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

Date of Decision: July 28, 2015

+ **CRL.M.C. 979/2013**

SUSHILA GARG

..... Petitioner

Through: Mr. R.N. Dubey, Advocate

versus

STATE & ORS.

.....Respondents

Through: Mr. Vinod Diwakar, Additional
Public Prosecutor for respondent-
State with SI Kapil Kumar
Ms. Mansi Sahoo, Advocate for
impleader

CORAM:

HON'BLE MR. JUSTICE SUNIL GAUR

JUDGMENT
(ORAL)

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Crl.M.A.6746/2014 (for impleadment)

For the reasons stated in the application, it is allowed and applicant-*Brij Mohan Gupta* is added a respondent-party in the main petition.

The application stands disposed of.

CRL.M.C. 979/2013

In proceedings under Section 145 of Cr.P.C., petitioner had sought execution of order of 1st September, 2008 vide which she had been

permitted to continue in possession of the disputed property with a rider that she can be dispossessed by following due process of law. In the execution proceedings, vide order of 2nd December, 2011 (*Annexure P-8*) local police was directed to ensure the compliance of the aforesaid order of 1st September, 2008. Finding that the local police is not complying with the aforesaid order, petitioner had filed a criminal revision petition seeking enforcement of the aforesaid order (*Annexure P-8*) and the said revision petition stands dismissed as not maintainable by the revisional court vide order of 16th December, 2013, which is impugned in this petition.

In the impugned order, it has been held that the order of 2nd December, 2011 passed (*Annexure P-8*) in the execution proceedings is an interlocutory order.

At the hearing, learned counsel for petitioner had contended that the order of 2nd December, 2011 (*Annexure P-8*) is not an interlocutory order and the revisional court ought to have ensured that the order of 2nd December, 2011 (*Annexure P-8*) was complied with by the local police.

During the course of hearing, it was submitted by learned counsel for petitioner that petitioner had made a complaint on 17th May, 2012 (*Annexure P-12*) to the local police regarding petitioner being not permitted to enter into the premises in question and it was also submitted that an application under Section 156 (3) of Cr.P.C. is pending before the trial court. Reliance was placed by learned counsel for petitioner upon decision of a co-ordinate Bench of this Court in *Jagdish Gandhi & Anr. V. State & Anr.* 153 (2008) DLT 64 wherein it was held that an order under Section 145 of Cr.P.C. is not an interlocutory order. Reliance was

also placed upon a decision of a Division Bench of this Court in the matter of *Court on Its Own Motion in Re. Sh. Vinod Kumar Jain*, 2013 SCC OnLine Del 4201 to submit that the conduct of respondent-*Brij Mohan Gupta* is contumacious and so, he deserves to be punished for contempt as has been done in *Vinod Kumar Jain (supra)*.

Attention of this Court was also drawn to Apex Court's decision in *Laxmibai (Dead) Thr. Lrs. & Anr. v. Bhagwantbuva (Dead) Thr. LRS. & Ors.* I (2013) SLT 644 to remind this Court that the substantial justice deserves to be preferred and on technicality, the order (*Annexure P-8*) cannot be termed to be an interlocutory one.

Learned counsel for the intervener/respondent had sought to argue this case on merits and had submitted that there is no substance in this petition.

Having heard learned counsel for the parties as well as the intervener and on perusal of the impugned order and order of 2nd December, 2011 (*Annexure P-8*), the material on record and the decisions cited, I find that the order of 2nd December, 2011 (*Annexure P-8*) is infact an interlocutory order and the impugned order does not suffer from any palpable error. So far as the compliance of the order of 1st September, 2008 is concerned, I find that it is not clearly brought out before this Court as to what is the background which compels petitioner to seek re-entry into the premises in question when order of 1st September, 2008 holds that petitioner is in possession of the premises in question. In any case, since the controversy now sought to be raised in this petition is already the subject matter of the pending application under Section 156 (3) Cr.P.C. before the trial court, therefore, this Court is not inclined to

exercise its inherent extraordinary jurisdiction under Section 482 of Cr.P.C..

This petition is disposed of while making it clear that the dismissal of this petition will not stand in the way of trial court to consider the pending application under Section 156 (3) Cr.P.C. independently.

With aforesaid observations, this petition stands disposed of.

(SUNIL GAUR)
JUDGE

JULY 28, 2015

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