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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ W.P.(C) 8261/2007

% ***Judgment Delivered on: 09.12.2009***

SH. MAHENDER SAHAI Petitioner
Through: Ms. Neelima Tripathi and Mr. Niyaz,
Adv. for the petitioner.

versus

GOVT. OF NCT OF DELHI & ORS. Respondents
Through: Mr. Nikhil Goel and Mr. Sayid Marzook,
Adv. for respondent
Mr. Sanjay Jain, Sr. Adv. with Ms. Ruchi
Jain and Ms. Prabhsahay Kaur,
Adv. for the applicant

CORAM:
HON'BLE MR. JUSTICE G.S.SISTANI

1. Whether the Reporters of local papers may be allowed to see the judgment?
2. To be referred to Reporter or not?
3. Whether the judgment should be reported in the Digest?

G.S.SISTANI, J. (ORAL)

1. The writ petition was dismissed as withdrawn on 10.9.2008. Learned counsel for the petitioner submits that this Court in pursuance to the order dated 10.09.2008 directed the Registrar, Vigilance to conduct enquiry, as to how the order dated 8.4.2005 found on record is different from the order released on the internet by the Registry. Relevant portion of the order dated 10.9.2008 reads as under:-

"In the aforesaid light, it is necessary to investigate as to how the order to be found on record is different from the one released on the internet by the Registry. Let an enquiry be conducted in this regard by the

Registrar Vigilance and the report to be filed before the next date.

The Registrar Vigilance will also report whether the petitioner had applied for the certified copy of the order dated 8.4.2005 in WP(C)No.811/1992 and obtained the same and, if so, when."

2. Pursuant to the order dated 10.9.2008, the Registrar Vigilance has conducted an enquiry and submitted his report. In the order of 8.12.2008 it was observed that the report has been filed and parties were granted time to file objections to the report. Objections have been filed by counsel for the petitioner as well as by the petitioner. Mr.Sanjay Jain, has appeared for counsel, who was appearing for the petitioner while Ms. Neelima Tripathi has appeared for Mr. Mahender Sahai, the petitioner.
3. Mr. Sanjay Jain, learned senior counsel, submits that the scope of the inquiry was essentially two-fold. Firstly to investigate as to how the order placed on record is different from the one released on the internet by the Registry and, secondly, the Registrar, Vigilance was also directed to report whether the petitioner had applied for a certified copy of the Order dated 08.04.2005 in WP(C)No.811/1992 and if the Order was obtained the date when the order was obtained. Senior counsel further submits that the Registrar, Vigilance, has come to a categorical finding that certified copy of the Order dated 08.04.2005 has not been applied for or taken by any party or any person.

4. Learned senior counsel for the applicant submits that the Registrar, Vigilance, has, however, exceeded the scope of inquiry, although he has failed to come to any categorical finding on the first issue involved in this matter. Senior counsel for the applicant further submits that certain observations have been made against the Advocate for the petitioner who was not a counsel for the petitioner when the first writ petition being WP(C)No.911/1992 was filed (in which order dated 8.4.2005 was passed) nor was he the counsel when order dated 08.04.2005 was passed by the Division Bench of this Court. Senior counsel also submits that the Advocate was engaged to appear in the present petition (WP(C)No.8261/2007] which was filed in November, 2007, and he had filed a copy of the Order dated 08.04.2005, which is a digitally computer generated print out downloaded from the official website of Delhi High Court and, thus, there is an inherent presumption with regard to its correctness. Senior counsel further submits that since the order was down loaded from the official website of the Delhi High Court, even though, the present counsel had inspected the record of WP(C)No.811/192, there was no reason for him to match/compare the original order placed in the file of the said writ petition and the digital order obtained from the website of Delhi High Court. Senior counsel also submits that the petitioner in the subsequent writ petition did not take any unfair advantage nor he placed reliance on the Order dated 08.04.2005 as the order sheets would show that no interim order was passed or pressed, in fact, the official order sheets would show that even

the Civil Miscellaneous application was not even mentioned in the Order sheets of this writ petition from the date 07.11.2007 when the matter first came up for hearing till 10.09.2008 when the writ petition was withdrawn.

