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THE HIGH COURT OF DELHI AT NEW DELHI

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Judgment Delivered on: 25. 07.2012

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CONT.CAS(C) 227/2011

ANURADHA SHARMA

..... Petitioner

Vs

DISTRICT NAZIR, TIS HAZARI COURTS & ORS. Respondents

Advocates who appeared in this case:

For the Petitioner : Mr Kanwal Chaudhary, Adv.

For the Respondent: Ms Latika Choudhery, Adv.

CORAM :-

HON'BLE MR JUSTICE RAJIV SHAKDHER

RAJIV SHAKDHER, J

1. The present contempt petition is directed against the officers of the district court and the Additional District Judge (ADJ) of the district court posted at the relevant time at Tis Hazari, Delhi. Respondent no. 1 is the District Nazir, while respondent no. 2 is Sh. Rajender Kr. Shastri, that is, the ADJ, pursuant to whose orders, the present contempt petition came to be filed.

2. At the outset, it deserves to be recorded that the present contempt proceedings came to be filed in circumstances, which could have been best avoided, had the officers of the District Court and respondent no. 2 paid more attention to detail, and dealt with, the case of the petitioner with alacrity and sensitivity. The absence of these attributes in the officers concerned is quite demonstrable from brief facts, which I propose to set out hereinbelow:-

3. The plaintiff filed a suit for partition. The petitioner, who was the plaintiff in the suit for partition, obtained a preliminary decree for partition on

22.09.2009, qua property bearing no. A-1/365, Janakpuri, New Delhi-110058 (hereinafter referred to as the said property). The defendant in the suit was, her husband.

4. It is obvious that these proceedings appear to have been instituted because of marital discord. The petitioner, along with her two minor children, appears to be on one side of the marital divide, while the husband is on the other side. Pursuant to the preliminary decree having been passed on 22.09.2009, respondent no. 2, i.e., the learned ADJ vide order dated 15.10.2009 appointed a local commissioner to effect sale of the said property as, parties had not been able to arrive at an agreement for partitioning the property by metes and bounds. It appears that the mode and manner of public auction delineated in order dated 15.10.2009 was deficient and therefore, upon an application being moved by the petitioner, the terms of the auction were amended. Among other aspects, the date of auction was also postponed from 11.04.2010 to 15.05.2010. These changes were brought about vide order dated 06.04.2010, passed by respondent no. 2.

5. It is not in dispute that the property in issue, was sold for a sum of Rs 2.25 crores to the defendant, i.e., the husband of the petitioner. The defendant deposited 50% of the said amount in court, being the share of the petitioner.

5.1 From the order sheets placed on record it is not clear as to when the said sum of money was deposited. The order sheet of the District Court dated 10.09.2010, records the stand of the defendant taken in the District Court that he had deposited the said sum on 31.05.2010. However, the order sheet dated 05.04.2011 passed by this court in the captioned contempt petition seems to indicate that the said amount was deposited on 24.07.2010. This position is also reflected in the enquiry report, generated pursuant to order of this court; to which I will make a reference as I proceed with the narrative. Suffice it to

say, in these circumstances, I will take the latter date to be correct, as the said orders were passed in the presence of the counsel for the petitioner.

5.2 Importantly, by order dated 10.09.2010, while recording the fact that the defendant had complied with the terms of auction by depositing only 50% of the auctioned amount, which was the share of the petitioner; the court directed the defendant to deposit the requisite court fee within two weeks from the said date, and that, on the said deposit being made, a sale certificate be issued in favour of the said defendant.

5.3 What is noticeable here is that respondent no. 2 did not direct the release of money straight away to the petitioner, i.e., the plaintiff in the suit, which in my view, in the normal circumstance, he should have proceeded to do, that is, order straight away release of money, without having the petitioner, i.e., the plaintiff to move an application for withdrawal of her share deposited in court. This in my view was the first mistake, which was committed by respondent no. 2.

6. Notwithstanding the aforesaid state of affairs, the plaintiff filed an application, on 28.09.2010, to secure permission of the court, to withdraw her share, equivalent to Rs. 1,12,50,000/-, which lay deposited in court. On this application, respondent no. 2 passed an order on 01.11.2010, after a gap of nearly one (1) month. By this order, respondent no. 2, directed two things: firstly, for release of the amount deposited by the defendant in favour of the petitioner/plaintiff; and secondly, permitted the local commissioner to withdraw the fee payable to him by the petitioner, i.e., the plaintiff.

