

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

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Date of decision: 1st May, 2015

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LPA No.364/2014

MOHAN NAIR

..... Appellant

Through: Mr. Ramesh Kumar, Adv.

Versus

RAJIV GUPTA & ORS.

..... Respondents

Through: Mr. Sunil Magon, Adv. for R-1 to 3.
Mr. Vivek B. Saharya, Adv. for R-4/NDMC.
Mr. Sanjeev Goyal and Mr. Abhjoy Banerjee, Adv. for R-5 with S.I. Bishambar Dayal.

CORAM :-

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J

1. This intra-court appeal impugns the order dated 14th March, 2014 of the learned Single Judge of this Court, of disposal of Cont. Cas (C) No.148/2014 filed by the appellant with liberty to the appellant to seek his civil remedies against the respondents.

2. Notice of the appeal was issued and replies have been filed on behalf of respondents No.1&2, respondent No.3 and respondent No.4. We heard the counsel for the appellant, the counsel for the respondents No.1 to 3 and the

counsel for the respondent no.4/NDMC. The respondent No.5 is the Sub Inspector of Police of the concerned police station.

3. To understand the controversy, it is necessary to commence from the beginning.

4. The appellant /his father was an old tenant at a rent of Rs.100/- per month in property No.N-5/2, Connaught Circus, New Delhi under the respondent No.2 The Motor and General Finance Limited of which the respondent No.1 is the Director. The appellant, on 4th January, 2003 was dispossessed from his tenancy premises in execution of an order of eviction obtained by the respondent no.2 Company in a petition for eviction under the Delhi Rent Control Act, 1958 filed against some other person. The appellant, on 14th January, 2003, filed an application under Section 25 of the Rent Act in the Court which had passed and executed the order of eviction and whereunder the appellant had been dispossessed from his tenancy premises. The said application was allowed vide order dated 7th July, 2011 of the Court of the Rent Controller. It was held that the appellant was a tenant under the respondent No.2 Company in respect of premises No. N-5/2, Connaught Circus, New Delhi as shown in the site plan Ex.AW5/4 and as portion D2 in the site plan Ex. OW1/1 and that the appellant had been wrongfully

dispossessed therefrom. Accordingly, the respondent No.2 Company was directed to restore to the appellant possession of N-5/2, Connaught Circus, New Delhi as shown in site plan AW5/2 and as portion D2 of site plan Ex.OW1/1.

5. However it appears that the respondent No.2 Company after wrongfully taking over possession of the premises aforesaid in the tenancy of the appellant, had commenced demolishing the same. On an application of the appellant, vide order dated 15th July, 2003 the respondent No.2 Company was directed to maintain status quo and not to carry out further demolition. Upon the respondent No.2 Company again, in or above the year 2005 proceeding to demolish the said premises, the appellant filed an application. The respondent No.2 Company however took a stand that the premises had fallen on their own. The appellant accordingly, after the order dated 7th February, 2011 of restoration of his possession, applied to the Rent Controller for a direction to the respondent No.2 to re-construct the property. The respondent No.2 objected contending that the property could be re-constructed only as per the provisions of the NDMC byelaws and no building could be reconstructed in derogation thereof and thus no order for reconstruction could be passed against the respondent No.2 Company. The

Rent Controller, vide order dated 24th August, 2011 accepted the said plea of the respondent No.2 Company and refused to direct the respondent No.2 Company to reconstruct the tenancy premises. However the Rent Control Tribunal in an appeal filed by the appellant in this regard, vide order dated 5th July, 2012 directed the respondent No.2 Company to their original condition as shown in the site plans aforesaid.

6. The aforesaid order of the Rent Controller and Rent Control Tribunal have attained finality.

7. The respondent No.2 however failed to comply therewith and which lead to the appellant filing Cont.Cas (C) No.754/2012 in this Court.

