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

+ RFA 62/2015 & CMs1843-1845/2015

% Date of decision : 26th February , 2015

PREM @ PEMLA Appellant
Through Mr. V.K. Anand, Mr. Manoj
Kumar, Advs.
versus

ARYA SAMAJ SAKET Respondent
Through Mr. Hardik Luthra, Adv.

**CORAM :-
HON'BLE MR. JUSTICE J.R. MIDHA**

JUDGMENT (ORAL)

1. The appellant has challenged the impugned judgment dated 20th October, 2014 whereby the learned Trial Court has passed a decree for possession and mesne profits against the appellant and her husband.
2. The respondent – Arya Samaj Saket, a society registered under the Societies Registration Act, is the owner in possession of Arya Samaj Mandir, property no.120A, D Block, Saket, New Delhi. In the year 1983-84, the appellant's husband started doing 'sewa' in the respondent's temple as a 'sewak' on an honorarium of Rs.1,000/- per month and was allowed to occupy the suit property. On 1st June, 2008, the appellant's husband was asked to stop the 'sewa' on the ground of objectionable conduct and behaviour as he

was cooking and eating non-vegetarian food and having liquor in the suit property. It was also found that the appellant's husband was working with the Department of Central Excise and has been allotted a flat in Pushp Vihar. Vide legal notice dated 27th April, 2009, the appellant and her husband were called upon to vacate the suit property within 30 days which was not complied with and therefore, the respondent instituted the suit for possession and mesne profits.

3. The appellant and her husband contested suit on the ground that they were granted permanent right to live in the suit property by the founder members of the society and therefore, they can never be evicted. The appellant and her husband further stated that they served the society with utmost sincerity till the time they were forced not to do the '*sewa*'.

4. The respondent examined the President of the society as PW-1 who proved eight receipts Ex.PW-1/3(Colly.) for Rs.1,000/- as honorarium issued by the society in favour of the appellant's husband. PW-1 also proved the letter dated 10th February, 2001 written by the appellant's husband asking for an advance of Rs.1,500/- with a request to deduct @ Rs.200/- per month out of honorarium. PW-1 also proved the copy of the legal notice dated 27th April, 2009 along with postal receipts as Ex.PW-1/6 to 1/8.

5. The appellant appeared in the witness box as DW-2 and her husband appeared as DW-1. The appellant also examined her son as DW-3 and they reiterated the defence taken in the written statement. However, none of the witnesses could give the

particulars of the oral assurance alleged to have been given by the founder members of the society namely the date, time and place of the alleged assurance.

6. The learned Trial Court held the status of the appellant in the suit property to be of a licensee/permissive user and the said licence having been revoked, the appellant and her husband had no right to occupy the suit property. The learned Trial Court further held that even otherwise permanent right in an immovable property can be granted only by a registered document whereas there was no written document in the present case.

7. Learned counsel for the appellant has urged at the time of hearing of this appeal that the appellant has a permanent right to stay in the suit property in terms of the assurance given by the founder members. Learned counsel, however, admitted that the husband of the appellant is working with the Central Excise Department and has been allotted a government accommodation in Pushp Vihar and he is staying there. Learned counsel submitted that the appellant and her husband are staying separately i.e. the appellant is staying in the suit property along with her unmarried daughter whereas her husband is staying separately in Pushp Vihar though they have not been judicially separated. Learned counsel pleaded that the appellant was performing '*sewa*' with the respondent.

8. During the course of the arguments, it was specifically put to learned counsel for the appellant as to what is the right of the appellant to stay in the suit property. Learned counsel for the

appellant admitted that the appellant is not the owner of the suit property. Learned counsel further admitted that the appellant is not a tenant. Learned counsel further even denied the right of the appellant as a licensee. Learned counsel submitted that the appellant has a right to stay in the suit property by virtue of an assurance given by the founder members of the respondent society. However, learned counsel for the appellant could not give the date, time and place of the alleged assurance. The learned counsel candidly admitted that none of the three witnesses examined by the appellant could even give the particulars namely date, time and place of the alleged assurance by the respondent.

9. This Court is of the view that the appellant's husband was given the licence to stay in the suit property as he was performing the '*sewa*' in temple, which has been validly revoked by the respondent vide notice dated 27th April, 2009 and therefore, the appellant has no right to stay in the suit property. The appellant could not prove the oral assurance alleged to have been given by the founder members of the society. Even otherwise, no member of the society can transfer or assign the permanent right in respect of the temple property by giving an oral assurance. The appellant's contention that she was receiving the honorarium from the respondent for doing '*sewa*' is false. The appellant has no right to continue to stay in the suit property. The appellant has raised a false claim in this appeal which is gross abuse and misuse of the process of law.