7. One would have thought that the tyranny of the petitioner would have come to an end. But that was not to happen as a matter of fact the woes of the petitioner/plaintiff seem to have commenced hereon, as the money deposited was not released to the petitioner despite order dated 01.11.2010. The petitioner, out of exasperation, filed a second application on 06.01.2011

with respondent no. 2, wherein she averred that she had made a payment of Rs 10,000/- towards the fee of the local commissioner, and that, she had not been able to withdraw the deposited amount despite orders of the court, due to administrative entanglement. The administrative glitch to which she referred was that the suit file had been retained by the Ahlmad/Nazir attached to respondent no. 2's court; an information which was passed on to her, on her making specific inquiries with respondent no. 1, i.e., the District Nazir. It is for this reason the petitioner averred that the refund voucher was not prepared for release of money in her favour. Accordingly, in the said application the prayer was made for a direction to be issued to the Ahlmad/Nazir to release the amount of Rs 1,12,50,000/- alongwith accrued interest thereon, in favour of the plaintiff.

7.1 This application culminated in respondent no. 2 passing a laconic order, which as a matter of fact makes no sense when seen in the light of the facts obtaining in the case and the prayers made in the application. The order is dated 28.01.2011 and reads as follows:

“Present: Sh. Gaurav Sharma and Ms Gunjan Chowkri,
Advocate for applicant/plaintiff.

It is submitted by Ld. Counsels that the amount which fell to the share of applicant could not be released despite order of this court as the case file was not sent by the Ahlmad. After disposing of this case on 1.11.10, case file was ordered to be consigned to record room but it has not been consigned till now.

Ahlmad is directed to consign it today itself and to report this court till 4 p.m.

Application is thus disposed of.”

(emphasis is mine)

7.2 Despite the fact that respondent no. 2 had asked the Ahlmad to report to him at 4.00 p.m., what surprises me is that the officer concerned made no inquiries as to what steps, if any, had been taken for release of money to the petitioner. The order dated 28.01.2011 was obviously ineffectual, and thus,

resulted in the petitioner being caught in the red tape of administrative quagmire.

8. The petitioner obviously, having by now reached her wits end, moved a third application dated 04.02.2011. This time around the petitioner sought orders for the file being summoned from the record room, and thereafter, being remitted to respondent no. 1/District Nazir. Once again, an attendant prayer was made, for issuance of appropriate directions to respondent no. 1/District Nazir for release of the deposited amount alongwith the accrued interest.

8.1 This application came to be disposed of on 09.02.2011 when, respondent no. 2 directed for the second time for release of money in favour of the petitioner, with an additional direction to respondent no. 1/District Nazir, to prepare a voucher in the name of petitioner/plaintiff.

9. There was obviously no movement in that direction despite orders for release of money in favour of the petitioner and preparation of a voucher in her favour by respondent no. 1 and, therefore, the petitioner having been left with little choice in the matter, proceeded to file the captioned contempt petition in this court on 23.03.2011.

10. The captioned petition came up before this court for the first time on 28.03.2011 when notice was issued to respondent no. 1. The notice was made returnable on 05.04.2011. By a detailed order my predecessor recorded, with anguish, the fact that even though the petitioner's share was deposited with the district court on 24.07.2010, she had not seen the colour of money. It is also recorded in the said order that the report filed in this court by respondent no. 2 was absolutely "unsatisfactory" and was reflective of the failure of respondent no. 2 to exercise superintendence over his own staff. Though the court declined to issue notice to respondent no. 2, it deemed it appropriate that a copy of the petition with the order passed by this court and

also the report received from respondent no. 2 be placed before the ACR Committee of respondent no. 2. Respondent no. 1 was directed in the meanwhile to file a reply to the petition. Importantly, on the said date, i.e., 05.04.2011 the petitioner was handed over a payment voucher for a sum of Rs 1,12,50,000/-, which was brought to court by respondent no. 1/District Nazir, who was present in court. Thereafter, the matter was listed before court for completion of pleadings. The matter was taken up for hearing once again on 27.02.2012 when, the court issued broadly the following directions:

