

Court No. - 4

Case :- CONTEMPT APPLICATION (CIVIL) No. - 1814 of 2022

Applicant :- Maya Tiwari

Opposite Party :- Rashmi And Others

Counsel for Applicant :- Soma Pandey, Shashank Dwivedi

Counsel for Opposite Party :- Raghvendra Ojha, Lalu Prasad Bhatt, Manju Gupta

Hon'ble Rajesh Singh Chauhan, J.

I.A. No. 6 of 2023

1. Heard.

2. This Court has passed order dated 2.11.2023, which reads as under :

"1. Heard.

2. This Court has passed the order dated 09.10.2023, which reads as under:-

"1. Heard Sri Shashank Dwivedi, learned counsel for the petitioner.

2. This Court has passed order dated 25.9.2023 which reads as under :

"1. Heard Ms. Soma Pandey along with Sri Shashank Dwivedi, learned counsel for the petitioner and Ms. Rashmi, opposite party no. 1, who appears in person.

2. This Court has passed the order dated 29.8.2023 which reads as under :

"1. Heard.

2. This Court has passed the order dated 28.03.2023 which reads as under:-

"Heard.

In pursuance to the order of this Court dated 13.03.2023 Ms. Rashmi, respondent no.1/contemnor is present in Court. She states that an SLP vide Diary No.9473 of 2023 in re: Rashmi vs. Maya Tiwari has been filed before the Apex Court against the judgment and order of the writ Court dated 31.05.2022 and now the Hon'ble Apex Court is seized of the matter.

Learned counsel for the petitioner states that in pursuance to the order of this Court dated 31.05.2022, an amount of Rs.6,000/- per month has been remitted in the account of respondent no.1 totalling an amount of Rs.66,000/- while according to respondent no.1, an amount of Rs.65,000/- has been received by her.

Respondent no.1 states that though she has received the amount yet she is not in a position to vacate the premises on account of her medical conditions.

Be that as it may, the fact of the matter remains that respondent no.4 in the writ petition, who is applicant herein namely Smt. Maya Tiwari, has paid an amount of Rs.65,000 - 66,000 to respondent no.1 but she has failed to vacate the premises in question despite the specific order of the writ Court dated 31.05.2022. The reason given by Ms. Rashmi is that she is unable to vacate the premises on account of her medical condition. No documents regarding her medical condition have been filed till date. It is also not the case of Ms. Rashmi that Hon'ble Apex

Court has interfered with the order passed by the writ Court dated 31.05.2022. Thus, the Court finds that there is deliberate and wilful disobedience and defiance of the order passed by the writ Court inasmuch as despite having received the payments as were required to be made by respondent no.4 in the writ petition who is applicant herein, the respondent/contemnor has failed to vacate the premises.

Considering the aforesaid, list this case on 03.05.2023 for framing of the charges against Ms. Rashmi on which date she shall remain present in Court."

3. On last date i.e. 16.08.2023, this Court has passed the following order:-

"Heard Ms. Soma Pandey, learned counsel for the applicant and Ms. Rashmi, respondent no.1 in person.

The respondent no.1 produced an order dated 12.05.2023 passed by the Hon'ble Supreme Court in Special Leave Petition (Civil) Diary No.9473/2023, in which the Hon'ble Supreme Court has declined to interfere with the impugned order passed by this Court. However, provided that to enable the petitioner to make alternate arrangement, two months time is granted to the petitioner to vacate the scheduled premises subject to an undertaking being filed in the registry of the Hon'ble Supreme Court within two weeks from the date of the order.

Respondent no.1 submits that she has filed the undertaking before Hon'ble Supreme Court on 12.05.2023. She further submits that as per the undertaking given by her, she has vacated the scheduled premises and shifted to Part A of the house in question, whereas as per the order dated 31.05.2022 passed in Writ C No.2186 of 2022(Rashmi versus State of U.P. and others), the petitioner has to vacate the premises in question and shall search for an alternative accommodation on rent and rent is to be paid by the respondent no.4. Condition no.3 in the order dated 31.05.2022 further provides that after a period of one year from the date of the order, the petitioner would be entitled to occupy the Part-A of the premises as proposed by the respondents. It has further been provided that the petitioner shall not enter in the house in question for a period of one year and shall not cause any inconvenience to the respondent no.4.

In view of above, it is apparent that the respondent has committed contempt of the order passed by this Court.

List on 29.08.2023 for framing of charges.

The respondent no.1 shall appear in person on the said date."