5. It may also be noticed that till the date writ petition was withdrawn the same very order dated 08.04.2005 continued to be available on the official website of the Delhi High Court and in fact continued to be available till 30.04.2009.
6. The brief background, which has led to the passing of order dated 10.9.2008, is that when the present writ petition was listed in the Court on 29.8.2008 Mr. Sarin, counsel for the DDA, produced an uncertified copy of the order dated 18.7.2008 passed by the Division Bench in Review Petition No.85/2005 in W.P.(C)No.811/1992, to show that the order records that the Division Bench had perused the orders passed by it after the judgment dated 2.12.2004, of which review is sought, and found that there is no order directing maintenance of status quo on the record of the case. The Court also noticed that at page 47 the petitioner had produced an uncertified copy of an order bearing the date 8.4.2005 passed in the aforesaid review petition, which records the grant of status quo as of that date with regard to possession. The Court directed that the record of the W.P.(C)No.811/1992 be sent to the Court on the next date. On the next date i.e. 10.9.2008, the following order was passed:

“O R D E R
10.09.2008

The original record of WP(C) No.811/1992 has been perused. It is seen that order dated 8.4.2005 as found in the file of WP(C) No.811/1992 does not contain the order directing maintenance of status quo with regard to the possession. Therefore, it stands established that the copy of the order dated 8.4.2005 placed on record by the petitioner as annexure-H at page 47 is not the same as the order actually found on record. In the aforesaid light it is necessary to investigate as to how the order to be found on record is different from the one released on the internet by the Registry. Let an enquiry be conducted in this regard by the Registrar Vigilance and the report be filed before the next date.

The Registrar Vigilance will also report whether the petitioner had applied for a certified copy of the order dated 8.4.2005 in WP(C) No.811/1992 and obtained the same and, if so, when.

List before the Court on 1.10.2008.

The record of WP(C) No.811/1992 be not sent again.

CM No.12673/2008

By this application the petitioner wishes to withdraw the writ petition with liberty to pursue such other remedies as may be available to him in respect of the subject matter of this writ petition.

While keeping the matter alive for the limited purpose of conducting the aforesaid enquiry, the writ petition is permitted to be withdrawn with liberty as prayed, subject to just exceptions.

Application stands disposed of.
Dasti.”

7. Pursuant to this order the Registrar, Vigilance, has held a detailed inquiry. The file of the inquiry report has been placed on record. As per the inquiry, which has been conducted, the Registrar, Vigilance has examined as many as 22 persons, recorded their evidence and made certain suggestions, which are to be taken up

on the administrative side. Objections to this report have also been filed.

8. The objections have been filed by the counsel, who was appearing in the present writ petition against the enquiry report, *primarily* on the ground that certain observations made by the enquiry officer, against him are not only called and the report was beyond the scope of the enquiry. As per the enquiry report, the Registrar Vigilance, has observed that the present writ petition was drafted and filed by the present counsel and he had inspected the original record of WP(C)No.811/1992 and in the writ petition he had referred to the extract of the alleged fabricated order and that further the document was attested as true copy by the clerk of the counsel, without making an effort to compare it and thus he would have had knowledge that the order on the internet was a fabricated order.
9. Mr.Jain, counsel for the advocate, further submits that counsel was only engaged when the present writ petition [WP(C)No.8261/2007] was filed and he had no role to play in filing of the initial writ petition [WP(C)No.811/1992] in which the alleged order is stated to have been passed. It is further submitted that merely because the counsel inspected the file would not necessarily mean that he would have inspected each and every page or every order and also would have compared the order-sheet with the copy of the order which had been obtained from the official website of the Delhi High Court. Mr.Sanjay Jain, learned senior counsel for the advocate submits that in case the

advocate was aware of the fact that order dated 8.4.2005 was not the correct order and in case he wanted to derive any unfair advantage, he would not have extracted the same specifically in the body of the writ petition which would certainly attract the attention of the respondent particularly when an advance copy of the writ petition as practice is served on the department, before the matter is listed in Court. It is further submitted that no aspersions can be cast on the conduct of the present advocate as he was nowhere in the picture when the order dated 8.4.2005 was passed or released on the internet. Admittedly, this order was available in the official website of Delhi High Court on 8.4.2005 or the period thereafter. In fact it is submitted that the order continued to remain on the web site till 30.04.2009. In effect, the submission of senior counsel for the Advocate is that even assuming that the order dated 8.4.2005 available on the official website of Delhi High Court was engineered, it was engineered, manufactured or fabricated only in the year 2005, when the present advocate was nowhere in the picture. The present advocate came into the picture when the present writ petition [WP(C)No.8261/2007] was filed and by no stretch of imagination could he have been involved or associated with the said unlawful act. The copy of the order was verified by the Court clerk of the counsel. At best it can be said that counsel should have been cautious and should have either applied for certified copy or demanded certified copy from his client. Merely because this was not done and he relied upon copy which was down loaded from

the official website of the Delhi High Court, no adverse inference can be drawn against him. Except that the advocate acted in a bona fide manner and action of the counsel is bona fide is writ large on the face of the record as he had reproduced the order completely in the body of the writ petition, besides filing the same as Annexure-H to the writ petition which would show that there was no evil design on his part. Counsel for advocate has also drawn the attention of the Court to the evidence of EW-22, which has been considered in para 59 of the Report, while answering the question as to how a computer generated copy is accepted with the writ petition, he referred to instructions in para 2(a) of Part A (a) of Chapter 1 (Judicial Business) and para 6 of part 2nd (Civil) of Chapter V, both of volume V of High Court Rules and Orders to state that annexures to the writ petition need not be certified copies inasmuch as the typed copies are also permitted.