False Claims and Defenses

10. In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria, (2012) 5 SCC 270**, 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.”

11. 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)

12. In *Satyender Singh v. Gulab Singh*, (2012) 129 DRJ 128 (Delhi), 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)

13. In **A. Shanmugam v. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam, (2012) 6 SCC 430**, the Supreme Court held as under:-

"RESTITUTION AND MESNE PROFITS

34. Experience reveals that a large number of cases are filed on false claims or evasive pleas are introduced by the defendant to cause delay in the administration of justice and this can be sufficiently taken care of if the courts adopt realistic approach granting restitution.

*35. This Court in **Ramrameshwari Devi v. Nirmala Devi** (2011) 8 SCC 249 (of which one of us, Dr Bhandari, J. was the author of the judgment) in paras 52(C), (D) and (G) of the judgment dealt with the aspect of imposition of actual or realistic costs which are equally relevant for this case...*

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36. Unless wrongdoers are denied profit or undue benefit from frivolous litigations, it would be difficult to control frivolous and uncalled-for litigations. Experience also reveals that our courts have been very

reluctant to grant the actual or realistic costs. We would like to explain this by giving this illustration. When a litigant is compelled to spend Rs 1 lakh on a frivolous litigation there is hardly any justification in awarding Rs 1000 as costs unless there are special circumstances of that case. We need to decide cases while keeping pragmatic realities in view. We have to ensure that unscrupulous litigant is not permitted to derive any benefit by abusing the judicial process.

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38. False averments of facts and untenable contentions are serious problems faced by our courts. The other problem is that litigants deliberately create confusion by introducing irrelevant and minimally relevant facts and documents. The court cannot reject such claims, defences and pleas at the first look. It may take quite some time, at times years, before the court is able to see through, discern and reach to the truth. More often than not, they appear attractive at first blush and only on a deeper examination the irrelevance and hollowness of those pleadings and documents come to light.

39. Our courts are usually short of time because of huge pendency of cases and at times the courts arrive at an erroneous conclusion because of false pleas, claims, defences and irrelevant facts. A litigant could deviate from the facts which are liable for all the conclusions. In the journey of discovering the truth, at times, this Court, at a later stage, but once discovered, it is the duty of the court to take appropriate remedial and preventive steps so that no one should derive benefits or advantages by abusing the process of law. The court must effectively discourage fraudulent and dishonest litigants.

40. Now, when we revert to the facts of this case it becomes quite evident that the appellant is guilty of

suppressing material facts and introducing false pleas and irrelevant documents. The appellant has also clouded the entire case with pleas which have nothing to do with the main controversy involved in the case.”

Imposition of Costs

14. In **Ramrameshwari Devi v. Nirmala Devi, (2011) 8 SCC 249**, the Supreme Court has held that the Courts have to take into consideration pragmatic realities and have to be realistic in imposing the costs. The relevant paragraphs of the said judgment are reproduced hereunder:-

“52... C. Imposition of actual, realistic or proper costs and or ordering prosecution would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases the courts may consider prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.

54. While imposing costs we have to take into consideration pragmatic realities and be realistic what the Defendants or the Respondents had to actually incur in contesting the litigation before different courts. We have to also broadly take into consideration the prevalent fee structure of the lawyers and other miscellaneous expenses which have to be incurred towards drafting and filing of the counter affidavit, miscellaneous charges towards typing, photocopying, court fee etc.

55. The other factor which should not be forgotten while imposing costs is for how long the

Defendants or Respondents were compelled to contest and defend the litigation in various courts. The Appellants in the instant case have harassed the Respondents to the hilt for four decades in a totally frivolous and dishonest litigation in various courts. The Appellants have also wasted judicial time of the various courts for the last 40 years.

56. On consideration of totality of the facts and circumstances of this case, we do not find any infirmity in the well reasoned impugned order/judgment. These appeals are consequently dismissed with costs, which we quantify as Rs. 2,00,000/- (Rupees Two Lakhs only). We are imposing the costs not out of anguish but by following the fundamental principle that wrongdoers should not get benefit out of frivolous litigation.”