4. The respondent no.1 i.e. Rashmi, who appears in person has filed supplementary affidavit, same is taken on record.

5. In the aforesaid supplementary affidavit, the respondent no.1 has filed the order dated 01.05.2023 passed by the Apex Court in Special Leave Petition (Civil) Diary No.9473 of 2023 (Annexure No.SA-4). The Apex Court has granted two months' time to the respondent no.1 herein to vacate from the petition scheduled premises subject to an undertaking being filed in the Registry of the Apex Court within two weeks from 01.05.2023.

6. Undisputedly, the order of the writ court dated 31.05.2022 has not been interfered by the Apex Court. The writ court has directed the respondent no.1 to vacate the premises in question within a period of one month and shall search for an alternative accommodation on rent so that the petitioner hereto, the respondent no.4 of the writ petition, could take proper steps for getting the property demarcated in terms of the proposed map but the premises in question has not been vacated by the respondent no.1, therefore, the petitioner hereto, the respondent no.4 of the writ petition, could not take steps for getting the property demarcated in terms of the proposed map. Therefore, it cannot be said as to what is Part-A or Part-B or Part-C of the premises in question.

7. The respondent no.1 has admitted that she is still occupying Part-A of the

premises but what is Part-A of the property is still undetermined as no determination could take place for the reason that the premises in question has not been vacated by the respondent no.1, therefore, this is a disobedience of the order of the writ court by the respondent no.1. Even otherwise, the period of two months pursuant to the order of the Apex Court has expired on 01.07.2023 but the premises has not been vacated by the respondent no.1. She has enclosed Annexure No.SA-6 with the supplementary affidavit which is medical report and as per the averment of such medical report which has been given in para 18, she is a 50 years old sick lady suffering from life threatening problems but there is no indication of disease or ailment in such paragraph.

8. Therefore, prima facie, it appears that the respondent no.1 has committed the deliberate and wilful disobedience of the order being passed by the writ court and by the Apex Court.

9. The respondent no.1 is given three weeks' time to file her explanation as to why she be not punished in the aforesaid charge under the Contempt of Courts Act.

10. List this case on 25.09.2023 within top ten cases.

11. In the meantime, the contempt petitioner, who is the respondent no.4 in the writ petition, may approach the competent authority for getting her premises released strictly in accordance with law.

12. On the next date, the respondent no.1 shall again appear in person."

3. In compliance of the aforesaid order no explanation has been filed by Ms. Rashmi on the point as to why she be not punished under the Contempt of Courts Act for flouting the order and direction being issued by the writ court. However, she has shown the copy of medical certificate being issued from one private hospital in the name of Human Care Hospital, Multi Specialties Hospital, Kanpur Road, Lucknow along with the medicines, so prescribed, same are taken on record.

4. Ms. Rashmi has also stated that since writ court has directed that before vacating the premises in question the consent of all the parties would be required and in the present case she (Ms. Rashmi) has not given any consent, therefore, she has not vacated the premises. She has also stated that even the petitioners of the contempt petition has not given any consent.

5. So as to appreciate the contention of Ms. Rashmi the order of the writ court dated 31.5.2023 is being reproduced herein below :

"Heard learned counsel for the petitioner and the counsel for the respondent no.4.

The present petition has been filed challenging the order dated 02.12.2021 whereby the directions have been issued to the petitioner to vacate the premises in question at the instance of the respondent no.4.

The contention of the parties is that the respondent no.4 as well as the petitioner and their another daughter are the co-owners of the property in question by virtue of interstate succession. It is on record that the property was owned by the father of the petitioner and the husband of the respondent no.4 and after his death, the petitioner who is a divorcee started residing over the premises in question. On account of the dispute in between the parties, an application came to be filed on 30.06.2020 purporting to be under section 22 of the Senior Citizens Act wherein several allegations were made against the petitioner.

It bears from the record that the respondent no.4 has been thrown out from the house by the petitioner and is presently not residing in the premises in question being L-612, Indralok Colony, Krishna Nagar, Lucknow, which according to the respondent no.4 is illegally occupied by the petitioner. In response to, an order has been passed directing the eviction of the petitioner from the property in

question.

This court had considered the Code of Chapter II and Chapter V of the Maintenance and Welfare of Parents and Senior Citizens Act, 2007 and the judgment has been delivered on 31.05.2022 in the case of Writ-C No.30835 of 2021 (Abhishek Tiwari and another vs. State of U.P. and others).

Considering the fact that the respondent no.4 approached the Tribunal seeking a right of residence and the order has been passed thereupon coupled with the fact that today a proposal has been given by the respondent no.4 to the effect that property in fact is divisible in three parts in view of the map submitted by the counsel for the respondent. The three parts have been shown as Para-A, Part-B and Part-C. The map and the proposal as given by the counsel for the respondent no.4 is taken on record.