10. Learned senior counsel further submits that since the genuineness of the sources of the document has not been disputed, the action of the counsel cannot be faulted with, more so when the data is to be uploaded by the Court Staff and in the absence of any finding of the Enquiry Officer against either the petitioner or any Court Staff in particular the present advocate cannot be blamed in any manner for manufacturing, adding, abetting or having any part to play in the creation of the order dated 7.4.2005. Counsel also submits that in fact any reference to the counsel in the Enquiry Report is liable to be expunged, including in para 60 sub-para (xiv), (xv), (xvi) and (xvii) of the Enquiry report.

11. The submissions of Mr. Sanjay Jain, learned senior counsel for the application can be summarized as under:
12. The present Advocate, was neither engaged in WP(C)No.811/1992 which was dismissed. Advocate was engaged to file Review Petition No.985/2005 and even the Order dated 08.04.2005 was never passed in his presence or at the time when he was engaged in the matter. Admittedly the review petition was filed by Mr. Subhash Mittal, Advocate, who appeared in the matter uptill 12.05.2006. The present Advocate, appeared in this writ petition for the first time on 20.04.2007. By this date, the Order dated 08.04.2005 had already been uploaded on the internet and was available to the public at large and, thus, he could have had no hand in preparation of the order or instrumental in the order being put on the website. The present Advocate, appeared for the first time in the Review Petition on 20.04.2007. The present Advocate, filed the second writ petition being NO.8261/2007 and according to which the statement made by the present Advocate, he downloaded the Order from the official website of Delhi High court and presuming the same to be correct not only filed the same as Annexure 'H' to the writ petition but also extracted the order in Para 13 of the writ petition. Mr.Jain submits that the submission foregoing would show that in case present Advocate, was even remotely involved or was aware that the order dated 08.04.2005, which has been reproduced in the body of the writ petitioner was not the correct copy he would not have extracted the same in the body of the writ petition when the same had been annexed as

Annexure 'H'. The enquiry officer has acceded his jurisdiction as the scope of the inquiry and he was only to investigate as to how the order was to be found on record is different from the one released on the internet by the Registry and also to report whether the petitioner had applied for a certified copy of the order dated 08.04.2005 and obtained the same and, if so, when. Any reference to the present Advocate could only have been in relation to placing the order on the official website of the Delhi High Court and not further.

13. The latter portion of the terms of the inquiry have been answered categorically by the Inquiry Officer in Para 47 of the inquiry report. Operative portion of the report reads as under:

"It is clear from the statements of all the witnesses read together, in particular the evidence of EW-7 that certified copy of the order dated 08.04.2005 has not been applied for or taken by any party or any person till date"

14. As regard the first portion of reference, the inquiry officer has been unable to reach a categorical finding.
15. It is contended that the alleged observations made against the present Advocate are without any basis and without granting any opportunity to explain or call upon the present Advocate, to bring to notice that the scope of the inquiry is being enlarged. So to say that that merely because the second writ petition was drafted by the present Advocate, it would be presumed that he had knowledge that the order sought to be extracted is forged, would be farfetched and of no consequence.

16. Mr. Jain, learned senior counsel, has strongly urged before this Court that there is no evidence on record to show that the present Advocate, had knowledge that the document downloaded from the official website of the Delhi High Court would not be an exact and true copy of the document on the Court record, the order was received by him from his client which was generated at an earlier stage which is evident from the order itself and simply because the present Advocate, had inspected the court file by itself cannot create a doubt of his having knowledge of the fact that the order in the Court file would be different from the Order downloaded from the official website of Delhi High Court. Further, in fact, there would be no reason or requirement for the present Advocate, to have compared the Order dated 08.04.2005 downloaded from the official website with the original file of the high court and during inspection ordinarily a counsel will only look at such information, which is not available in the file of the counsel or not available on the website of Delhi High Court and in case each order down loaded from the official website of the Delhi High Court is to be compared the very purpose of the website would be defeated.
17. Ms. Neelima Tripathi, learned counsel for the petitioner submits that the petitioner had filed a writ petition bearing No.811/1992 through Mr. Mukul Rohtagi, Advocate, the review petition was filed by Sh. Subhash Mittal, Advocate and the order dated 08.04.2005 was communicated to the petitioner by his counsel, Mr.Subhash Mittal. It is further submitted that he neither had any access to

the staff of the Delhi High Court and further there is nothing in the inquiry to suggest that he had contacted either the Private Secretary or the Stenographers of the Court or any other person for downloading an incorrect order on the Internet.

