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

+ **Date of Decision: 13.07.2012**

% **FAO(OS) 300/2012 & C.M. Nos. 11689-91/2012**

SH. JORAWAR SINGH Appellant
Through: Mr. P.P. Khurana, Senior Advocate
with Ms. Anu Bagai, Advocates.

versus

SHRI RAJESH JAIN AND OTHERS Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

HON'BLE MR. JUSTICE VIPIN SANGHI

VIPIN SANGHI, J. (Oral)

1. The appellant Sh. Jorawar Singh assails the common order dated 01.06.2012 passed by the learned Single Judge in I.A. Nos. 2122/2007, 2906/2008 and 11879/2008 in CS(OS) No. 1565/2006 filed by the plaintiff/respondent No. 1 herein, whereby the learned Single Judge has disposed of these applications preferred by respondent No. 1 primarily under Order XXXIX Rule 2A read with Section 151 CPC alleging disobedience of the orders of injunction passed by the learned Single Judge in the aforesaid suit.

2. The factual background may first be stated. A suit under Order XXXVII CPC was preferred by respondent No. 1 on 08.08.2006 against the sole defendant in the suit, who is respondent No. 2. The suit was based on a Promissory Note that the plaintiff claims had been

executed, in the sum of Rs.1 Crore 50 Lakhs. The case of the plaintiff/respondent No. 1 herein was that the defendant/respondent No. 2 herein had undertaken to pay to the plaintiff a sum of Rs.1 Crore 50 Lakhs within two years with the further assurance that he would hand over possession of the property of M/s Laxmi Cable Company situated at No.A-6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi to the plaintiff/respondent No. 1 in the event of default. Along with the suit, respondent No. 1 moved I.A. No. 8892/2006 to seek an interim injunction. This application was taken up on 17.08.2006 by the Court and an injunction order was passed restraining the defendant from selling, alienating, transferring or parting with the property bearing No.A-6/1, Jhilmil Industrial Area, GT Road, Shahdara, Delhi, till further orders. The said interim order of injunction was served on the defendant in the suit on 18.08.2006.

3. After the defendant entered appearance through counsel, the plaintiff/respondent No. 1 filed an application for issuance of summons for judgment being I.A. No. 12608/2006. This application was listed before the Court on 15.11.2006. On account of non-appearance on behalf of the plaintiff, the suit was dismissed in default by the Court on 15.11.2006. The plaintiff, on the very next date, moved an application under Order IX Rule 4 CPC being I.A. No. 12805/2006 for setting aside the order of dismissal dated 15.11.2006 and for restoration of the suit. The restoration application was taken up for hearing on 20.11.2006.

The Court restored the suit while recalling the order dated 15.11.2006. The interim order of injunction, as aforesaid, was also restored. On I.A. No. 12608/2006, summons for judgment were directed to be issued to the defendant.

4. On 16.11.2006, i.e. one day after the dismissal of the suit in default and the consequent vacation of the interim injunction order, defendant in the suit and one Mr. Rana Pratap Sehgal, as partners of M/s Lakshmi Cable Co., sought to deal with the aforesaid property by entering into an agreement to sell in respect thereof. Pertinently, this transaction was entered into by the defendant with M/s Alka Builders Private Limited (respondent No. 6 herein) in which Mr. Atul Mahendru (respondent No. 3), the brother-in-law of the defendant No. 1 was a Director. M/s Lakshmi Cable Co. appointed M/s Alka Builders Private Limited and Mr. Atul Mahendru as General/ Special Attorney/ Attorneys for the completion of the sale of the property, conferring full powers for administration of the property. We may note that though the agreement described the property sought to be dealt with as A-6, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi (and not A-6/1), there is no dispute that it is one and the same property in respect whereof the injunction was sought by the Plaintiff, and granted by the Court. This is evident from the order passed in I.A. No. 2122/2007, 2906/2008 and 11879/2008 in the suit on 02.03.2009. The Court, inter alia, recorded in its said order as follows:

“ Learned counsel for the non-applicants have also contended that the property in respect of which an agreement to sell has been executed is A-6, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi and not A-6/1.

This is not disputed that the defendant does not have rights in the property No. A-6/1 as alleged by the other non-applicants. Therefore, the order by which the defendant was restrained from selling or parting with the property of the defendant was in respect of the property of the defendant which is A-6, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi.

