

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

+ **RFA No.139/2010**

% **1<sup>st</sup> December, 2011**

SHRI GURBAX SINGH ..... Appellant  
Through: Mr. K.R. Chawla, Advocate.

VERSUS

SHRI CHARAN SINGH & ORS. .... Respondents  
Through: Mr. Ashwin Kumar, Advocate with  
Mr. Sudeep Bhandari, Advocate for  
respondent Nos.8 and 9.

**CORAM:**  
**HON'BLE MR. JUSTICE VALMIKI J.MEHTA**

To be referred to the Reporter or not?

**VALMIKI J. MEHTA, J (ORAL)**

1. The challenge by means of this Regular First Appeal under Section 96 of Code of Civil Procedure, 1908 (CPC) is to the impugned judgment of the trial Court dated 24.12.2009 which dismissed the suit on account of the failure of the appellant/plaintiff to appear for his examination in spite of repeated orders and imposition of costs. The impugned judgment is effectively a judgment under Order 10 Rule 4(2) CPC which provides for consequences in case a party to a suit who is called for examination by the Court fails to appear. I may note that the trial Court had passed directions for

personal appearance because at one stage, the counsel for the appellant had appeared and said that the compromise had taken place and the appellant/plaintiff was found to have received monies.

2. The facts of the case are that the subject suit was filed by the appellant/plaintiff for declaration, injunction and possession with respect to the suit property bearing No.E-385, Greater Kailash, Part-II, New Delhi. Though the plaint is replete with various transactions spread over many years, and there are as many as nine defendants in the suit, including police officials and the subsequent purchasers of the property, however, I need not dilate on merits inasmuch as the basic issue is as to the validity of the impugned judgment of the trial Court dismissing the suit for non appearance of the appellant/plaintiff. The facts which are relevant to note are that after completion of pleadings, the Court was informed on 4.2.2009 that parties have settled their disputes pursuant to which the appellant/plaintiff was stated to have received a sum of ₹ 10 lacs by two banker's cheques dated 2.2.2009. The statements of attorney of the appellant/plaintiff, Director of defendant No.9, counsel for defendant Nos.5 to 7, defendant No.3 and the attorney of defendant Nos.1 and 2 were recorded by the Court. On 5.2.2009, when the case was listed for consideration of the statements, one proxy counsel for the appellant/plaintiff who was not the earlier counsel, appeared and expressed surprise with respect to the compromise and asked for an adjournment for

taking instructions from the appellant/plaintiff. On 9.2.2009, another Advocate, namely, Sh. Ashwani Kumar appeared, who claimed to appear on behalf of the appellant/plaintiff. At that stage, it appeared to the Court that there was something amiss and therefore to finally determine the issue, personal appearance of the plaintiff was required by the detailed order dated 9.2.2009. The plaintiff is said to be a resident of Canada. By the detailed order dated 9.2.2009, all earlier interim orders passed by the trial Court were vacated. The following are some of the observations of the trial Court in the order dated 9.2.2009:-

“.....Not everything appears to be well. Either the plaintiff has become dishonest or the previous attorney has acted beyond his jurisdiction. Either ways the personal appearance of the plaintiff would be required to determine this issue. In this background, the plaintiff is directed to appear in person before this court on the next date. The counsel appearing on behalf of the plaintiff today submits that the plaintiff is presently in Canada and requests for at least one month time to secure his presence in India. Ld. Counsel is directed to file his Vakalatnama duly obtained in accordance with law after seeking no objection/discharge from the previous counsel as per rules.....”

3. Despite the aforesaid directions, plaintiff failed to appear before the Court on 12.3.2009 on the ground that the plaintiff was suffering back pain and could not come to India. There was an additional ground of mother-in-law of the plaintiff being seriously sick. Another Advocate Sh. Rajan Sabharwal appeared on behalf of the plaintiff on this date i.e. 12.3.2009 and one more opportunity was granted for personal appearance of the plaintiff on

20.4.2009 subject to deposit of costs of ₹ 10,000/-. However, on 20.4.2009, the plaintiff once again did not appear and again the illness/back pain of the plaintiff was mentioned as the reason for being unable to come to India. In fact, on this date an Advocate Mr. Alim Mizaz who had appeared with the first counsel Mr. S. Q. Kazim took up a different stand and said that non-appearance was deliberate as plaintiff had handed over forged documents to the earlier Advocate and the plaintiff was now deliberately avoiding to furnish the originals. Trial Court has noted that all earlier counsel who had appeared were not discharged till that date. In spite of deliberate defiance of the orders of the trial Court, a final opportunity for personal appearance of the plaintiff was granted subject to payment of costs of ₹ 1,50,000/-.

4. This order of imposing costs of ₹ 1,50,000/- dated 20.4.2009 was challenged by the appellant/plaintiff in this Court by way of Civil Misc. (Main) Nos.614/09 and 615/09. An earlier order dated 9.2.2009 was also challenged. A learned Single Judge of this Court disposed of the two Civil Misc. (Main) vide order dated 12.10.2009 observing that a Court is always empowered under Order 10 CPC to direct personal appearance of the parties. Out of the sum of ₹ 1,50,000/- imposed as costs, since ₹ 50,000/- was already deposited the direction to deposit a further sum of ₹ 1 lakh was stayed subject to personal appearance of the appellant/plaintiff. Once again thereafter the appellant/plaintiff failed to appear before the trial Court on

4.11.2009. This was despite the specific direction of the learned Single Judge of this Court, who passed the order dated 12.10.2009. On this date, a fourth Advocate Mr. Varun Sikka appeared and made a request for adjournment for personal appearance of the appellant/plaintiff. Though there was no ground for granting adjournment, in the interest of justice, case was adjourned with the specific observations that in case of non-appearance, adverse orders would follow.

