

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

% Judgment pronounced on: August 29, 2013

+ CM(M) No.173/2013 & CM No.10337/2013

HARI SHANKAR Petitioner
Through Mr.Sanjeev Ralli, Adv. with
Mr.Alpha Phiris Dayal, Adv.

versus

SARDAR HARNAM SINGH & ORS. Respondents
Through Mr.S.C. Singhal, Adv. for R-1.
Mr.Ishaan Chhaya, Adv. for Mr.Rajat
Aneja, Adv. for R-2.
Mr.B.B. Gupta, Adv. for R-3.

**CORAM:
HON'BLE MR. JUSTICE MANMOHAN SINGH**

MANMOHAN SINGH, J.

1. The petitioner assails the order dated 19th November, 2012 passed by the Additional District Judge in Suit No.302/2009 by filing of the present petition under Article 227 of the Constitution of India. The learned trial court dismissed the application of the petitioner under Section 151 CPC for recalling the order dated 17th August, 2010 striking out the defence of the petitioner (defendant No.1 in the suit).
2. The parties to the present petition have made their respective rival submissions. It is necessary to mention certain facts with regard to the litigations pending between the parties.
3. Sh.Harnam Singh, respondent No.1 herein, executed an agreement to sell dated 5th October, 2004 in respect of suit bearing No.G-2, Old Mahavir Nagar, Main Najafgarh Road, Tilak Nagar, New Delhi, measuring 133 sq.

yards, for a total sale consideration of ₹10 lac in favour of the present petitioner Sh.Hari Shankar, who filed a suit for specific performance against Sh.Harnam Singh, respondent No.1 before the learned District Judge, being Suit No.441/2004, which was decreed on the application under Order XII, Rule 6 CPC for judgment on admission by order dated 25th April, 2005. The petitioner thereafter filed an execution, being Execution No.389/2006, wherein a Local Commissioner was appointed by the Court through whom the sale deed was executed in favour of the petitioner on 25th August, 2006 in respect of the suit property. The respondent No.1 thereafter in the year 2008 filed a suit for declaration, mandatory and prohibitory injunction, being Suit No.45/2008, against the petitioner herein (defendant No.1 in the suit) and respondent No.2 (defendant No.2 in the suit) praying therein, inter alia, for passing a decree for declaration for setting aside the decree and judgment dated 25th April, 2005 passed by the Additional District Judge in Suit No.441/2004. The sum and substance of the suit filed by the respondent No.1 is that the consent decree obtained by the petitioner was by playing fraud upon the Court as well as the respondent No.1 who averred such details in the plaint. Copy of the same was supplied to this Court. Such details taken from the copy of the plaint supplied are mentioned as under:

- i) The respondent No.1 in the year 2008 was surprised and shocked to see the Agreement to Sell on the records which was never signed by him and his signatures are forged on the said agreement and was also surprised to see the copy of the sale deed. The respondent No.1 never engaged Shri S.K. Rajput, his advocate nor he ever engaged ShriParmanand Prasad, Advocate, who had been appearing in the said suit.
- ii) Shri S.C. Singhal, Advocate who thereafter instructed his associate Shri Praveen Suri, Advocate to inspect the entire court record of the suit file and he having come to

know of the entire story being sure of further action also directed for inspection of the execution record and found that judgment and decree was shown to be proceeded ex-parte thereafter application under Order 9, Rule 7 CPC has been moved and Shri Praveen Suri, Advocate shown the said application to the respondent No.1 and the respondent No.1 was shocked and surprised to see that the application does not bear his signatures and the signature on the application are forged. It was further worth noting that the application is supported by the affidavit of Shri Parmanand Prasad, Advocate who has filed an affidavit in support of the application and such application is not supported by affidavit of respondent No.1.

- iii) Perusal of the records revealed that the written statement was got drafted on 4.2.2005 and the said written statement or supporting affidavit does not bear his signatures. The respondent No.1 surprised to know from Shri Praveen Suri, Advocate about the proceedings in which he never appeared nor signed any documents and for the first time came to know only in January, 2008 as stated above that the judgment and decree has been passed on 25.4.2005 against him in respect of the said property. Respondent No.1 neither received any amount on 5.10.2004 from petitioner nor any amount till date.
- iv) Having come to know of the said proceedings further enquiry revealed about the execution and those execution File No.58/2005 was also inspected and it was to the utter surprise of the respondent No.1 that Sh.S.K. Rajput, Advocate had appeared on his behalf again in the execution proceedings and filed a reply. The said reply and affidavit certainly bears his signatures but those are obtained by the respondent No.2 on 11th September, 2005 on which day the respondent No.1 went to the court on call of the respondent No.2. He was told that he was only to put his attendance and he was also made to sign in a register as well in presence of some other advocates to whom the respondent No.1 does not know but he was

told to write the words that “I identified by Shri S.K. Rajput, Advocate.”

