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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on : 19.01.2012

Date of decision : 30.01.2012

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FAO (OS) No. 249 of 2004

SMT. JUGAN K. MEHTA

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APPELLANT

Through : Mr. S.P. Kalra, Sr. Adv. with
Ms. Kirti K. Mehta, Advocate.

- V E R S U S -

SHRI SHAM SUNDER GULATI & ORS.

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RESPONDENTS

Through : Mr. Sanjeev Sidhwani &
Ms. Ekta Kalra, Advocates
for respondent Nos. 1 to 3.
None for R-4.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE RAJIV SHAKDHER

SANJAY KISHAN KAUL, J.

1. The appellant filed a suit, being CS (OS) No.736/2002, for partition and rendition of accounts against her siblings / their legal heirs qua the estate of her deceased father late Shri Mangal Sain Gulati. One of the immovable properties forming subject matter of the partition suit is a residential double-storey house with basement constructed on a plot measuring 1300 sq. yds. bearing Municipal No. 6909/31, Bungalow Road, Kamla Nagar, Delhi. The appellant claimed that as per the wishes of her father, soon after her marriage, she came in occupation and possession of a part of the said property situated in the backyard on the first

floor consisting of two independent rooms and bathroom-cum-latrine along with the roof of the said portion. The appellant claims to have used the said portion as the residence till the year 1974 when she shifted her residence.

2. The appellant alleged that soon after the demise of her mother on 30.03.1992, the original defendant No. 5, namely, Smt. Pushpa Mediratta (daughter of late Shri Mangal Sain Gulati); late Shri Prakash Chand Gulati (son of late Shri Mangal Sain Gulati) represented by his legal heirs, i.e., original defendants No. 2 to 4, namely, Smt. Chanchal Gulati (wife), Shri Raj Kumar Gulati (son) and Shri Chintu Gulati (son); and the original defendant No. 1, namely, Shri Sham Sunder Gulati (son of late Shri Mangal Sain Gulati) struck a deal of settlement between themselves with regard to the estate left behind by the father, namely, late Shri Mangal Sain Gulati. In terms of this arrangement, the parties shifted in different portions of the property and leased out the entire basement for commercial use. The original defendants No. 1 to 5 are alleged to be in possession and control of the entire estate of Shri Mangal Sain Gulati and her mother Smt. Vidya Vati Gulati except the portion of the property in occupation of the appellant. It was also alleged that defendants No. 1 to 6 were threatening to sell the entire property to defendant No. 7, namely, Smt. Neelam Sablok in order to pocket the entire consideration including the share of the appellant. This is the background in which partition is sought of the immovable property and rendition of accounts of the business apart from recovery of rent realized from the immovable property.

3. The appellant along with the suit filed an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, 1908 (for short, 'the said Code') for interim relief being IA No. 3171/2002 seeking a restraint against the defendants from creating any charge or transferring, selling or alienating the aforesaid immovable property and from dispossessing the appellant from the portion in her possession on the first floor apart from a restraint against removing the account books from the business premises. Summons were issued in the suit as also notice in the application on 02.04.2002 and ad interim ex-parte orders were granted to the appellant directing the parties to maintain status quo in respect of title and possession of the premises as on that date and restraining the parties from alienating, selling, transferring or creating third-party interest in the aforesaid immovable property.
4. On the summons and notice being served, original defendant No. 7, Smt. Neelam Sablok moved an application, being IA No.4447/2002, under Order XXXIX Rule 4 of the said Code. The application records that the title of the property vested with Shri Mangal Sain Gulati in pursuance to a Sale Deed dated 19.01.1973, who executed a registered Will dated 16.04.1981 bequeathing the said immovable property in equal share to his two sons, namely, Shri Prakash Chand Gulati and Shri Sham Sunder Gulati with a right of residence to his wife, Smt. Vidya Vati Gulati during her lifetime. The daughters were not bequeathed any share. On the death of Shri Mangal Sain Gulati, his wife continued to reside in the said property till her demise on 30.03.1992. Affidavits are stated to have been affirmed by all