5. On the next date i.e. 21.12.2009, a fifth Advocate appeared on behalf of the appellant/plaintiff, and who is also the Advocate appearing for the appellant/plaintiff in this appeal. An application was filed under Section 151 CPC for modification of the order dated 4.11.2009 regarding imposition of costs. It was pleaded in this application that the plaintiff need not appear at this stage since he will prove his case by way of evidence. Obviously, this application was directly in the face of earlier orders of the trial Court directing personal appearance and which orders were upheld even by this Court. The trial Court also noted that medical certificates placed on behalf of the appellant/plaintiff in the Court were of one Mr. Gurbakht Gulati and the plaintiff was not Mr. Gurbakht Gulati but one Mr. Gurbax Singh. The trial Court dismissed the application which was filed under Section 151 CPC.

6. After referring to all the aforesaid aspects including change of Advocates, appearance of certain Advocates without power of attorney,

entering into a compromise, receiving amounts, appointing a new counsel without seeking discharge of the existing counsel and non compliance of orders of the Court for personal appearance, the following observations have been made by the trial Court in the impugned judgment:-

“This being so, I hereby hold that the conduct of the plaintiff in keeping away from the court appears to be deliberate. He has filed the present suit before this court without placing on record the original documents as required under the CPC. His duly constituted attorney (which attorney) has not been revoked till date as per the judicial record) has accepted two cheques for a sum of ` 5 lacs each ( ` 10 lacs) towards the settlement amount on his behalf. I hold that the attempt of the plaintiff is only to keep the litigation alive on one ground or the other. He has misused and abused the platform of this court firstly to secure favourable orders in his favour at the initial stage and later by not placing on record the original documents and evading appearance before this court due to which reasons all interim orders were revoked. The allegations made by the defendants that, this is being done by the plaintiff only to arm-twist them for extorting more money may not be unfounded. The platforms of the court cannot be permitted to be used by unscrupulous persons for their benefits. A person who has no respect for law and has abused the repeated accommodation given by this court deserves no further indulgence. The plaintiff who is an Non Resident Indian based in Canada does not appear to be taking the directions of Indian Courts (both this court and the Delhi High Court) rather seriously and perhaps entertains an impression that come what may, he can get away, which impression requires to be dispelled. Therefore, unless these circumstances I hereby hold that no further accommodation or indulgence can be granted to such a person and no useful purpose would be served by keeping the present litigation alive, more so as the duly constituted attorney of the plaintiff has already compromised all the disputes raised by the plaintiff in the present suit with the defendants outside the court.”

7. The trial Court has left the issue open regarding recovery of costs

and filing of application under Section 340 Cr.P.C. on behalf of defendant Nos.8 and 9 who are said to have purchased the suit property.

8. Learned counsel for the appellant/plaintiff before this Court once again argued that the appellant/plaintiff need not appear personally and there can be video conferencing. Obviously, as noted by the trial Court, the appellant/plaintiff has no respect for the Indian Courts, and in fact the argument as raised by the counsel for the appellant flies in the face of confirmation of the earlier orders passed by the trial Court and which were upheld by this Court. This argument is in clear disregard of the earlier orders of the trial Court and of this Court.

9. The Supreme Court recently in the case of *Ramrameshwari Devi and Others v. Nirmala Devi and Others (2011) 8 SCC 249* has observed that it is high time that actual/realistic costs be imposed. It is held in that judgment that there is unnecessary litigation in this country because a person who fails walks away scot free without paying the costs of litigation incurred by the successful litigant. Some of the relevant paras of aforesaid judgment of the Supreme Court are as under:-

**“43.** We have carefully examined the written submissions of the learned Amicus Curiae and learned Counsel for the parties. We are clearly of the view that unless we ensure that wrongdoers are denied profit or undue benefit from the frivolous litigation, it would be difficult to control frivolous and uncalled for litigations. In order to curb uncalled for and

frivolous litigation, the courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that court's otherwise scarce and valuable time is consumed or more appropriately wasted in a large number of uncalled for cases.

**47.** We have to dispel the common impression that a party by obtaining an injunction based on even false averments and forged documents will tire out the true owner and ultimately the true owner will have to give up to the wrongdoer his legitimate profit. It is also a matter of common experience that to achieve clandestine objects, false pleas are often taken and forged documents are filed indiscriminately in our courts because they have hardly any apprehension of being prosecuted for perjury by the courts or even pay heavy costs. In *Swaran Singh v. State of Punjab* MANU/SC/0320/2000 : (2000) 5 SCC 668 this Court was constrained to observe that perjury has become a way of life in our courts.

**52.** The main question which arises for our consideration is whether the prevailing delay in civil litigation can be curbed? In our considered opinion the existing system can be drastically changed or improved if the following steps are taken by the trial courts while dealing with the civil trials.

A. ...

B. ...

C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

.....

**54.** While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the

Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

**55.** The other factor which should not be forgotten while imposing costs is for how long the Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

**56.** On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.” (underlining added)

In fact, I am also empowered to impose actual costs in terms of *Volume V of the Punjab High Court Rules and Orders (as applicable to Delhi) Chapter VI Part I Rule 15.*

10. In view of the above-stated facts, the deliberate; willful and blatant disregard of the orders of the trial Court as upheld by this Court directing personal appearance of the appellant/plaintiff; I therefore dismiss this appeal with costs of ₹ 1 lakh and which costs shall be paid within a period of four weeks from today.

**C.M. Nos.4433/2010 (stay) and 10952/2011 (video conferencing)**

Since the main appeal has been dismissed, no orders are required to be passed in these applications which are disposed of as such.

**VALMIKI J. MEHTA, J**

**DECEMBER 01, 2011**

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