For effecting the partition, certain alterations and modifications are required in the house in question, which may take six months to one year and the respondent no.4 being a very old lady does not have ample time, she has even offered to pay the petitioner an amount of Rs.6000/- per month for the period the construction takes place so as to affect the partition of the property in question. The petitioner, on the other hand, has no source of employment and she survives on an amount of Rs.14,000/-, which she gets from her erstwhile husband. Considering the fact that I have already held in the case of Abhishek Tiwari and another (supra) that the Tribunal has the power to direct or provide for the residence, which is included in the definition of maintenance coupled with the fact that the respondent no.4 has offered to pay an amount of Rs.6,000/-, I modify the order dated 02.12.2021 on the following terms :

1. The petitioner shall vacate the premises in question within one month from today and shall search for an alternative accommodation on rent.

2. The respondent no.4 shall pay an amount of Rs.6,000/- per month, as offered by her, starting w.e.f. 01.07.2022 to the petitioner.

3. The respondent no.4 shall take steps for getting the property demarcated in terms of the proposed map and shall ensure that the constructions as proposed are carried out with all expedition preferably within a period of one year from today. After a period of one year from today, the petitioner would be entitled to occupy the Part-A of the premises, as proposed by the respondents. The petitioner would not enter in the house in question for a period of one year and shall not cause any inconvenience to the respondent no.4.

In case of violation of any of the directions given above, the parties can approach this court by filing an appropriate application, if they so desire. The cost of the constructions shall be paid in the fraction of one third each i.e. by the petitioner, the respondent no.4 and the other daughter of the respondent no.4, on whose instance, the counsel for the respondent says that she would also contribute towards the constructions.

The writ petition stands disposed off in terms of the said order."

6. Precisely, in operative portion three conditions have been indicated by the writ court and since the premises in question has not been vacated in terms of the order of the writ court no demarcation could take place. So far as the consent part is concerned, as submitted by Ms. Rashmi there is no indication of consent in the order of the writ court.

7. Undoubtedly, the order of the writ court has attained finality up to the Hon'ble Apex Court and the Apex Court vide order dated 1.5.2023 granted two months time to vacate the premises in question but the compliance of the order of the writ court as well as the order of the Apex Court has not been done by the opposite party no. 1, Ms. Rashmi till date.

8. Her further submissions regarding her medical ailments may not rescue her from the contempt proceedings inasmuch as such factum may not come within

the way of making compliance of the order of the courts, therefore, the following charge is framed against her :

"Ms. Rashmi has deliberately, willfully and intentionally flouted the order / direction being issued by the writ court on 31.5.2022 in Writ-C No. 2186 of 2022 as well as she has deliberately, willfully and intentionally flouted the order of the Apex Court dated 1.5.2023 passed in Special Leave Petition (Civil) Diary No. 9473 of 2023. Despite the explanation being called vide order dated 29.8.2023 by this Court she has not given any explanation. Therefore, she is liable to be punished u/s 12 of the Contempt of Courts Act, 1971 read with Article 215 of the Constitution of India."

9. List on 9.10.2023.

10. By the next date of listing Ms. Rashmi, the opposite party no. 1 may file her defense on the aforesaid charge failing which she may be punished under section 12 of Contempt of Courts Act read with Article 215 of the Constitution of India on the next date.

11. In the meantime the present Sub-Divisional Magistrate, Sadar, Lucknow and Station House Officer, P.S. Krishna Nagar, Lucknow may do the needful exercise in terms of the aforesaid order.

12. On the next date Ms. Rashmi, the opposite party no. 1 shall again appear in person. "

3. By means of the aforesaid order the direction was issued to the opposite party no. 1 Ms. Rashmi to appear in person. In the aforesaid order the charges have been framed against her. Neither Ms. Rashmi is present nor any application for exemption etc. has been filed on her behalf.

4. Let the bailable warrant be issued against Ms. Rashmi, the opposite party no. 1 executable by the Chief Judicial Magistrate, Lucknow.

5. C.J.M., Lucknow may grant bail to Ms. Rashmi, if she appears or surrenders before him and shall ensure her presence before this Court on the next date.