the legal heirs of late Shri Mangal Sain Gulati including the appellant giving their no objection to the Will and, thus, the property was mutated in the name of the two sons vide letter dated 19.07.1995. The said two sons agreed to sell the property to the applicant (i.e., the original defendant No. 7 / respondent No. 4 herein) for a consideration of Rs.40 lakhs and executed the Sale Deed on 11.10.2000 in respect of their undivided portions, which was duly registered. The applicant claimed to be in physical possession of the first floor even prior to execution of the Sale Deed and was given symbolic, proprietary and constructive possession of the entire property purchased by her and started collecting rent from the tenants. The property stood mutated in the name of the applicant. These two applications were finally disposed of by a detailed Order of the learned Single Judge dated 25.08.2003 confirming the Order passed on 02.04.2002 with a modification that in case original defendant No. 7 wanted to transfer the title or possession of the property further as claimed by her, she would seek prior permission from the Court. We are informed that an appeal was preferred against this Order by defendant No. 7 being FAO (OS) No. 366/2003, but was withdrawn on 29.08.2006.

5. Insofar as the controversy in the present appeal is concerned, the same arises out of an Order passed on 27.09.2004 in CCP (OS) No. 90/2004 filed by the appellant. The allegation in this application is that there has been violation of the status quo Order dated 02.04.2002 as confirmed on 25.08.2003. It may be noticed that though the contempt petition was styled as such, in the heading, it is stated to be an application under Order XXXIX

Rule 2A read with Section 151 of the said Code.

6. The husband of the appellant, namely, Shri Kirti K. Mehta claims to have visited the suit premises on 09.07.2004 at about 4 p.m. when he found that the entire roof of the first and ground floors barring the outer walls of the suit premises were demolished causing extensive damage to the suit premises. On enquiry, it was found that the demolition had commenced on 25.06.2004 during the summer vacations of the High Court and was carried out under instructions of the respondents / contemnors, i.e., Shri Sham Sunder Gulati (son), Shri Raj Kumar Gulati (grandson), Shri Chintu Gulati (grandson) and Smt. Neelam Sablok to facilitate construction of a multi-storey commercial complex, which was funded by the husband of Smt. Neelam Sablok.
7. The respondents denied commission of any contempt alleging that the appellant had raised a frivolous claim after 20 years of the demise of her father; 10 years after the demise of her mother; and two years after the property was sold to the original defendant No. 7 (respondent No. 4 in the contempt petition as also herein) by a registered Sale Deed. Insofar as the Orders dated 02.04.2002 and 25.08.2003 are concerned, it was stated that the ex-parte Order granted on 02.04.2002 simply required the parties to maintain status quo qua the possession and title of the said property and further restrained alienation, transfer or creating third-party interest. In view of the Sale Deed, possession is stated to have already been passed on to the original defendant No. 7 and the Order dated 25.08.2003 had declined to go into the issue of the claim of possession of the

appellant without recording evidence. There was, thus, no restraint order against the demolition of certain walls, which was carried out. This argument found favour with learned Single Judge, who dismissed the contempt petition by the impugned Order dated 27.09.2004.

8. A further development, which has taken place, is that another set of interim applications was decided by learned Single Judge on 17.01.2006 by a detailed Order. This included IA No. 4283/2004 filed in CCP (OS) No. 90/2004 (which had already been dismissed by then) as also another application filed by the appellant under Order XXXIX Rules 1 and 2 of the said Code being IA No. 9942/2003. One further application considered was filed by the original defendant No. 7 seeking vacation and modification of an Order dated 16.02.2005 passed on IA No. 1181/2005 in CCP (OS) No. 90/2004. The Order dated 16.02.2005 was passed post-dismissal of the contempt petition restraining the defendants from carrying on any construction in the suit property. The appellant also claimed at that stage of time that IA No. 4283/2004 seeking sealing of the property and the contempt petition was pending, which also required orders to be passed. Learned Single Judge noticed that the Order dated 25.08.2003 clearly held that whether the appellant was in possession of the property or not could not be decided without recording evidence and only restrained further transfer by the original defendant No. 7 without permission of court. The dismissal of the contempt petition (which is assailed in the present appeal) was also noticed. Learned Single Judge concluded that while dismissing the contempt petition on

25.08.2003, it had been noticed that no specific order has been passed against the original defendant No. 7 restraining carrying out any further construction. In view of dismissal of the contempt petition, the interim applications filed in that contempt petition were also dismissed. Learned Single Judge after discussing the provisions of Section 44 of The Transfer of Property Act, 1881 and Section 4 of The Partition Act, 1893 qua the issue of keeping away strangers, who may purchase undivided shares of co-sharers, found against the appellant as the entire house had been sold to the original defendant No. 7. The house was not even a dwelling house in the sense that a part of it was sold to some other persons by an earlier Sale Deed dated 16.06.1997. Various applications filed by the appellant were dismissed and the original defendant No. 7 was permitted to construct.