18. Learned counsel for the petitioner relies on the affidavit filed before the inquiry officer wherein he has stated that the Court had granted status quo with regard to possession and he was informed that copy of the order would be available on the official website of Delhi High Court and Mr. Subhash Mittal has provided him the copy (Computer generated) of the order dated 08.04.2005 from the official website of the Delhi High Court. He has also categorically stated that he has never applied for a certified copy nor obtained the same. In view of the illness of Sh. Subhash Mittal, Advocate, he had handed over the files to the present counsel in March, 2007.
19. It is submitted that the petitioner is 77 years old, who has only cleared his Class XII examination and is not computer literate and is leading a semi-retired life.
20. I have heard learned counsel for the parties, perused the inquiry report, which has been filed together with the supporting documents. The terms of inquiry, which have been set out in the order dated 10.09.2008 would show that the Court thought it necessary to order an investigation to find out as to how the order to be found on record is different from the one released on the internet by the Registry. The Registrar, Vigilance, was also directed to report whether the petitioner had applied for a

certified copy of the Order dated 08.02.2005 in WP(C)No.811/1992 and obtained the same and, if so, when. The Registrar, Vigilance, has conducted a detailed inquiry, considered the various statements made by as many as 22 witnesses, including nine advocates, two Court Masters and two Private Secretaries as well as the Technical Director, National Informatics Centre and Principal System Analyst, National Informatics Centre. The Registrar, Vigilance, has given a categorical finding in Para 47 of the report that a certified copy of the order dated 08.04.2005 has not been applied for or taken by any party or any person till date. The Registrar, Vigilance, has also taken pains to give various proposals, which may require urgent consideration and action to block the loopholes in the system and in order to make the system foolproof. It is also seen that despite best efforts, the Registrar, Vigilance, was unable to give a categorical finding as to how the order to be found on record is different from the one released on the internet by the Registry. Having been unable to record any evidence on the material aspect, the portion of the report which has given a speculative finding with regard to the present Advocate, who had subsequently appeared in the matter need to be expunged on the ground that when the Order dated 20.04.2007 was passed, the present Advocate, was not retained by the petitioner as admittedly he filed his Vakalatnama in Review Petition No.85/2005 only in April, 2007 by which time not only was the order dated 08.04.2005 was passed but it was also available on the official website of the Delhi High Court. I also find from the

record that the second writ petition No.8261/2007 was filed by the present Advocate, who did not make any effort to conceal the order dated 08.04.2005, but in fact, extracted the same in para 13 of the petition [WP(C)No.8261/2007] even though he had filed a copy of the Order as Annexure 'H' to the writ petition. I am satisfied that in case the present Advocate, was either aware that the order dated 08.04.2005 which was extracted as well as filed as Annexure 'H' was not the correct or true copy, he would have certainly not extracted the same in the body of the writ petition, which would definitely come to the knowledge and notice of the counsel for the respondents to whom an advance copy is served before the actual writ petition is taken up for admission. I also find force in the submission of learned senior counsel for the application that merely because the counsel had inspected the records it would necessarily mean that he would have compared the copy download by him from the official website of the Delhi High Court with the copy in the Court record. In case every order down loaded from the official website is to be compared, the very purpose of the official website would be defeated. Even if he would have compared the same, the question as to how and who down loaded a wrong order would still remain unanswered and merely because he did not compare the same does not mean that he was responsible for the wrong order being placed on the website or that he was in any way connected or associated with the illegal act. Ordinarily, if a copy is downloaded from the official website of the Delhi High Court, it would be a presumed that the

order downloaded from the official website would be genuine and a correct copy of the order available in the record. In fact, it would be unthinkable for any person to expect otherwise. In the absence of any categorical finding against the present advocate observation made by the Registrar Vigilance are uncalled for. Consequently, paragraphs 60 (XIV, XV, XVI, XVII), 61, 62, 63 and 63(I) of the inquiry report shall be expunged. Further taking into consideration the age of the petitioner and also taking into consideration that there is nothing on record to show that the petitioner had any direct role to play for the order dated 08.04.2005 being placed on the website no further steps are required to be taken pursuant to the report which has been placed on record with respect to the petitioner. It may also be taken into consideration the petitioner never derived any benefit from the order dated 08.04.2005 in the present writ petition being no.8261/2007 as neither any interim order was passed nor granted. No further orders are required to be passed and the objection stands disposed of accordingly. The Court appreciates the effort put in by the Registrar Vigilance in culling out the various suggestions which shall make the system of uploading of Court Orders on the website of the Delhi High Court foolproof.

G.S. SISTANI, J.

December 09, 2009
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