8. The respondent No.2 Company contested the said contempt case by again contending that it had written several letters to the NDMC seeking permission to reconstruct the premises in the tenancy of the appellant as directed by the Rent Control Tribunal but no satisfactory response had been received from NDMC. The respondent No.2 Company further offered to pay cost of re-construction to the appellant to enable the appellant to himself restore the premises to the original condition at his own risk and responsibility and in terms of the order of the Rent Controller and further

offered that it will cooperate and sign all papers to enable the appellant to do so. The said offer of the respondent No.2 Company was accepted by the appellant who submitted that no permission was required from NDMC; reliance in this regard was placed on the observations in the order dated 5th July, 2012 supra of the Rent Control Tribunal. It was further the contention of the counsel for the appellant as recorded in the order of that day that even as per the building byelaws, construction which was either demolished or which fell on its own could be restored and no permission therefor was required.

9. The Cont.Cas(C) No.754/2012 was accordingly disposed of by accepting and taking on record the statements of the counsels for the parties and ordering the parties to remain bound by the same and a direction for payment of the agreed sum of money by the respondent No.2 Company to the appellant towards construction cost was passed.

10. However the appellant was not able to himself also reconstruct and restore the property to its original condition, according to the appellant owing to collusion between the officials of the respondent No.2 Company, Police and the NDMC, who prevented the appellant from doing so. This led to the filing of Cont.Cas (C) No.148/2014 wherefrom this appeal arises.

11. The learned Single Judge however vide the impugned order dismissed the said contempt case *in limine* observing, i) that the respondent No.2 Company, at the time of disposal of Cont. Cas(C) No.754/2012 earlier filed by the appellant had not given any undertaking to facilitate re-construction / restoration of the premises by the appellant and in fact the appellant had agreed to carry out the said works at his own risk and responsibility; ii) if according to the appellant the respondents were deliberately obstructing reconstruction / restoration activity being undertaken by him, then it was for the appellant to invoke the civil remedies as may be available to him in law but contempt proceedings would not be a substitute for the same. Accordingly, the contempt case was disposed of with liberty to the appellant to seek his civil remedies against the respondents.

12. In spite of being conscious of an appeal / LPA being maintainable only against an order punishing for contempt, we issued notice of this appeal finding that, in the legalese, the orders / directions aforesaid of the Rent Controller and the Rent Control Tribunal which had attained finality, have remained unimplemented thereby making a mockery of the process of law and the likely effect whereof would be erosion of faith and respect in the orders / directions of the Court. Sure enough, the counsel for the

respondents No.1 to 3 also, on the very first date, took objection as to the maintainability of the appeal. The said objection has been reiterated in the reply filed to the appeal.

13. The appellant has also impleaded Sh. Arun Mitter, another Director of the respondent No.2 company as respondent No.3. The respondent No.3 has filed a separate reply but through the same advocate as the respondents No.1 and 2. The respondent No.4 Chief Architect, NDMC has also filed a reply / status report to the effect that though the respondent No.2 company was directed to submit a proposal for the proposed construction in the prescribed proforma but had not done so and without permission of the NDMC the construction in terms of the order of the Rent Control Tribunal could not be carried out.

14. The learned Single Judge, in the impugned judgment has not given any reasoning whatsoever for holding as to why the contempt case was not maintainable and as to why the appellant instead take up remedies in law except for recording that the respondent No.2 Company at the time of disposal on 25th February, 2013 of the earlier Cont.Cas (C) No.754/2012 filed by the appellant had not given any undertaking.

15. However the power to invoke contempt jurisdiction of this Court is not limited to cases of breach of undertaking only. Reliance by the counsel for the appellant in this respect on *Rama Narang Vs. Ramesh Narang* (2006) 11 SCC 114 is apposite. It was held that the words “willful disobedience to any judgment decree, direction, order, writ or other process of a Court” in Section 2(b) of the Contempt of Courts Act, 1971 denote wide nature of the power of the Court and that in the case of consent order / decrees, even where no undertaking was given to the Court, the question would still arise whether the party in breach of such promise could be called upon to answer proceeding in contempt for willful disobedience of the consent order. While addressing the said question, it was held that all decrees and orders including consent decrees or orders are executable but merely because they are executable would not take away the Courts jurisdiction to deal with the matter under the contempt jurisdiction, if the Court is satisfied that the violation of the order or decree is such that it would warrant punishment under Section 13 of the Act on the ground that the contempt substantially interferes or tends substantially to interfere with the due course of justice. It was further held that in such circumstances, it would neither be in consonance with the statute, judicial authority, principle

or logic to draw any distinction between the willful violation of the terms of a consent decree and willful violation of a decree which is passed on adjudication. It was yet further held that ultimately, the matter is one of the Court's discretion having regard to the facts of the case. Finding that the violation in the facts of that case to be a violation of the Court's order, it was held that the violation was contumacious.

