go on to show that the explanation provided that payment is to be done on

the entire amount admitted and explanation also talks about the monthly amount due whether as rent or compensation for use and occupation on the admitted rate of rent. Once there is a dispute of the locus standi of the plaintiffs on account of lack of relationship of lessor-lessee, the Civil Court was not justified in coming to the conclusion that the provisions were mandatory and the amount had to be deposited. Reliance can also be placed upon the judgment of this Court in *Satpal Bansal* versus *Sandeep Kumar & another*⁵ wherein the application had been filed for striking off the defence. There was a dispute between the father and son and the suit was for mandatory injunction to vacate the room given on a licence. The Trial Court had held that there was no relationship of landlord-tenant between the parties and therefore, the provisions of Order 15 Rule 5 CPC would not be attracted. The said order was upheld by this Court by giving due consideration to the explanations provided in the provisions. The said judgment would, thus, be applicable in the above facts and circumstances.

(18) On the issue of maintainability of the application under Order 15 Rule 5 CPC, being raised, this Court is of the opinion that the said provisions would not be applicable. The judgments which have been relied upon and which hold the field pertain to the admitted relationship of lessor-lessee and the amount due and where there is no denial regarding those facts. At the cost of repetition, it is to be noticed that it is the case of the plaintiffs themselves that the rent revenue agreement was executed at their back by respondent No.2 and therefore, they have raised challenge to the same. Thus, they now cannot take benefit of the provisions of Order 15 Rule 5 CPC as they cannot blow hot and cold at the same time.

(19) Resultantly, the impugned orders dated 18.10.2019 & 12.12.2019 (Annexures P-1 & P-2) are not sustainable and the same are quashed. However, since the petitioner himself submitted that a sum of Rs.4,17,414/- had been offered to respondent No.2 but he refused to accept the same, the petitioner is directed to deposit the said amount with the Court, within a period of one month from the receipt of the certified copy of this order. The same shall be kept in fixed deposit receipt during the pendency of the suit and the Civil Court shall be at liberty to issue directions as to whom it is to go, at the conclusion of the trial. Further, directions are issued that the suit be decided within a period of six months and the defendant/petitioner be given reasonable

⁵ 2017 (1) PLR 400

opportunity to complete his evidence. In case of non-deposit within the prescribed period, the impugned orders will come into force. The observations made herein are only for the purpose of deciding the present revision petition and the Trial Court will not be prejudiced by the said observations while deciding the main suit.

(20) With the above-said directions, the present revision petition stands allowed.

Shubreet Kaur