- (i) The Principal District Judge was directed to file a status report as to whether the amount had earned any interest, while it lay deposited in the treasury.
- (ii) Whether the amount was invested in a fixed deposit. If so, the period for which it was invested and the amount of interest it had earned, while it was invested in a fixed deposit.
- (iii) The Principal District Judge was directed to hold a detailed inquiry and to fix responsibility of the erring officials.
- (iv) The Principal District Judge was directed to file a status report within one month of the order and upon fixing of responsibility post an inquiry, to initiate disciplinary proceedings against the erring officials.

11. Since then the District and Session Judge, Ms Sunita Gupta has submitted an inquiry report, which was placed before her by Sh. Mukesh Kumar Gupta, learned ADJ - 06/Central Delhi. After delving into the facts which have been broadly referred to by me hereinabove, Sh. Mukesh Kumar Gupta in his report has come to the following conclusions:

“E). **CONCLUSIONS**

From the facts and circumstances discussed above, the following factual conclusions can be drawn:

- i). Though the amount was deposited on 24.07.2010, the application for withdrawal of the amount was moved

for the first time by the applicant Ms Anuradha Sharma on 28.09.2010.

- ii). Though the release of amount was ordered by the Ld. ADJ on 01.11.2010, however, specific directions for sending the file to the District Nazir have not been given.
- iii). The District Nazir has not factually derelicted from his duties or willfully neglected or delayed the issuance of the refund/release voucher as he could not have done the same in the absence of the necessary documents and the judicial file.
- iv). The Ahlmad of the court of the Ld. ADJ has not faulted in not sending the file to District Nazir since there were no specific directions for the same and has rather complied with the directions of Ld. ADJ by consigning the same to the record room as ordered in the order dated 01.11.2010 as passed by Ld. ADJ.
- v). The record room incharge could not have send the file in the absence of any robkar for sending the same, either to the court or to the District Nazir directly and as such no responsibility or fault can be fixed on the record room incharge.

Thus, the delay in preparation of the refund voucher between the period 01.11.2010 (the date on which the order was made for the first time) and 02.04.2011 (the date on which the voucher was prepared), cannot be attributed either to the District Nazir or to the Ahlmad of the court of Ld. ADJ, or to the Record Room Incharge as, all these officials were neither negligent nor have committed willful disobedience of orders of the Ld. ADJ concerned or have derelicted in performance of their duties. The same can at best be attributed to the regular procedural delays, non-exercise of due diligence by the applicant, ignorance of procedure for deposit and release, limitations of infrastructure, absence of co-ordination and normal systemic laches.”

12. The matter was posted before me for hearing on 25.07.2012. After hearing Mr Kanwal Choudhary for the petitioner and Ms Latika Chaudhary, on behalf of the respondents and on perusal of the record, I have come to the

conclusion that the observations of Sh. Mukesh Kr. Gupta, learned ADJ to the effect that the delay in release of money to the petitioner could be: *"attributed to the regular procedural delay, non-exercise of due diligence by the applicant, ignorance of procedure for deposit & release, limitations of infrastructure, absence of co-ordination and normal systemic laches."* – cannot be accepted.

12.1 The reason for this is clearly that despite three applications having been moved by the petitioner one after the other, there was complete inertia not only on the part of respondent no. 2, but the officer working immediately below him, i.e., the Ahlmad/Nazir as well as respondent no. 1/District Nazir and the officers in his department.

12.2 The first error, which was committed in this case was, on 10.09.2010 when respondent no. 2 disposed of the application of the defendant in the suit, holding thereby that he had not violated the conditions of the auction by depositing only the share of the petitioner in court. At this very stage the respondent no. 2 could have directed the release of money to the petitioner. Simultaneously, respondent no. 2 could have directed the officer, i.e., the Ahlmad attached to him, as also the District Nazir, to take consequential steps for release of money to the petitioner. The non-release of money led to the petitioner filing an application for release of money on 28.09.2010. This application was disposed of, as indicated above, by an order dated 01.11.2010, wherein respondent no. 2, after a little over one month, directed the release of money to the defendant. However, no consequential direction was issued either to his Ahlmad or respondent no. 1/ District Nazir. This resulted in the petitioner filing a second application seeking a specific prayer for issuance of direction to the Ahlmad and/or respondent no. 1/District Nazir for release of money alongwith accrued interest.