- v) The execution file further reveals that the petitioner also filed the general power of attorney and the receipt of ₹5,00,000/- but the receipt does not bear his signatures and the general power of attorney bears his signature. The respondent admits his signature on the said GPA and that GPA was obtained and his photographs were obtained by the respondent No.2 from him only to represent him in respect of stopping his demolition and getting the shop vacated. The perusal of the General Power of attorney further shows that though it has been shown to be executed on 21.5.2005, and has been filed alongwith the execution proceedings mentioning therein that a balance sum of ₹5,00,000/- were given in cash on 21.5.2005 and it further discloses that the respondent No.1 at the time of receiving ₹5,00,000/- has given the original Sale Deed and General Power of Attorney which could not be registered and the respondent No.1 had been avoiding to get it registered but a perusal of the General Power of Attorney would show that it does not refer to the suit for specific performance or decree so passed at all and it does not give any power for the sale of the house.
- vi) The petitioner thus cleverly filed the said execution petition and the respondent No.1 was never served with the notice of the execution petition and Shri S.K. Rajput appeared at his own on 20.4.2006 on his behalf. The report of the Process Surveyor on the records would show that the respondent No.1 had been shown to left the house and in fact not only left the house but also sold the house and shifted to another premises bearing No.61, Mahavir Nagar, New Delhi, and there is another report of the Process Surveyor for the date of hearing 20.4.2006 which reveals that the respondent No.1 was not found and is not residing at the given address and some other sikh gentlemen having fair colour aged about 50-55 years, height middle were met and told that no person in the name of Shri Harnam Singh resides in the premises in

question whereas the respondent No.1 is residing at the suit premises till date. Similar the report for the date of hearing of 30.3.2006 of Shri Rajesh Kumar, Process Surveyor shows that the respondent No.1 is not residing at the premises and sold the house and shifted to Gali No.6, House No.61, New Mahavir Nagar, New Delhi and that report has been given by the said Process Surveyor on 22.3.2006/28.3.2006. As no such person was found and still on 29.4.2006 Shri S.K. Rajput has appeared.

- vii) Shri S.K. Rajput firstly appeared in the execution proceedings on 7.10.2005 and thereafter he did not appear for 18.11.2005 or any other subsequent dates and ultimately the Court appointed Shri Prashant Gaur, Advocate to execute the Sale Deed vide order dated 18.11.2005 and thereafter the Court vide order dated 20.3.2006 again directed issuance of the notice to the Judgment Debtor for the application of the Decree Holder under Order 21, Rule 34 CPC for 30.3.2006 and on issuance of the notices, a false report was given that the respondent No.1 is not residing at the given address and then fresh notice ordered to be issued for 29.4.2005 for which date a false report was given but yet Shri S.K. Rajput appeared so as to fulfill the purposes of the service of the notices and so that the case could proceed further as he only wanted to facilitate the execution of the sale deed and sought the date on the date and similarly on 26.3.2006 again sought the date and disappeared and did not appear at all.
- viii) Thus the records would show that Shri S.K. Rajput who appeared only to put the appearance on behalf of the respondent No.1 through he had not performed any services for which he was required by the respondent No.1.
- ix) That perusal of the entire records would show clearly that the petitioner and respondent No.2 in connivance with each others so as to deprive the respondent No.1 of his property, played fraud upon respondent No.1 and obtained decree dated 25.4.2005 from the Court of Shri O.P. Gupta, ADJ, Delhi fraudulently though it is shown

that possession has been delivered to the petitioner but whereas the respondent No.1 is in possession of the suit premises till date.