16. We, for the reasons following are of the view that the present appeal is maintainable and the findings returned by the learned Single Judge in the impugned order are liable to be set aside and the respondents No.1 to 3 have indeed committed contempt of Court and appropriate directions required to be issued to enforce the orders of the Rent Controller and the Rent Control Tribunal:

- (A) The finding of the Rent Controller which has attained finality is that the respondent No.2 company of which respondents No.1 and 3 are Directors, in execution of an order of eviction not obtained against the appellant, wrongfully dispossessed the appellant on 4th January, 2003 from the premises in his/in his father's tenancy since the year 1953.

- (B) Though the appellant, within a few days of his dispossession, on 14th January, 2003 filed objections under Section 25 of the Rent Act as aforesaid, but the respondents No.1 to 3 inspite of knowledge of pendency of the said objections, on or about 6th June, 2003 got the said premises demolished by complaining to the NDMC of the same being unauthorized. The appellant had to again approach the Court for a direction to the respondents No.1 to 3 to maintain *status quo*.
- (C) Inspite of the said order of *status quo*, further damage was caused to the premises, though the explanation of the respondents No.1 to 3 was that the premises have fallen on its own.
- (D) The objections filed by the appellant under Section 25 were finally allowed as aforesaid on 7th July, 2011 with a direction to the respondent No.2 Company to restore possession to the appellant and direction for reconstruction/restoration of the premises to the original condition was also issued on 24th August, 2011.

- (E) Though the respondents No.1 to 3 did not challenge the said orders of the Rent Controller and Rent Control Tribunal but also did not comply with the same taking the excuse of having applied to the NDMC and NDMC having not permitted reconstruction / restoration of the premises, inspite of the said plea having not found favour with the Rent Control Tribunal and thereby compelling the appellant to approach this Court in Cont.Cas (C) No.754/2012.
- (F) Faced therewith, the respondents No.1 to 3 offered to pay the cost of reconstruction / restoration of the premises to the appellant to enable the appellant to himself restore the premises as directed by the Rent Control Tribunal and which offer was accepted by the appellant.
- (G) In this manner, the respondents No.1 to 3 avoided decision on merits of Cont.Cas (C) No.754/2012.
- (H) From a reading of the order dated 25th February, 2013 of this Court in Cont.Cas(C) No.754/2012 it can by no means be said that the appellant discharged the respondents No.1 to 3 from

their obligations under the orders of the Rent Controller and Rent Control Tribunal or that the liability of the respondents No.1 to 3 to comply with the orders / directions of the Rent Controller and the Rent Control Tribunal came to an end. This is quite evident from the statement of the counsel for the respondents No.1 to 3 recorded in the said order to the effect that the said respondents had no intention to flout the orders of the Rent Controller and the Rent Control Tribunal and that inspite of the respondents paying the agreed cost of reconstruction / restoration to the appellant and the appellant himself taking over the said work, the respondents would remain liable to cooperate in the said works and would sign all papers and documents which they may be required to sign in this regard. Not only so, the said order dated 25th February, 2013 also binds the respondents to the statement made by them before the Court.

- (I) The learned Single Judge is thus clearly in error in the impugned order in proceeding on the premise that the directions / orders of the Rent Controller and the Rent Control Tribunal

averring contempt of which the earlier Cont.Cas(C) No.754/2012 had been filed ceased to be enforceable or that a fresh arrangement had come into being between the parties in terms of the order dated 25th February, 2013 or that the appellant was required to take civil remedies for enforcement of the obligations of the respondents arising from the order dated 25th February, 2013.