Therefore, the other non-applicants cannot take shelter under the plea that the interim order is not in respect of the property in respect of which an agreement to sell has been executed by the defendant on 16th November, 2006 in favour of M/s Alka Builders Pvt. Ltd.

Therefore, in the facts and circumstances, the non-applicants are directed to maintain status quo in respect of rights and possession of the property bearing No. A-6, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi, till further orders. The presence of the non-applicants/contemnors is dispensed with till further orders.”

5. Apparently, the agreement to sell in favour of respondent No.6 was a collusive exercise and was a sham transaction. The agreement to sell recorded that vacant physical possession of the property had been delivered to the vendee at the time of execution of the agreement and that the vendee confirms having taken possession thereof when, factually, this was not the correct position as demonstrated by the pleadings of the parties before the Court.

6. When the plaintiff learnt of the said development, he moved I.A. No. 2122/2007 under Order XXXIX Rule 2A CPC on 19.02.2007 for

initiation of contempt proceedings against the defendant and the Directors of M/s Alka Builders Private Limited, in particular, Mr. Atul Mahendru. The plaintiff also sought an injunction restraining the latter from dealing with the property in question. On 23.03.2007 this application was taken up for consideration by the Court and the Court restrained the defendant from giving effect to the agreement to sell dated 16.11.2006. The defendant was directed to bring the order of injunction passed on 17.08.2006 to the notice of his attorney forthwith, so that the property cannot change hands and the subject matter of the suit is preserved.

7. The Defendant/Respondent No. 2 herein, however, refused to receive the copy of the aforesaid order on more than one occasion. A copy of the order was also sent by the Plaintiff to M/s Alka Builders Private Limited and Mr. Atul Mahendru on 24.02.2007.

8. The defendant, thereafter, filed an application bearing I.A. No. 3593/2007 under Order XXXVII Rule 5 CPC, seeking leave to defend the suit. The defendant, in said application and the affidavit filed in support thereof, stated that the factory of M/s Lakshmi Cable Co. was situated at property bearing No. A-6, Jhilmil Industrial Area; and that it is engaged in the business of manufacturing wires and cables from its factory aforesaid, and that the same exists – meaning thereby that the

possession of the said premises had not been parted with as on date of filing of the application i.e. 19.03.2007.

9. While I.A. No. 2122/2007 under Order 39 Rule 2A CPC was pending adjudication, another application (Second one), being I.A. No. 2906/2008, under the same provision came to be filed by the plaintiff wherein the Appellant along with Respondent No. 2, 3 and 6 herein, were impleaded as respondents - on the ground that the possession of the property was likely to be delivered to the Appellant herein by the said Respondents, under a hidden transaction, in deliberate disobedience of the orders of the Court. Qua the appellant the specific averment in this application was that the other respondents/contemnors were in the process of again transacting the property, and possession of the property was likely to be delivered to the appellant in collusion with the Appellant, who is the owner of one half of the suit premises. It was averred that the appellant *"contacted the Applicant/Plaintiff and offered an amount which is less than the said amount. This clearly indicates that underlying transaction amongst Non-Applicants No. 1 to 4"*. A restraint was sought against the Appellant from taking over possession of the premises in question from the other respondents. Defendant/Respondent No. 2 herein, vide reply dated 06.05.2008 to the said application, took the stand that the possession of the property had not been parted with.

10. The plaintiff thereafter preferred another application (Third one), being I.A. No. 11879/2008, under Order 39 Rule 2A CPC, alongwith applicable provisions of the Contempt of Courts Act, 1971, wherein, apart from the Appellant and Respondent No. 2, 3 and 6 herein, Respondent No. 4, 5 and 7 were also alleged to be contemnors. It was alleged in the application that upon inspection of records of the Registrar of Companies, Ministry of Corporate Affairs, pertaining to Respondent No. 6 on 12.09.2008, it was revealed that Respondent No. 3, 4, and 5 herein had ceased to be directors of Respondent No. 6 M/s Alka Builders Private Limited, and that the Appellant and Respondent No. 7 had been inducted as Directors w.e.f. 29.02.2008. The record further revealed that the registered office of Respondent No. 6 had been shifted to A-6, Jhilmil Industrial Area, Delhi, with effect from 24.03.2008.