- x) It is stated in the plaint that when in January, 2008 defendant No.1 in the suit and respondent No.2 did not return back the sale deed despite of reminders, the son-in-law of the respondent No.1 informed the respondent No.2 to file a police report against him then he informed the son-in-law of respondent No.1 that the property had been sold to the petitioner and thereafter the respondent No.1 and his son-in-law visited Ms.Rubi Bedi, Advocate and came to know that she was not handling any such matter, they should find out from the record room and later on the respondent No.1 inspected the court file and came to know about the Suit No.441/2004 having been decreed against the respondent No.1 vide judgment and decree dated 25th April, 2005.

4. In the present case, the petitioner and respondent No.2 filed their respective written statements and issues were framed on 20th October, 2009 and the matter was posted for evidence of the respondent No.1. Matter was listed on 4th June, 2010. The petitioner herein had moved an application for information of sale of the suit property and had informed the Court that since the petitioner had no concern with the suit property from that day, therefore, an appropriate order be passed in view of the application filed.

5. Learned court observed that since the information mentioned in the application was not complete as the name of the purchaser was not mentioned, the petitioner shall inform the learned counsel for the respondent No.1 about particulars of the purchaser within two weeks. The matter was adjourned to 13th July, 2010. On 13th July, 2010, an adjournment was sought by the petitioner for furnishing the particulars of purchaser of the property as well as for providing information to the counsel within two weeks. The matter was adjourned to 28th July, 2010 subject to cost of ₹1000/-. On 28th

July, 2010 again one month's time was given to the petitioner to provide said details, subject to cost of ₹2000/-. The adjournment was granted on the ground that the petitioner had gone Gorakhpur as his father was seriously ill. On 17th August, 2010, again an adjournment was sought by the petitioner. However, the court passed the order that despite of granting various opportunities to the petitioner for furnishing the particulars as the petitioner had failed to furnish the same, therefore, the defence of the petitioner be struck off.

6. It is matter of fact that the petitioner after more than one year and three months filed an application dated 18th November, 2011 under Section 151 CPC for recalling the order dated 17th August, 2010 wherein the defence of the petitioner was struck off. The application was supported by another application under Section 5 of the Limitation Act. It is not disputed by the petitioner that the order dated 17th August, 2010 was not challenged by the petitioner either in the higher court or nor any application was filed by the petitioner.

7. During the pendency of the said application, the purchaser namely Bharat Chabria filed an application under Order 1 Rule 10 CPC for impleadment in the suit which was allowed by order dated 3rd May, 2012. Bharat Chabria is respondent No.3 in the present petition who also filed written statement before the trial court on 30th August, 2012 and additional issues were also framed in the matter. Thereafter, the petitioner's application for recalling the order dated 17th August, 2010 was dismissed by the impugned order dated 19th November, 2012.

8. Learned counsel for the petitioner argues that the learned trial court ought not have passed the order dated 17th August, 2010 which is otherwise not sustainable in law. The present matter is not such serious case in which

the said orders are invited with regard to purchaser of the suit property. There were no specific direction issued by the court similar to the provision of Order 11 Rule 21 CPC, the said inherent power could not have been exercised. Therefore, the orders of striking out the defence of the petitioner passed on 17th August, 2010 should have been recalled. Mr. Sanjeev Ralli, learned counsel appearing on behalf of petitioner has referred to two decisions in support of his submissions:

1. ***Vemula Nagendram Firm vs. Ram Subhas Hari & Co. and others***, 966 Andhra Law Times Reports 1958.
2. ***Desh Raj Gupta vs. State***, ILR 1987 Delhi 153.

9. Mr. Ralli argues that even otherwise the defence of petitioner in the present case has to be considered in the nature of dispute involved in the matter as the respondent has sought the relief of declaration for setting aside the decree passed in favour of the petitioner who ultimately has to explain to the court of its validity in view of averments made in the written statement. The respondent No.3 is merely a purchaser who was not a part to the earlier. Thus, in the interest of justice, equity and fair play the order dated 17th August, 2010 be recalled. He has admitted that the application filed by his client bears his signature wherein he had mentioned that after the sale of suit property, he is no mere concerned in the matter.

10. Learned counsel appearing on behalf of Bharat Chabria admitted that his client purchased the suit property from the petitioner. He states that his client undertakes to maintain the status quo with regard the suit property by not creating third party interest in any manner whatsoever till the disposal of suit, however the respondent No.3 is not opposing the prayer made in the present petition.