12.2 Respondent no. 2 committed his second mistake by passing an order

dated 28.01.2011, on the second application of the petitioner, which made no sense in the context of the prayers made in the said application. The order has already been extracted by me hereinabove. Instead of inquiring closely into the matter as to why his order dated 01.11.2010 had not been complied with, respondent no. 2 observed that he had directed the case file to be consigned to the record and since the needful had not been done by the Ahlmad, he was directed to consign the case to the record, and report to him, in respect of the same, on the same day at 4.00 p.m. The petitioner's grievance remained completely unaddressed.

12.3 Consequently, petitioner moved respondent no. 2 once again for the third time. The prayers in this application were to rectify the damage done by order dated 28.01.2011 by seeking orders for summoning the suit file from the record room, and thereafter, having it remitted to respondent no. 1/District Nazir. Specific prayer was also made in this application for issuance of direction to respondent no. 1 for release of the money deposited in court. Respondent no. 2 disposed of this application vide order dated 09.02.2011 whereby he directed respondent no. 1/District Nazir to prepare a voucher in the name of the petitioner/ applicant.

13. Such was the sloth displayed by the officer/ahlmad attached to respondent no. 2 that he did not deem it fit to place the file before respondent no. 1/District Nazir to give effect to the orders of respondent no. 2. Respondent no. 2 also, on the other hand, did not deem it fit to post the matter on another date to ensure that his orders were complied with, so that the petitioner obtained release of money from respondent no. 1/the District Nazir.

13.1 It is only after a contempt petition was filed in this court and notice was issued on 28.03.2011 that evidently a voucher for refund was drawn up by respondent no. 1/District Nazir and handed over to the petitioner in court on 05.04.2011. The delay which occurred between the date of passing of

order dated 09.02.2011 to 02.04.2011 is sought to be explained by respondent no. 1/District Nazir, as per the findings recorded in the report of Sh. Mukesh Kr. Gupta, the learned ADJ, in the following manner:

“The order was taken by the plaintiff on 11.02.2011 from the court and was shown for the first time to the District Nazir on 28.02.2011 where the official concerned in the District Nazarat made a noting at the base of the order sheet that suit file is required for preparation of voucher as also identification of the claimant on 28.02.2011 itself. The amount somehow could not be released by the District Nazir despite application of the plaintiff Anruadha Sharma which was also decided by the Id. ADJ, Sh. Rajender Kumar Shastri on 04.03.2011. The amount could only be released on 05.04.2011 and the voucher for the same was handed over by the District Nazir to the petitioner before the Hon’ble High Court on 05.04.2012 itself.”

14. The aforesaid explanation clearly shows that the respondent no. 1 for the first time saw the order of 09.02.2011 after a gap of nearly 19 days, i.e., on 28.02.2011. The reasons as to why the said order was not transmitted to respondent no. 1/Distt. Nazir on the same day or the day after, is not explained. It is also evident that there was perhaps a fourth application moved by the petitioner on which orders were passed by respondent no. 2 on 04.03.2011. Despite which, respondent no. 1 apparently failed to release the amount.

14.1 The explanation which seems to have been accepted by the inquiry officer/ Mukesh Kr. Gupta, ADJ is that despite a noting by respondent no. 1, on 28.02.2011 that the suit file would be required for preparation of voucher, it was not sent, and that, the file finally reached respondent no. 1 only on 01.04.2011. And that on the file having been received, the very next day, that is, on 02.04.2011, respondent no. 1/District Nazir prepared the voucher.

14.2 There is no explanation as to why there was no follow up by respondent no. 1's office with the office of respondent no.1/Nazir as to the

reason why the suit file had not been sent to him despite specific orders of respondent no. 2 dated 09.02.2011 directing him to prepare a voucher in favour of the petitioner/plaintiff so that the money could be released to her.