11. Defendant/ respondent no. 2 herein denied to have violated any orders of the Court by transferring the shareholding in respondent No. 6 company. Respondent No. 3 to 5 herein contended that change in the composition of the Company (Respondent No. 6 herein) did not result in any contemptuous act as the same did not amount to transfer of property. It was further contended that the restraint order dated 17.08.2006, in any case, had been passed only against the Defendant in the suit. The Appellant, Respondent No. 6 and 7 herein submitted that they were total strangers to the proceedings and had only taken

over the Company from its earlier Directors, which was not prohibited by any of the orders passed by the Court.

12. Ld. Single Judge vide order dated 02.03.2009, directed the non-applicants to maintain status quo in respect of the rights and possession of the property bearing A-6, Jhilmil Industrial Area, G.T. Road, Shahadara, Delhi, till further orders.

13. Respondent No. 6, through the Appellant, sought modification of the aforesaid order by an application under Section 151 CPC, being I.A. No. 14921/2009, on the ground that he was neither a party to the suit nor had anything to do with the plaintiff or the defendant. Thereafter, another application was preferred by the Appellant, Respondent No. 6 and Respondent No.7, wherein it was admitted that the property had subsequently come into their hands. However, the said application came to be withdrawn on 18.01.2012, and the said stand was sought to be purportedly clarified and corrected by another application, being I.A. No. 1518/2012.

14. So far as Respondent No. 2/defendant is concerned, the learned Single Judge in her detailed judgment has held that he has deliberately breached the order of injunction after it was restored on 20.11.2006, as also the order dated 23.02.2007, whereby he was restrained from giving effect to the agreement to sell dated 16.11.2006. The Court had, inter alia, directed Respondent No. 2 to bring the order of

injunction passed on 17.08.2006 to the notice of his attorney forthwith, so that the property does not change hands and, accordingly, the subject matter of the suit is preserved. Admittedly, Respondent No. 2 did not take steps in this regard. He sought to explain his conduct by casually stating that he did not communicate the order dated 23.02.2007 to his attorney by oversight. The learned Single Judge notes that the attorney, i.e. Respondent No. 3 and Respondent No. 2 are brothers-in-law and this plea was, therefore, rejected by the learned Single Judge and, in our view, rightly so. The Court also found and, in our view, rightly so that the Respondent No. 2 delivered actual physical vacant possession of the premises in question to M/s Alka Builders Private Limited/Respondent No. 6 of which the appellant and Smt. Arbinder Kaur/Respondent No. 7 had become shareholders. Pertinently, the appellant was already the owner of half portion of the property bearing No. A-6/1, Jhilmil Industrial Area, G.T. Road, Shahdara, Delhi. The registered office of Respondent No. 6 was shifted w.e.f. 24.03.2008 (i.e. after the said company had been taken over by the Appellant) from 551/2/1, Village Rajokari, New Delhi to A-6, Jhilmil Industrial Area, Delhi. Thus, despite the restoration of the initial interim order of injunction dated 17.08.2006 (which was to operate till further orders), on 20.11.2006 Respondent No. 2 had parted with possession of the premises in question to M/s Alka Builders Private Limited/Respondent No.6 after the appellant and Respondent No. 7

had taken over the shareholding of Respondent No.6 from its erstwhile shareholders and had also stepped in as directors of Respondent No.6.

15. In relation to, inter alia, the conduct of, and the role played by the appellant in violating the interim orders of the Court, the observations made by the learned Single Judge in the impugned order, which are based on the record, read as follows:

“48. Insofar as the respondents Nos.2 to 7 are concerned, though are not parties to the present suit, it is more than clear that they have aided and abetted the contumacious acts of the respondent No.1. The Court cannot help but observe that the Company, M/s. Alka Builders Pvt. Ltd. and the other respondents were being used as a cloak to hide the contumacious acts of the respondent No.1. This apart, the respondents Atul Mahendru and Jorawar Singh went to the extent of filing false affidavits in this Court in line with the false affidavits filed by the respondent No.1, which it is well-settled is contempt of the Court. This is evident from a perusal of the replies filed to IA No.2906/2008 by the respondent No.1 and by Atul Mahendru (the respondent No.2 in the said application) and Jorawar Singh (the respondent No.4 in the said application). In paragraph 11 of the said application, the plaintiff/petitioner averred that the defendant/respondent No.1 was in the process of vacating the premises in question and conveying the property in question to the respondent No.4 (Mr. Jorawar Singh). He asserted that the alleged transaction was a fraud being played upon the Court being a deliberate disobedience of the orders of the Court. In the reply filed by him, the defendant/ respondent No.1 categorically denied the averments of the plaintiff/petitioner that the respondent No.1 in collusion with others was in the process of conveying the property in question to the respondent No.4. He submitted that the plaintiff was trying to mislead the Court by expressing his “unfounded apprehension” and the assertions made by the plaintiff were a “sheer figment of imagination of the plaintiff”. The respondent Nos.2 and 4 Mr. Atul Mahendru and Mr. Jorawar Singh filed a similar reply. The reply of the respondent No.1 was filed on 6th