11. After having considered the submission of the respondent No.1 also as well as pleadings in the matter and material placed on record, it is necessary for the court to refer certain events happened in the matter which compelled the court to pass such orders dated 17th August, 2010 and the impugned order dated 19th November, 2012. The details are :

- i) It is not in dispute that the respondent No.1 filed the suit for declaration, mandatory injunction and prohibitory injunction against the petitioner and respondent No.2, inter alia, for passing a decree of declaration for setting aside the decree and judgment dated 25th April, 2005 mainly on the ground that the said decree is obtained by the petitioner by playing fraud upon the Court as well as on the respondent No.1.
- ii) The petitioner has also not disputed that when the matter was listed before Court on 4th June, 2011, the application signed by the petitioner (defendant No.1 in the suit) specifically contained the statement that the petitioner had no concern with the said property from that date who had sold the same.
- iii) It is not disputed by the learned counsel for the petitioner that in the order dated 4th June, 2010, 13th July, 2010, 28th July, 2010 and 17th August, 2010, the information about the purchase of the property and details thereof were not provided by the petitioner to the learned counsel for the respondent No.1 although in all the orders it is mentioned that the petitioner has already sold the suit property. However, as a matter of fact, it has come on record that the suit property was sold by the petitioner to the respondent No.3 after striking out the defence of the petitioner.

iv) Copy of the sale deed shows that the sale dated 13th July, 2011 apparently executed after about more than 10 months for total sum of ₹45 lac. The dates of the payments made received by the petitioner were also subsequent to the date of striking out the defence of the petitioner.

v) It is also pertinent to mention that the petitioner has filed an application for recalling the order dated 17th August, 2010 on 18th November, 2011 i.e. after execution of the sale deed.

12. It is also apparent on the face of it that the petitioner has made the incorrect statement before court from time to time which was recorded by the learned trial court on 4th June, 2010, 13th July, 2010, 28th July, 2010 as well as 17th August, 2010. Admittedly on said dates, suit property was sold by petitioner to respondent No.3. The petitioner was apparently avoiding to provide the details and side by side trying to dispose of the property. It is done by the petitioner knowingly and deliberately who has not once but many times made statement which is untrue in order to take the advantage which he has taken on receiving a sum of ₹45 lac from the respondent No.3 at the time of registering the sale deed dated 13th July, 2011. After receiving the said amount, he filed the application for recalling the order dated 18th November, 2011 by retracting the earlier statement made in the application filed on 4th June, 2010 wherein he made the statement that he has sold the property and had no concern in the matter though the said statement was incorrect as on that date the suit property was not sold.

13. It appears from the pleadings that on the one hand the petitioner has filed the application before the trial court on 4th June, 2010 stating the petitioner had no concern in the suit property from that date and after executing the sale deed, the same very petitioner filed the application for

recalling the order of striking out the defence of the petitioner. Two stands of the petitioner are totally contrary to each other.

14. It is apparent that the petitioner was not truthful to the Court not only once but even many times. The argument of Mr. Ralli cannot be accepted that the court ought not to have passed the order as the said information sought by the court was not very much relevant in order to decide the real controversy between the parties. This Court is not agreeable with the submission of the petitioner because the property in question was the subject of the suit property. It was the duty of the petitioner to give the correct information to the court who could have restrained the petitioner to do so. At the same time, the petitioner after giving the wrong information to the court many times has sold the property after striking out the defence. It appears that the petitioner had no fear of Court who was making incorrect statements before Court and ultimately he received full consideration from the respondent No.3. It is evident that now the petitioner by way of application intends to help the respondent No.1 on the basis of defence raised by him in the written statement.

15. It is also pertinent to mentioned that when the matter was listed on 28th July, 2010, an adjournment was taken on behalf of the petitioner that he had gone to Gorakhpur as his father was seriously ill. Learned counsel for the respondent No.1 has pointed out that even that statement made by the petitioner was also incorrect before Court in view of the death certificate of the father of the petitioner which shows that he was the resident of Village Diedh (Mahadeva) Tehsil/Ward Gyanpur District Sadar Bhadohi registered in U.P. State as well as certificate issued by the Dr.Amitabh Srivastav from Varanasi, who has certified that the father of the petitioner was suffering

from anemia and was under his treatment before 6 months, is dated 25th September, 2010.

