

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

Reserved on: 20.03.2014
Date of Decision: 24.09.2014

+ C.R.P. No.121 of 2011 & CM No.16438 of 2011

RAKESH KHANDELWAL Petitioner
Through: Mr. B.L. Chawla, Adv.

versus

KRISHAN KUMAR KHANDELWAL Respondent
Through: Mr. Ajay Garg & Mr. Ganesh Tiwari, Adv.

CORAM:
HON'BLE MR. JUSTICE NAJMI WAZIRI

NAJMI WAZIRI, J.

1. This petition impugns an order dated 4.6.2011, whereby the petitioner's appeal against the Trial Court's order dated 3.3.2001 was dismissed. In an application under Order 39 Rule 2A of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code') The respondent/plaintiff had alleged before the Trial Court, that the petitioner/defendant No.1 had wilfully violated its order dated 6.5.1999, by which he was restrained from disposing off the suit property: being 4161-65, Gali Shahtara, Ajmeri Gate, Delhi, till the next date of hearing. It was submitted that the defendant had sold it off on 9.5.1999 and executed a Sale Deed on 17.5.1999. The defendant's defence was that he was unaware of the Trial Court's order and further submitted that he had already sold the property on 3.4.1999. The Trial Court was of the view that the said stand of the defendant was belied from the record of his

appearance/presence marked in the order sheet commanding the restraint on 6.5.1999 and if the property had already been sold by that date, it ought to have been brought to the notice of the Trial Court by the counsel representing him in his presence. Furthermore, the Trial Court noted that his application seeking rejection of the plaint under Order 7 Rule 11 of the Code too did not mention the alleged prior sale. The Trial Court also noted that the affidavit dated 15.2.2000 by the purchaser, mentioned an Agreement to Sell but a copy of the same had not been adduced which further falsified the petitioner/defendant's case. The Trial Court further noted that payment for the aforesaid sale was stated to have been deposited in the bank but no such bank statement was filed in the Court. Besides the sale deed showed that cash was received from the vendee in advance but the sale deed did not provide details thereof. The Trial Court was of the view that the seller could have produced the records of his bank statement. Furthermore, the seller had already sold the land on 3.4.1999, then there was no reason for him to have executed the Sale Deed on 17.5.1999 which was after the restraint order was passed. Therefore, he had knowingly violated the Trial Court's order. The Appellate Court found that the appeal lacked merit and the impugned order therein did not suffer from any illegality or infirmity in view of the clear and cogent reasons of the Trial Court. Hence, the appeal was dismissed.

2. On 26.9.2011, while issuing notice to the respondent in this petition, this Court was of the view that *"before any decision is taken by this Court a notice should also go to the purchasers of the property in question because in case any adverse order is passed by this Court against the*

petitioner, it may have impact on their interest also inasmuch as the admitted position is that sale deeds in their favour were executed by the petitioner when the stay order against sale of the property in question was in operation.” Therefore, it was observed that the purchasers ought to be accorded an opportunity to put forth their case before the case is decided. Notices were issued to the purchasers, namely Mst. Shaheen Begum and Mst. Rabia Begum, who were impleaded as respondent Nos. 2 & 3. The proceedings show that on 12.12.2012, the service was complete on the respondents. Respondent No.1 appeared before the Court on 22.4.2013, in person and stated that he did not wish to file a reply and the case was renotified for arguments on 27.8.2013. The purchasers also have chosen to not file their reply.

3. The learned counsel for the petitioner submits that the Trial Court had erred in not giving an opportunity to the petitioner for producing evidence for examination of the purchasers, in support of the defence that the Sale Deed had been completed earlier in time; that the property had already been sold on 3.4.1999 i.e., before the filing of the suit and it is only the Sale Deed which was executed on 17.5.1999; that the standard of proof for establishing a charge of contempt, civil or criminal, has to be proved beyond reasonable doubt and the charge cannot be decided without leading evidence. He relied upon this Court’s judgement in ***Jitender Kumar v. Jai Kishan Aggarwal, 145 (2007) DLT 304***, which according to the learned counsel for the petitioner, was ignored by the Trial Court. He reiterates that since the property was sold prior to the passage of the restraint order there could be no breach of the latter; that the Trial Court had failed to consider the affidavits of the

purchasers and erred in not giving an opportunity to the petitioner for relying upon them. He further submits that there was no wilful disobedience of the impugned order and the petitioner had *bona fide*ly misconstrued the order; therefore, he cannot be held for violation of the same. He relied upon the *dicta* of the Supreme Court in ***State of Bihar Vs. Rani Sonahati AIR 1961 SC 221*** in support of this contention. He then submits that the learned Trial Court had failed to appreciate that the petitioner had no actual knowledge of the order dated 6.5.1999, hence, he could not be charged for wilful disobedience or breach of the same. He further argued that the petitioner/seller had acted in good faith without any motive to defeat or defy the Court's order; besides the order did not exist on 17.5.1999 when the formal sale deed was executed because the order of 6.5.1999 was passed in the presence of the petitioner as well as his counsel. Therefore, the petitioner knew and would otherwise be deemed to have knowledge of the order.