May, 2008, whereas the reply of the respondents Nos.2 and 4 was filed on 27th November, 2008, i.e., much after the date on which the physical possession of the registered office of the Company was transferred by the respondent No.1 to the respondent No.4, which, as stated above, was transferred on 24th March, 2008 (as per Form 18 from the record of the Registrar of Companies). This came to light only when the plaintiff inspected the records of the Registrar of Companies and moved IA No.11879/2008 also under Order XXXIX Rule 2A of the Code of Civil Procedure, along with documents relating to transfer of shareholding, etc."

16. After extracting the replies filed by, inter alia, the appellant to I.A. No. 2906/2008 the learned Single Judge observed:

"49. It is amply clear from the above replies filed on affidavit that the respondent No.1 along with respondent No.2 and respondent No.4 was bent upon misleading the Court and circumventing the course of justice by taking the false plea that nothing had transpired after the execution of the Agreement to Sell dated 16.11.2006, and that the application of the plaintiff was only an expression of his "unfounded apprehensions" and "a sheer figment of his imagination". This tendency of filing false affidavits in Court whether by a party or otherwise has been deprecated time and again on the ground that false affidavits have the tendency to interfere with the administration of justice which must be allowed to flow unhindered and unharmed otherwise, the majesty and dignity of the Court will suffer. If recourse to falsehood is taken with oblique motive as in the instant case, it becomes a matter of serious concern as the same would definitely prevent the Courts from discharging their legal duties as they are supposed to do. "

17. The learned Single Judge has taken note of various decisions of the Hon'ble Supreme Court and of this Court, wherein it has repeatedly been held that making false statement on affidavit with the intention of

inducing the Court not to pass any adverse orders or with a view to mislead the Court tantamounts to contempt of Court.

18. The learned Single Judge has held that the appellant deliberately and with oblique motive circumvented the Court's order by feigning ignorance of the same. The same shows scanty regard on their part for the orders of the Court. They had adopted all possible means to lower the dignity and majesty of the Court.

19. In the aforesaid background, the learned Single Judge, vide the Impugned order disposed off the three applications, being I.A. Nos. 2122/2007, 2906/2008 and 11879/2008, as aforesaid, holding the Appellant, Respondents No. 2 and Respondent No. 3 guilty of committing contempt of Court. Appellant, Respondent No. 2 and respondent No. 3 herein were sentenced to costs of Rs. 1 Lac each, to be deposited within a period of six weeks with the Registrar General of this Court, failing which they have been directed to undergo simple imprisonment for a period of 15 days each on that count. Upon deposit, if made, the amounts were directed to be transmitted to Delhi Legal Services Authority. It was declared that the third party rights created after 17.08.2006 shall be of no consequence and were set aside. It was directed that physical possession of the property shall be restored by the Appellant and Respondents No. 3 & 6 to respondent

No. 2, who was restrained from dealing with the property till the disposal of the suit.

20. The submission of learned counsel for the appellant is, firstly, that the appellant was not a party to the suit and was not aware of the injunction order passed in the suit against the respondent No. 2 herein. He submits that there was no injunction against respondent No. 6 company in respect of the suit premises and there was certainly no injunction against sale or purchase of the shareholding of the respondent No. 6 company by a third party. It is submitted that the appellant was not aware of any injunction order passed by the Court.