16. In *Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria*, 2012 (3) SCALE 550, the Supreme Court held that false claims and defences are serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. The Supreme Court held as under:-

“False claims and false defences

81. False claims and defences are really serious problems with real estate litigation, predominantly because of ever escalating prices of the real estate. Litigation pertaining to valuable real estate properties is dragged on by unscrupulous litigants in the hope that the other party will tire out and ultimately would settle with them by paying a huge amount. This happens because of the enormous delay in adjudication of cases in our Courts. If pragmatic approach is adopted, then this problem can be minimized to a large extent.”

17. In *Dalip Singh v. State of U.P.*, (2010) 2 SCC 114, the Supreme Court observed that a new creed of litigants have cropped up in the last 40 years who do not have any respect for truth and shamelessly resort to falsehood and unethical means for achieving their goals. The observations of the Supreme Court are as under:-

“1. For many centuries, Indian society cherished two basic values of life i.e., ‘Satya’ (truth) and ‘Ahimsa’ (non-violence). Mahavir, Gautam Buddha and Mahatma Gandhi guided the people to ingrain these values in their daily life. Truth constituted an integral part of the justice-delivery system which was in vogue in the pre-Independence era and the people used to feel proud to tell truth in the courts irrespective of the consequences. However, post-Independence period has seen drastic changes in our value system. The materialism has over shadowed the old ethos and the quest for personal gain has become so intense that those involved in litigation do not hesitate to take shelter of falsehood, misrepresentation and suppression of facts in the court proceedings.

2. **In Last 40 years, a new creed of litigants has cropped up. Those who belong to this creed do not have any respect for truth. They shamelessly resort to falsehood and unethical means for achieving their goals. In order to meet the challenge posed by this new creed of litigants, the courts have, from time to time, evolved new rules and it is now well established that a litigant, who attempts to pollute the stream of justice or who touches the pure fountain of justice with tainted hands, is not entitled to any relief, interim or final.”**
(*Emphasis supplied*)

18. In *Satyender Singh v. Gulab Singh*, 2012 (129) DRJ 128, the Division Bench of this Court following *Dalip Singh v. State of U.P.* (supra) observed that the Courts are flooded with litigation with false and incoherent pleas and tainted evidence led by the parties due to which the judicial system in the country is choked and such litigants are consuming Courts time for a wrong cause. The observations of this Court are as under:-

“2. As rightly observed by the Supreme Court, Satya is a basic value of life which was required to be followed by everybody and is recognized since many centuries. **In spite of caution, courts are continued to be flooded with litigation with false and incoherent pleas and tainted evidence led by the parties. The judicial system in the country is choked and such litigants are consuming courts time for a wrong cause. Efforts are made by the parties to steal a march over their rivals by resorting to false and incoherent statements made before the Court.** Indeed, it is a nightmare faced by a Trier of Facts; required to stitch a garment, when confronted with a fabric where the weft, shuttling back and forth across the warp in weaving, is nothing but lies. As the threads of the weft fall, the yarn of the warp also collapses; and there is no fabric left.”
(*Emphasis supplied*)

19. It has been noticed by the court not only from this matter but also from a large litigation of real estate, the litigants do not have respect for truth

and they are raising false and frivolous statements before Court knowingly and also in their pleading in order to take advantage.

20. In the present case also the petitioner not once but on various occasions made untrue statements before court with his full knowledge but he shamelessly kept on making the same.

21. No doubt, I agree with the submission of the learned counsel for the petitioner that in view of two decisions referred by him, normally courts should be slow in passing the orders of striking of defence unless specific direction within the four corners under the provisions of Order 11 Rule 21 are not passed. But the present case is not of such type where the petitioner can derive the benefit of the decisions as the facts in the present case are totally distinct and it is the duty of the courts to see that such wrong doers are discouraged at every step even he may suffer in his case on merit, otherwise it is not possible to maintain purity and sanctity of judicial proceedings. The truth is the guiding star in the entire judicial process. It is the duty of the Courts to maintain it in order to provide complete justice.

22. Considering overall facts and circumstances of the case coupled with the fact that petitioner himself has filed the application before the Court which is duly signed by him that after 4th June, 2010 that he had no concern with the matter, he cannot be allowed to change his stand after selling the suit property to the respondent No.3 in order to help the respondent No.3 who is a purchaser of the suit property.

23. In view of abovesaid reasons, the present petition is hereby dismissed.

(MANMOHAN SINGH)
JUDGE

AUGUST 29, 2013