9. This Order was assailed in FAO (OS) No. 211/2006. The appeal was disposed of on 25.07.2006 specifically permitting the original defendant No. 7 to continue construction with the direction that in case the appellant succeeds in the suit, the entire construction made by the original defendant No. 7 would abide by the directions in the decree to be passed in the suit and the construction would not give any right or special equity in favour of the original defendant No. 7. We are informed by learned counsel for respondents No. 1 to 3 (no counsel appeared for respondent No. 4, who was the original defendant No. 7) that the construction has been completed and the property is occupied by the original defendant No. 7 / respondent No. 4 herein.
10. We set out these detailed facts pre and post contempt petition as

well as the appeal as they are material for determining the controversy in question.

11. On consideration of the matter, we find that the Orders passed by the learned Single Judge on 25.08.2003 confirming the injunction order was restrictive in its nature only qua a further transfer / sale by the original defendant No. 7. In fact, the original defendant No. 7 was permitted to transfer title and possession of the property with prior permission of the Court. The subsequent endeavours by the appellant to prevent construction by the original defendant No. 7 also failed right up to the Division Bench. What weighed with learned Single Judge while passing the impugned Order dated 27.09.2004 was that no status quo order had been passed qua construction on the property, but only maintenance of status quo in respect of the title and possession of the premises was directed. Such an order was also passed without the Court being informed of the registered Sale Deed already entered into two years' prior to the suit transferring title to the original defendant No. 7.
12. Leaned counsel for the appellant strongly relied upon the observations of the Supreme Court in Satyabrata Biswas & Ors. v. Kalyan Kumar Kisku & Ors., AIR 1994 SC 1837 while analyzing what was meant by a status quo order. We reproduce the relevant paras as under:

“25. In Wharton's Law Lexicon 14th Edition at page 951 Status Quo has been defined as meaning:

“The existing state of things at any given date; e.g., Status quo ante bellum, the state of things before the war.”

26. According to Black's Law Dictionary 6th Edition the relevant passage occurs:

“The existing state of things at any given date. Status quo ante bellum the state of things before the law. "Status quo" to be preserved by a preliminary injunction is the last actual, peaceable, uncontested status which preceded the pending controversy.”

27. This Court in Bharat Coking Coal Ltd. v. State of Bihar, 1987 Supp SCC 394 at 398 : (AIR 1988 SC 127 at p. 129 para 5) stated thus:

“According to the ordinary legal connotation, the term 'status quo' implies the existing state of things at any given point of time.””

It is, thus, the plea of learned counsel for the appellant that the existent state of affairs had to continue till a given point of time, which would encompass not tampering with the construction.

13. We find some merit in this plea of learned counsel for the appellant and it would have been advisable for the original defendant No. 7 to move the Court for varying the construction thereon even though there was a restrictive injunction order. However, we cannot simultaneously lose sight of the fact that any additional relief qua these aspects was not granted to the appellant while confirming the Order on 25.08.2003 and the incident which has led to contempt proceedings is post that date. Despite the incident, on a conspectus of the overall facts, learned Single Judge found that the original defendant No. 7 should not be restrained from carrying out further construction and that Order dated 17.01.2006 received the imprimatur of the Division Bench on 25.07.2006. We are, thus, not inclined to hold that the

original defendant No. 7 (i.e., respondent No. 4 in the contempt petition as also herein) is guilty of willfully violating the interim Orders passed by this Court and the interest of the appellant are protected in terms of the Orders of the Division Bench dated 25.07.2006 passed in FAO (OS) No. 211/2006. We may notice that during the course of arguments, learned counsel for the appellant stated that he was really pressing the appeal only against respondent No. 4 herein.