14.3 The acceptance of the explanation of the Ahlmad that he did not send the file to respondent no. 1/the District Nazir cannot pass muster, in view of the fact that orders of the court cannot be read in a wooden manner, i.e., if there was a missing procedural link in the order of 09.02.2011, which required respondent no. 2 to issue direction to his officer/Ahlmad to enable him to despatch the file to respondent no. 1 he should have placed it before respondent no. 2 for obtaining orders in that regard. Failure to do so, in my view, amounted to dereliction of duty.

14.4 Similarly, failure on the part of respondent no. 1 to ensure that procedural impediments were taken care of, so that specific direction could be issued to him for preparation of voucher, ought to have been triggered.

14.5 It is quite evident that both the officer attached to respondent no.2 and respondent no. 1/District Nazir adopted an approach of complete non chalance, resulting in the petitioner running from pillar to post to obtain release of money which had been deposited in court as far back as on 24.07.2010.

15. The failure of respondent no. 2 to discharge his duties, as is expected of a judicial officer, are quite evident in the facts of the present case. Respondent no. 2 displayed complete insensitivity to the woes of the litigant. It was incumbent on respondent no. 2 to ensure that his orders were effectively complied with, at least after the petitioner approached him for the second time with a prayer for release of money. He ought to have posted the matter before him for compliance. Respondent no. 2 failed to take any steps in this regard. Therefore, in my view, the conclusion arrived at by Sh. Mukesh Kr. Gupta, learned ADJ does not commensurate with the facts

adduced by him during the course of the inquiry.

16. In my view, respondent no. 2, the officer attached to him the Ahlmad and the respondent no. 1/the District Nazir, were derelict in discharging their respective duties. Since I have to determine as to whether the petitioner should or should not be granted interest, an aspect which I will proceed to consider hereafter, the determination of the issue, with regard to the dereliction of the duties by the respondent no.2, Ahlmad and District Nazir was therefore incumbent. Having regard to the fact that I have differed with the conclusion arrived at by the Inquiry Officer, the District and Sessions Judge, Tis Hazari, Delhi, after taking into account the Inquiry report and the observations made by me hereinabove, shall proceed with departmental action against the District Nazir and the Ahlmad in accordance with the applicable procedure. Insofar as Respondent No.2 is concerned, a copy of this order should be placed in his Annual confidential report. The ACR Committee of this Court pertaining to respondent no.2 should also be furnished a copy of this order.

17. In so far as the petitioner is concerned her grievance can be redressed, in my view, only by the court compensating her for loss of interest which she could have earned but for the officers of the District Court not being derelict in the discharge of their respective duties. This aspect attains importance as the enquiry has revealed that neither the money was invested in a fixed deposit nor did it earn any interest, which it lay deposited in the treasury.

17.1 The period of delay in release of money by the District Court is of eight (8) months and eleven (11) days. Therefore, the petitioner is granted simple interest at the rate of 6% per annum for the said period on the sum of Rs 1,12,50,000/- per annum. This relief is premised on the rationale that, firstly no litigant can suffer by an act of court, and secondly, the court even in contempt jurisdiction, in a limited manner, has the power to reverse the

aggravation which takes places during the period the order of the court, in respect of which, contempt is initiated, lies unimplemented. The real value of money, having regard to the state of the economy, is depreciating each day. Therefore, the only manner in which this wrong can be reversed is by granting interest to the petitioner. [See following judgments where status quo ante was restored: *Delhi Development Authority vs. Skipper Construction Co. (P) Ltd.* (1996) 4 SCC 622; *C. Elumalai vs. A.G.L. Irudayaraj* (2009) 4 SCC 213; *Sita Ram Sahu vs. Smt. Lalpari Devi* 1991 Supp. (2) SCC 711 and *Chiranji Lal vs. Ajay Kumar Sood* (1997) 11 SCC 336]. This payment would be made to the petitioner within four weeks from today. The ultimate burden will of course be on the State, as this amount would have to be included in the Court budget.

18. As to whether the loss occasioned to the State on account of grant of interest by me to the Petitioner ought to be recovered from the Ahlmad and/or the District Nazir is an issue, which can be addressed in the departmental proceedings by the concerned authority; in addition to any other action it deems fit.

19. The order be communicated to the District & Session Judge, Tis Hazari, Delhi for due compliance. A copy of the order be also despatched to the petitioner, without process fee.

RAJIV SHAKDHER, J

JULY 25, 2012

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