4. The learned counsel for the petitioner has relied upon the Supreme Court dicta in ***Ashok Kumar & Ors. v. State of Haryana & Anr., 2007(2) Civil Court Cases 464 (SC)*** which held that “*there is no warrant for the proposition, as was stated by the High Court that unless an order or stay passed once even for the limited period is vacated by an express order or otherwise, the same would continue to operate.*” The Supreme Court had rejected the contention of the respondent therein that the injunction order would continue till it was vacated. However, in the present case it is clear that the petitioner was aware of the restraint order and his conduct shows that he had tried to overcome the same. Firstly, by feigning ignorance and secondly, by claiming that he misconstrued the

order. His act can be termed as one one where he defied the Court's order and is in breach thereof.

5. In its order dated 3.3.2001, the Trial Court had, while disposing off the plaintiff/respondent's application under Order 39 Rule 2A of the Code, recorded as under:

“6. No doubt, the order dated 12.5.1999 does not mention the word, “the interim order continued”. It is also on record that order dated 6.5.1999 was passed by which the defendants were restrained only till the next date of hearing. It is also the matter of fact that on 27.5.1999 the interim order has been continued till the next date of hearing. If the court assumes that arguments of the defendant is correct that there is no order on 12.5.1999 by which he has been restrained from disposing off alienating, the suit property, then, to my mind the order dated 27.5.1999 has no consequences. Order dated 27.5.1999 clearly mentioned that the interim order be continued till the next date of hearing. It is the well established legal principle that if injunction is not vacated in expressed words then it shall be deemed to be continued. It is also on record that interim order passed on 6.5.1999 has not specifically or not expressed words vacated. Then it shall be assumed that on 12.5.1999, the interim order passed by this Court on 6.5.1999 was in force. Therefore, the arguments of the respondent that n order, by which he was restrained, is in existence on 6.5.1999, does not hold good. One more point has been raised by the respondent that he is not aware of the order passed on 6.5.1999. Memo of appearance has been filed by the defendant No.1, whether he is aware or not aware is not material. Once the order is passed, duty of obey cannot be put upon the shoulder of the counsel that he has not told the same to the defendant. Learned counsel for respondent also argued that property has been sold on 3.4.1999, when, even the suit has not been filed, but when he filed application under Order 7 Rule 11 CPC on 6.5.1999, the defendant has not mentioned anything in this application whether the suit property has been sold. Neither any receipt of obtaining Rs.1,20,000/- nor any

agreement to this effect has been raised on record by the defendant that they had to sell the property on 3.4.1999. Moreover, the defendant has raised one step further even to execute the sale deed on 17.5.1999. The counsel for defendant argued that it is the triable issue whether the defendant has committed any contempt or not, does not stand upon the merits because the contempt appears to have been committed on the face. If the contemnor goes unpunished on a feeling of the confidence of the belief though and proper administration and justice has been challenged. Therefore, to convert the majesty of court and law, it is essential that the contemnor be given the proper punishment. Though judicial hyper sensitiveness is not warranted but angelic silence on the part of a Judge is also not expected vis-a-vis an infraction of majesty of law.”

6. It is not in dispute that the restraint order was passed in the presence of the petitioner as well as his counsel. It is also not in dispute that the alleged sale deed was executed eleven (11) days later on 17.5.1999. Therefore, the defence of the petitioner that he was not aware of the restraint order, would not be available to him. Furthermore, the petitioner’s application under Order 7 Rule 11 of the Code, does not mention the alleged prior sale of 3.4.1999. The grounds on which the revision petition has been filed are self-contradictory. On one hand, it is stated that the petitioner was unaware of the order, although it was passed in his presence as well as of his counsel; on the other hand, he states that the order was *bona fide*ly misconstrued. Now insofar as the petitioner admits that he had misconstrued the order, surely he cannot feign ignorance of the same. Therefore, such misconstruing whether *bona fide* or otherwise which resulted in violation or breach of the order would have to be so determined. Insofar as it is clearly established that the order had been breached, the reliance upon the precedents by the

learned counsel for the petitioner would be immaterial and of no consequence. Furthermore, reliance on *Ashok Kumar* (supra) by the learned counsel for the petitioner is also misplaced since the decision in that case was rendered in the peculiar set of facts. In the said case, the issue before the Supreme Court was in relation to a declaration under Section 6 of the Land Acquisition Act, 1894 wherein such declaration had to be deferred due to an interim injunction passed by the Civil Court. Moreover, since Section 6 of the said Act was inserted for the benefit of the land owners, the same had to be strictly construed and given its full effect. The Supreme Court in that case had also observed that “*Such a statutory benefit, thus, cannot be taken away by a purported construction of a court order which, in our opinion, is absolutely clear and explicit.*” Therefore, the facts of the present case are distinguishable qua the aforesaid judgment.

7. In view of the aforesaid this Court is of the view that the reasoning for and the conclusion arrived at in the impugned order are based upon appreciation of material on record and the view taken is plausible in law. It does not suffer from material irregularity. The petition is without merit and is accordingly dismissed.

SEPTEMBER 24, 2014
b'nesh

NAJMI WAZIRI, J.