(Emphasis supplied)

15. In **Maria Margarida Sequeria Fernandes v. Erasmo Jack de Sequeria** (supra) the Supreme Court held that heavy costs and prosecution should be ordered in cases of false claims and defences as under:-

“82. This Court in a recent judgment in Ramrameshwari Devi and Ors. (supra) aptly observed at page 266 that unless wrongdoers are denied profit from frivolous litigation, it would be difficult to prevent it. In order to curb uncalled for and frivolous litigation, the Courts have to ensure that there is no incentive or motive for uncalled for litigation. It is a matter of common experience that Court's otherwise scarce time is consumed or more appropriately, wasted in a large number of uncalled for cases. In this very judgment, the Court provided that this problem can be solved or at least be minimized if exemplary cost is imposed for instituting frivolous litigation. The Court observed at

pages 267-268 that imposition of actual, realistic or proper costs and/or ordering prosecution in appropriate cases would go a long way in controlling the tendency of introducing false pleadings and forged and fabricated documents by the litigants. Imposition of heavy costs would also control unnecessary adjournments by the parties. In appropriate cases, the Courts may consider ordering prosecution otherwise it may not be possible to maintain purity and sanctity of judicial proceedings.”

(Emphasis supplied)

16. In **Padmawati v. Harijan Sewak Sangh, 154 (2008) DLT 411**, this Court imposed costs of Rs.15.1 lakhs and noted as under:

“6. The case at hand shows that frivolous defences and frivolous litigation is a calculated venture involving no risks situation. You have only to engage professionals to prolong the litigation so as to deprive the rights of a person and enjoy the fruits of illegalities. I consider that in such cases where Court finds that using the Courts as a tool, a litigant has perpetuated illegalities or has perpetuated an illegal possession, the Court must impose costs on such litigants which should be equal to the benefits derived by the litigant and harm and deprivation suffered by the rightful person so as to check the frivolous litigation and prevent the people from reaping a rich harvest of illegal acts through the Courts. One of the aim of every judicial system has to be to discourage unjust enrichment using Courts as a tool. The costs imposed by the Courts must in all cases should be the real costs equal to deprivation suffered by the rightful person.

7. ... The petitioners are, therefore, liable to pay costs which is equivalent to the average market rent

of 292 months to the Respondent No. 1 and which comes to Rs.14,60,000 apart from litigation expenses and Counsel's fee throughout which is assessed at Rs. 50,000/-. The petition is hereby dismissed with costs of Rs.15,10,000/- to be recovered from the petitioners jointly and severally. If any amount has been paid towards user charges, the same shall be adjustable.

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9. Before parting with this case, I consider it necessary to pen down that one of the reasons for over-flowing of court dockets is the frivolous litigation in which the Courts are engaged by the litigants and which is dragged as long as possible. Even if these litigants ultimately loose the lis, they become the real victors and have the last laugh. This class of people who perpetuate illegal acts by obtaining stays and injunctions from the Courts must be made to pay the sufferer not only the entire illegal gains made by them as costs to the person deprived of his right and also must be burdened with exemplary costs. Faith of people in judiciary can only be sustained if the persons on the right side of the law do not feel that even if they keep fighting for justice in the Court and ultimately win, they would turn out to be a fool since winning a case after 20 or 30 years would make wrong doer as real gainer, who had reaped the benefits for all those years. Thus, it becomes the duty of the Courts to see that such wrong doers are discouraged at every step and even if they succeed in prolonging the litigation due to their money power, ultimately they must suffer the costs of all these years long litigation. Despite settled legal positions, the obvious wrong doers, use one after another tier of judicial review mechanism as a gamble, knowing fully well that dice is always loaded in their favour,

since even if they lose, the time gained is the real gain. This situation must be redeemed by the Courts.”

(Emphasis supplied)

Conclusion

17. On consideration of totality of the facts and circumstances of this case, I do not find any infirmity in the well reasoned impugned judgment. The appellant has misused the process of law by raising a false claim. The appellant has no respect for truth and has made false statements on oath. The respondent had allowed the appellant's husband to use the suit property as he was performing the 'sewa' in the temple. The respondent stopped the appellant's husband from performing 'sewa' on 01st June, 2008 which has not been challenged by the appellant's husband. The respondent thereafter revoked the licence of the appellant's husband on 27th April, 2009. The learned Trial Court has decreed the possession of the suit property against the appellant and her husband. However, the appellant's husband has chosen not to challenge the impugned judgment and decree. The appellant, who has no right whatsoever, has challenged the impugned judgment by raising false claims. The appellant has shamelessly resorted to falsehood and has attempted to pollute the pure fountain of justice with tainted hands and, therefore, the appellant is not entitled to any relief. This case is squarely covered by the above mentioned judgments and warrants prosecution as well as imposition of penal costs on the appellant. However, considering that the Courts are already

overburdened, directing prosecution of the appellant would further burden the system. This appeal is consequently dismissed with cost of Rs.1,00,000/- on the appellant. The cost be paid by the appellant to the respondent within four weeks.

J.R. MIDHA, J

FEBRUARY 26 , 2015
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