21. We are not impressed by this submission of the appellant. The learned Single Judge has exhaustively dealt with the said submission of the appellant. It has been taken note of that the appellant was already half owner and in possession of half share of the suit premises. Moreover, the admission made by the appellant in an earlier filed application, i.e. I.A. No. 1076/2012 to the effect that the premises in question had come into the hands of, inter alia, the appellant subsequent to the passing of the order dated 23.02.2007 was sought to be withdrawn. Thirdly, the reply filed by the respondent No. 2 to I.A. No. 2096/2008 (particularly to paragraph 11), coupled with the fact that the registered office of the respondent No. 6 company, after the same was taken over by, inter alia, the appellant, was changed w.e.f.

24.03.2008 to the suit premises clearly brought out the fact that the possession of the suit property had changed hands despite the injunction order operating and that the appellant was guilty of stating falsehood before the Court. Consequently, we do not find any merit in the aforesaid submission of learned counsel for the appellant and we confirm the finding of the learned Single Judge.

22. The next submission of learned counsel for the appellant is that the effective directions issued by the Court are not in consonance with Order XXXIX. It is argued that the appellant has been held to be guilty of criminal contempt. It is argued that if that were so, the learned Single Judge ought to have made a reference to a Division Bench of this Court to try the appellant. It is further submitted that the learned Single Judge has sentenced, inter alia, the appellant to pay Costs of Rs.1 Lakh whereas under Order XXXIX Rule 2A the Court is empowered, upon finding a person guilty of disobedience or breach of an interim order of injunction, to attach the property of such person and also empowers the Court to order that such person be detained in civil prison for a term not exceeding three months, unless in the meantime the Court directs his release. It is argued that the attachment made under Order XXXIX Rule 2A can remain in force for a period of not more than one year and if the disobedience or the breach continues the property attached may be sold and out of the proceeds the Court may award compensation to the injured party. It is

submitted that the Court, in the present case, instead directed deposit of Rs.1 Lakh, inter alia, by the appellant with the Registrar General of this Court within six weeks, failing which the appellant has been directed to undergo simple imprisonment for a period of fifteen days. The amount deposited is directed to be transferred to the Delhi Legal Services Authority. In this case the Court has not passed an order of attachment of the appellant's property, though the Court could have directed attachment of the appellant's property including the premises in question.

23. We do not find merit in the aforesaid submission of learned counsel for the appellant. The Court has not held the appellant guilty of committing criminal contempt of Court as defined in the Contempt of Courts Act, 1971. The appellant has been held as having deliberately and willfully connived with respondent No. 2 in breaching the order of injunction as restored on 20.11.2006, and the order dated 23.02.2007. The Court has also held the appellant guilty of contempt on account of filing knowingly false and misleading replies before the Court. In our view, the learned Single Judge while exercising the power vested in her to direct detention of the appellant in a civil prison has sought to show leniency by providing a leeway to the appellant, by depositing a sum of Rs.1 Lakh with the Registrar General of this Court, to be transferred to the Delhi Legal Services Authority. The Court could have, apart from attaching the appellant's property, also

directed detention of the appellant in civil prison for a term not exceeding three months. However, in the exercise of her discretion, the learned Single Judge considered it just and proper to order conditional detention of the appellant – the condition being if the appellant were to deposit the Costs of Rs.1 Lakh with the Registrar General of this Court, he would not be detained in civil prison. The appellant cannot have a grievance with the grant of the aforesaid opportunity.

24. If the appellant is aggrieved by the grant of a leeway, and the grant of another opportunity to him to avoid being detained in a civil prison, it is open to the appellant not to comply with the said condition, and not to avail of the opportunity granted by the learned Single Judge. There is no impediment, in our view, in the law which prohibits the imposition of such a condition on the Court while exercising jurisdiction under Order XXXIX Rule 2A CPC.

25. The use of the expression *“failing which the aforesaid contemnors shall undergo civil imprisonment ”*, in our view, is nothing more than adoption of a wrong phrase. It is clear that the learned Single Judge was exercising her jurisdiction under Order XXXIX Rule 2A CPC, which empowers the Court to detain the guilty person in civil prison. Therefore, the expression “undergo simple imprisonment” deserves to be read as “to be detained in a civil prison” in the

impugned order. In our view, the aforesaid typographical error does not impinge on the validity of the impugned order.

26. For all the aforesaid reasons, we dismiss this appeal with Costs of Rs.1 Lakh.

VIPIN SANGHI, J.

SANJAY KISHAN KAUL, J.

JULY 13, 2012
'BSR'