6. List on 2.11.2023."

3. Opposite party no.1 i.e. Ms. Rashmi is not present in the Court nor any application for seeking exemption has been filed. Paper book reveals that the Chief Judicial Magistrate, Lucknow has submitted a report dated 30.10.2023 addressing to the Chief Judicial Magistrate, Prayagraj wherein it has been indicated that opposite party no.1 has been approached to her address at Lucknow and to her another address at Prayagraj but she was not available at any place. The daughter of opposite party no.1 has been contacted on mobile phone no.8004835846 and her daughter picked up the phone and apprised that her mother is not living with her. As per the aforesaid report, opposite party no.1 is not traceable either at Prayagraj or at Lucknow, therefore, prima facie it appears that opposite party no.1 i.e. Ms. Rashmi has not only flouted the order of the writ court but she is flouting the order of the contempt court. Even she did not appear/surrender before the Chief Judicial Magistrate, Lucknow for getting herself bailed out in terms of the order dated 09.10.2023 (supra). She has not informed the Court through her counsel by filing any appropriate application seeking exemption about the reason as to why she did not appear before the Court and also before the Chief Judicial Magistrate, Lucknow.

4. Therefore, under the aforesaid compelling circumstances, this Court has got no other option except to issue non-bailable warrant.

5. Let non-bailable warrant be issued against opposite party no.1-Ms. Rashmi.

6. The aforesaid non-bailable warrant shall be executed by the next date of listing and the presence of opposite party no.1 shall also be ensured before this Court on the next date.

7. Registry of this Court is directed to take necessary steps for compliance of this order.

8. List on 06.12.2023.

9. It is made clear that if on the next date, it is found that there is any lapse on the part of the administration/ police authorities in not to trace out the location of opposite party no.1 and also not to provide proper assistance to the administrative authorities for getting the order of the writ court as well as the order of the contempt court complied with, any coercive order may be passed against the erring officer inasmuch as learned counsel for the petitioner has stated that the Naib Tehsildar concerned has sought help from the local police but the local police is not providing proper help/ assistance for getting the order of the writ court and the order of the contempt court complied with."

3. Ms. Soma Pandey, learned counsel for the petitioner and Ms. Manju Gupta, learned counsel for the opposite party no. 1, both have informed that the premises in question has been got vacated by using force by the district administration and now the possession of the premises in question is with the applicant, however, the specific recital to this effect has not been given in the aforesaid application.

4. It has been further informed that after the aforesaid order having been passed the opposite party no. 1 has been taken into custody and now she is in a judicial custody. The opposite party no. 1 namely, Rashmi w/o Puneet Kumar is present with Ms. Archana Chaubey, Sub-Inspector, and Ms. Kundan Sachan, Lady Constable, both from Reserve Police Lines, Lucknow. It has been further informed that the non-bailable warrant has already been executed.

5. Ms. Manju Gupta has stated that the opposite party no. 1 is suffering from some mental ailment, so on account of that reason she could not understand the direction being issued by the writ court and by the contempt court. On account of aforesaid reason she could not obey the order of personal appearance and order of bailable warrant. She has further submitted that since she is in judicial custody w.e.f. 27.11.2023 and the possession of the premises in question has been handed over by the administration to the applicant, therefore, the aforesaid order dated 2.11.2023 may be recalled.

6. Learned counsel for the petitioner / applicant Ms. Pandey has also stated that the applicant was not willing that her own daughter be sent to the judicial custody, therefore, if the aforesaid order is recalled and any direction for her bail is granted, she has no objection. However, Ms. Pandey has stated that after release from jail the applicant is expecting that the opposite party no. 1 should abide by the directions being issued by the writ court and the Apex Court as well.

7. Having considered the submission of learned counsel for the

parties, particularly the fact that the possession of the premises in question has been handed over to the applicant on 30.11.2023 and the opposite party no. 1 is in judicial custody w.e.f. 27.11.2023, I find it appropriate that the order dated 2.11.2023 be recalled.

8. Accordingly, the order dated 2.11.2023 is **recalled**.

9. Since the opposite party no. 1 is in judicial custody, therefore, she shall file bail application before the Chief Judicial Magistrate concerned at the earliest and as soon as the aforesaid bail application is filed she may be granted bail on the same day on her furnishing a personal bond of Rs. 50,000/-, so that she could be released from jail at the earliest, preferably on the same day.

10. However, it is expected that in compliance of the order of the writ court as well as of the order being passed by the Apex Court in the present matter, the required exercise shall be undertaken so that the dispute in present issue could be resolved finally.

11. In the wake of aforesaid development nothing remains to be adjudicated by this Court in this writ petition.

12. Accordingly, the contempt petition is **disposed of** finally in view of aforesaid terms.

13. Consign to records.

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[Rajesh Singh Chauhan, J.]

Order Date :- 6.12.2023

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