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

+ CRL.M.C. 1335/2007

Date of decision: 13th April, 2010

DHARAM CHAND HANDA Petitioner
Through Mr. Sanjeev Soni, Advocate.

versus

STATE & ORS. Respondents
Through Ms. Fizani Husain, APP for the State.
Mr. R.K. Jain, Advocate for respondent No. 2.

CORAM:
HON'BLE MR. JUSTICE SANJIV KHANNA

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

ORDER

1. The petitioner, Mr. Dharam Chand Handa has filed the present petition under Section 482 of the Code of Criminal Procedure, 1973 read with Article 227 of the Constitution of India against order dated 11th September, 2006 dismissing his revision petition and affirming the order passed by the SDM dismissing his application/petition under Section 145/146 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the Code, for short).

2. Learned counsel for the petitioner has submitted that the learned Additional Session Judge and the SDM have erred as they have not examined

the question of possession, but have gone into the question of title of the property while adjudicating the application/petition under Section 145/146 of the Code. Learned counsel for the petitioner has relied upon *Shanti Kumar Panda versus Shakuntala Devi*, (2004) 1 SCC 438 and *Prakash Chand Sachdeva versus The State and Another*, AIR 1994 SC 1436.

3. The petitioner was/is a partner with his brother Mr. Kewal Krishan Handa, were/are carrying on business in the name and style of partnership firm M/s Handa Food Products, B-70/30, DSIDC Industrial Complex, Lawrence Road, Delhi. The admitted position is that the said industrial shed was allotted to Mr. Kewal Krishan Handa, the respondent No. 2 herein. It is the contention of the petitioner that payment for the said shed was made out of the funds of the partnership firm and thereafter the said industrial shed was put up with the permission of DSIDC by the partnership firm. In the year 2000, the petitioner suffered a stroke and became bed ridden. It is the case of the petitioner that thereafter the respondent No. 2 could not furnish accounts and settle the accounts and has refused to accede to the request of the petitioner to settle accounts of the partnership firm.

4. It was in these circumstances that the petitioner had filed an application under Section 145/146 of the Code before the SDM stating, inter alia, that there was apprehension of breach of peace and the respondent No. 2 was illegally preventing the petitioner from entering the shed though as a partner of the partnership firm, the petitioner has right to possession of the shed.

5. Learned counsel for the petitioner is right in his contention that while adjudicating and deciding an application under Section 145/146 of the Code, the Executive Magistrate is not concerned with the question of right to title but an enquiry has to be made as to the actual physical possession by reference to

the date of the preliminary order or within two months before the said date. Further, the Executive Magistrate can pass an order to maintain status quo as to possession till the entitlement of possession is determined by a court having competence to enter into adjudication of civil rights, which an Executive Magistrate cannot decide. The legal position has been lucidly summarized in paragraphs 10 and 11 in the case of *Shanti Kumar Panda* (supra), which read as under:-

“10. Possession is nine points in law. One purpose of the enforcement of the law is to maintain peace and order in society. The disputes relating to property should be settled in a civilized manner by having recourse to law and not by taking the law in own hands by members of society. A dispute relating to any land etc. as defined in Sub-section (2) of Section 145 having arisen, causing a likelihood of a breach of the peace, Section 145 of the Code authorizes the Executive Magistrate to take cognizance of the dispute and settle the same by holding an enquiry into possession as distinguished from right to possession or title. The proceedings under Sections 145/146 of the Code have been held to be quasi-civil, quasi-criminal in nature or an executive or police action. The purpose of the provisions is to provide a speedy and summary remedy so as to prevent a breach of the peace by submitting the dispute to the Executive Magistrate for resolution as between the parties disputing the question of possession over the property. The Magistrate having taken cognizance of the dispute would confine himself to ascertaining which of the disputing parties was in possession by reference to the date of the preliminary order or within two months next before the said date, as referred to in proviso to Subsection (4) of Section 145, and maintain the status quo as to possession until the entitlement to possession was determined by a court, having competence to enter into adjudication of

civil rights, which an Executive Magistrate cannot. The Executive Magistrate would not take cognizance of the dispute if it is referable only to ownership or right to possession and is not possession simpliciter; so also the Executive Magistrate would refuse to interfere if there is no likelihood of breach of the peace or if the likelihood of breach of peace though existed at a previous point of time, had ceased to exist by the time he was called upon to pronounce the final order so far as he was concerned.

11. There is a difference between a case where the subject-matter of dispute is not attached by the Executive Magistrate under Section 146(1) and the case where it is so attached. Under Sub-section (1) of Section 145 a preliminary order taking cognizance of the dispute having been passed, the Magistrate would under Sub-section (4) decide who was in possession of the disputed property on the date of the passing of the preliminary order. Consistently with such party would follow under Sub-section (6) entitling it to retain possession over such property until evicted therefrom in due course of law. And until such eviction all disturbances in its possession shall be forbidden. If any party is found to have been forcibly or wrongfully dispossessed within two months next before the date on which the report of a police officer or other information setting the Magistrate in motion was received by him or between such date and the date of order under Sub-section (i), then the party dispossessed has to be fictionally treated as one in possession on the date of preliminary order under Sub-section (1). The declaration of entitlement to possession under proviso to Sub-section (4) read with Sub-section (6) shall be made in favour of such party and the party found to have been so dispossessed forcibly and wrongfully may also be restored into possession. The declaration of entitlement to

possession under proviso to sub-section (4) read with sub-section (6) shall be made in favour of such party and the party found to have been so dispossessed forcibly and wrongfully may also be restored into possession. The declaration having been made, it would be for the unsuccessful party to approach the competent court and Secure such order as would enable his entering into possession and evicting the party successful in proceedings under Section 145.