14. In the end, we may also notice one additional fact arising from the mis-description of the application of the appellant as CCP (OS) even though he describes it as an application under Order XXXIX Rule 2A read with Section 151 of the said Code. This has some ramification as, if the contempt petition is dismissed, no appeal would be maintainable before this Court in view of the judgment of the Supreme Court in Baradakanta Mishra v. Mr. Justice Gatikrushna Misra, Chief Justice of the Orissa High Court, (1975) 3 SCC 535 and Midnapore Peoples' Coop. Bank Ltd. & Ors. v. Chunilal Nanda & Ors., (2006) 5 SCC 399. However, learned counsel for the appellant submitted that the application was filed under Order XXXIX Rule 2A read with Section 151 of the said Code and not as a contempt petition as per the description and an Order passed on an application under Order XXXIX Rule 2A read with Section 151 of the said Code is appealable in view of the provisions of Order XLIII Rule 1(r) of the said Code. Thus, he claims that a mis-description should not block the remedy for the appellant.
15. We may only notice that it is the appellant, who herself styled the application as CCP (OS), though the heading showed that it

was an application made under Order XXXIX Rule 2A read with Section 151 of the said Code. The fault lay at the door of the appellant. However, we are not inclined to take a technical view of the matter as though styled as CCP (OS), the petition is under Order XXXIX Rule 2A read with Section 151 of the said Code and even the prayers are made accordingly. Thus, we have considered the appeal on merits.

16. We may add in the aforesaid context that learned counsel for either of the parties did not dispute the maintainability of the appeal from an order dismissing an application under Order XXXIX Rule 2A of the said Code in view of the provisions of Order XLIII Rule 1(r) of the said Code, which reads as under:

“ORDER XLIII. APPEALS FROM ORDERS

1. Appeals from orders

(r) an order under Rule 1, Rule 2, Rule 2A, Rule 4 or Rule 10 of Order XXXIX;”

However, on examination of this matter ourselves, we find that there appears to be a conflict of view qua this issue. A learned Single Judge of the Punjab and Haryana High Court in Rajinder Kaur v. Sukhbir Singh, 2002 Civil CC 125 = MANU/PH/1830/2001 has held that there is no limitation whatsoever in the aforesaid Rule as to the nature of the order passed under this Rule. Thus, a restrictive meaning cannot be given that an appeal would not lie if the application is dismissed. On the other hand, learned Single Judge of the Gauhati High Court in Shri Banamali Dey v. Shri Satyendra Chanda & Ors., (1990) 2 GLR 408 = MANU/GH/0164/1990 has held that an order passed by the Court holding there was no disobedience or

breach of injunction granted by it is not an order within the meaning of Rule 2A and, thus, the question of passing an order under Rule 2A will arise only in a case where on consideration of the information received by it, the Court is satisfied that there is disobedience or breach of injunction granted by it. The learned Judge concluded that an order refusing to take action under Rule 2A on the ground that there was no disobedience or breach of injunction cannot be said to be an order under Rule 2A and, thus, no appeal would be maintainable against such an order under clause (r) of Rule 1 of Order XLIII of the said Code.

17. We find that there is something to be said about the view of the Gauhati High Court, but then a Division Bench of this Court in The Bombay Metal Works (P) Ltd. v. Tara Singh & Ors., ILR (2006) I Delhi 840 has held that appeal would be maintainable from an order dismissing the application under Order XXXIX Rule 2A of the said Code. We may notice that the aforesaid two judgments (of the Gauhati High Court and the Punjab and Haryana High Court) have not been discussed in this case and the perspective expressed by the Gauhati High Court has also not been examined. The application filed in The Bombay Metal Works (P) Ltd.'s case (supra) was actually under Sections 2(a), 11 and 12 of the Contempt of Courts Act, 1971 and the learned Single Judge absolved the respondents from notice of contempt. An appeal was filed under Section 19 of the Contempt of Courts Act, which was pleaded to be by the respondents as not maintainable in view of the settled legal position. The appellants pleaded that the contempt application filed for disobedience of the interim orders purported to have been filed was actually

under Order XXXIX Rule 2A of the said Code and a wrong provision was cited. The appeal was, thus, treated as FAO (OS) and while discussing this aspect, it was observed that the appeal would be maintainable.

18. However, since neither of the counsels canvassed or assisted us in this behalf, we are not inclined to go into this question any further leaving the question at large.
19. We, thus, do not completely agree with the basis of the conclusion of learned Single Judge in the impugned Order dated 27.09.2004, but do not deem it appropriate to interfere with the dismissal order of that application for the reasons recorded aforesaid and the rights and obligations of the parties would be determined in the suit, which has unfortunately taken large number of years, issues having been framed on 14.11.2003 and the first witness of the plaintiff PW-1 having entered the witness box in 2004. The suit is at the stage of rebuttal evidence fixed on 31.1.2012 before the Ld. Joint Registrar.
20. The appeal is accordingly dismissed leaving the parties to bear their own costs.

SANJAY KISHAN KAUL, J.

JANUARY 30, 2012
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RAJIV SHAKDHER, J.