6. Judgment in the case of ***Prakash Chand Sachdeva*** (supra) does not lay down a different law and states that the object behind Section 145 is to prevent a person from forcefully and unlawfully taking possession of a property in occupation of a third person. It has been clarified that mere pendency of a civil suit for injunction would not bar jurisdiction of an Executive Magistrate/SDM, when conditions mentioned in Section 145 of the Code for invoking jurisdiction are otherwise satisfied.

7. The aforesaid decisions do not help the petitioner. Facts placed on record show that the petitioner had filed applications under Sections 11 and 9 of the Arbitration and Conciliation Act, 1996 before the District Judge on or about 24th May, 2004, i.e., before he had filed the application under Section 145/146 of the Code before the SDM i.e. on 3rd June, 2004. The applications under Sections 11 and 9 of the Arbitration and Conciliation Act, 1996 were disposed of on 9th August, 2004. The application under Section 9 was dismissed, but the application under Section 11 of the Arbitration and Conciliation Act, 1996 was allowed and a sole arbitrator was appointed. The application under Section 9 of the Arbitration and Conciliation Act, 1996 was specifically relating to the industrial shed and the right of the respondent No. 2 to deal with the same and transfer the same to any third person. The petitioner

herein did not contest and file any appeal/revision against the order dismissing his application under Section 9 of the Arbitration and Conciliation Act, 1996.

8. In these circumstances, the SDM by his order dated 3rd March, 2006 dismissed the application under Section 145/146 of the Code filed by the petitioner. In this order, the SDM has specifically referred to the order passed by the learned Additional District Judge dismissing the application under Section 9 of the Arbitration and Conciliation Act, 1996 that the shed in question was allotted to the respondent No. 2 in his individual name and the petitioner prima facie had not been able to establish that the shed had become a partnership property. In the present case, the civil court has, therefore, decided the issue with regard to possession as well as right of the petitioner to the aforesaid premises. Reference was also made by the civil court to the partnership deed which was accepted by DSIDC by their letter dated 3rd February, 1978, which states that the shed shall not become an asset of the partnership firm but shall be an asset of the respondent No. 2 in his individual capacity. Thus the civil Court had decided the civil dispute between the parties, even before the SDM had passed any order. Any order by the SDM to the contrary would have been in direct conflict and contrary to the order passed by the learned Additional District Judge and the reasoning given by him while dismissing the application under Section 9 of the Arbitration and Conciliation Act, 1996.

9. It may be relevant here to reproduce the findings recorded by the learned Additional District Judge while dismissing the application under Section 9 of the Arbitration and Conciliation Act, 1996 in his order dated 9th August, 2004, which is reproduced below:-

“5. Coming to the application under Section 9 of

the Act it is found that petitioner has failed to show any prima facie case in his favour. He has also failed to show any balance of convenience in his favour. Vide letter dated 12.04.04 the petitioner herein had written to DSIDC respondent no. 2 stating that the aforesaid industrial shed was initially allotted in the name of respondent no. 2 and the by mutual consent of M/s. Handa Foods for the terms settled between the parties at the time of formation of partnership deed. Now the same dispute have arisen between the partners and there is an arbitration clause to settle all the disputes between the parties(sic) and for that purpose separate proceedings are likely to be initiated and in the light of this the aforesaid industrial shed may not be transferred in the name of any third party on the basis of any document executed by Kewal Krishan Handa. The said letter was replied by the DSIDC vide their letter dated 11.05.04 which has been placed on record by the petitioner herein. In the said letter DSIDC has reiterated that allotment of the said industrial shed stands only in the name of Kewal Krishan Handa; that Clause-4 of the partnership deed accepted by DSIDC vide their letter no. F-1-1743/PD/TP/7511 dated 03.02.78, clearly states that the shed shall never become asset of the partnership firm and shall be in the name of Kewal Kishan Handa in his individual capacity; that in case there was some dispute on account of the said firm the same may be sorted out amongst the partners themselves and DSIDC has nothing to do with the dispute of the partnership firm. The said letter make crystal clear that the shed in question is allotted only in the name of Kewal Kishan Handa in his individual name and it has never become the asset of the partnership firm. Therefore, the petitioner has no prima facie case in his favour to be entitled to the discretionary relief asked for vide application under Section 9 of the Act. Since, there is no prima facie in favour of the petitioner the

balance of convenience also does not lie in his favour. He is also not going to suffer any irreparable loss or injury if the discretionary relief is not granted to him. Accordingly, the application under Section 9 of the Act is without any merits and is dismissed.”

10. In view of the aforesaid findings, which have not been challenged and questioned by the petitioner by way of revision/appeal, I do not see any reason to interfere with the orders passed by the authorities dismissing the application of the petitioner under Section 145/146 of the Code. It is, however, open to the petitioner to take appropriate stand before the learned arbitrator in respect of his claims. It is clarified that observations made in this order will not influence and will not be binding on the learned arbitrator.

The petition is disposed of.

SANJIV KHANNA, J.

APRIL 13, 2010
VKR/NA