(J) Not only so, once the right of the appellant to restoration of possession of the premises in its tenancy by reconstruction thereof in the same position as it existed prior to demolition thereof has been established in a competent Court, to direct the appellant for fresh adjudication is to make as aforesaid a mockery of law and the process of the Courts and which this Court can by no stretch of imagination allow to happen. If the same were to be allowed, the same will send a message to the public at large that the orders / directions of the Court need not to be complied with.

(K) the net effect today is that the respondent No.2 Company, inspite of accepting and allowing the orders aforesaid of the

Rent Controller and Rent Control Tribunal to attain finality, has for the last nearly three years been successful in evading implementation / enforcement thereof.

(L) The impugned order dated 14th March, 2014, holding that the orders of the Rent Controller and Rent Control Tribunal are no longer actionable/enforceable and the relationship of the parties is now governed by the terms recorded in the order dated 25th February, 2013, in our view is not a order declining to initiate proceedings for contempt or of dropping the proceedings for contempt or an order acquitting or exonerating the contemnor but a decision made on the merits of the dispute between the parties;

(M) The Supreme Court in *Midnapore Peoples' Coop. Bank Ltd. Vs. Chunilal Nanda* (2006) 5 SCC 399 has held that any direction issued or decision made by the High Court on the merits of a dispute between the parties, will not be in the exercise of jurisdiction to punish for contempt and therefore not appealable under section 19 of the Act unless such direction or decision is incidental to or inextricably connected with the

order punishing for contempt, in which event the appeal under section 19 of the Act can also encompass the incidental or inextricably connected directions. It was further held that if the High Court decides an issue or makes any direction relating to the merits of the dispute between the parties in a contempt proceedings, the aggrieved person is not without remedy; such an order is open to challenge in an intra-court appeal.

(N) The counsel for the respondents No.1 to 3 has not even argued that the obligations / liability of the respondents No.1 to 3 under the orders aforesaid of the Rent Controller and the Rent Controller Tribunal stand extinguished; rather, to be fair to the counsel for the respondents No.1 to 3, he had stated that the respondents No.1 to 3 have no objection to the appellant reconstructing / restoring the premises to the same condition as shown in the site plan referred to in the order of the Rent Controller and would create no impediments thereto, if the NDMC was not to object to the same.

(O) Thus the impugned order of the learned Single Judge treating the relationship of the appellant and the respondent No.2

company to be governed by the terms and conditions contained in the order dated 25th February, 2013 and the liability of the respondent No.2 company to comply with the directions contained in the orders aforesaid of the Rent Controller and Rent Controller Tribunal to have stood extinguished, has but to be set aside.

- (P) We have considered whether after holding so, to remand the matter to the learned Single Judge to proceed with the contempt. However, the matter being very old and having heard the counsel for the NDMC also and is the only objection to the implementation / enforcement of the orders of the Rent Controller and the Rent Controller Tribunal, we do not feel the need therefor.
- (Q) The counsel for the NDMC of course, with undue vehemence contended that without plans for construction being submitted and being sanctioned by the NDMC no re-construction / restoration of the premises to the original condition can be permitted.

(R) We are however of the opinion that the said argument is today not available. We may highlight that the said contention, this time by the counsel for the NDMC, is but an echo of the contention raised by the counsel for the respondent No.2 company before the Rent Controller and which had found favour with the Rent Controller who refused to direct the respondent No.2 company to reconstruct the property. However, the Rent Control Tribunal in appeal held that the contention that permission from NDMC would be required or the reconstruction would invite an action against the respondent No.2 company was misconceived. It was held that once it was found that the respondent No.2 company had illegally obtained possession of the said portion in the tenancy of the father of the appellant, the appellant was entitled to get it re-erected. It was also noticed that it was not the case of the respondent No.2 company that the said portion was illegal. The said finding also has attained finality and though NDMC was not a party to the proceedings before the Rent Controller or the Rent Control

Tribunal, but is bound thereby. The attempt of the NDMC to help the respondents no.1 to 3 is evident.

- (S) We may in this regard also notice that the finding which has attained finality is, of the father of the appellant being a tenant with respect to the said premises since the year 1953. The NDMC areas prior to the year 1994 when the NDMC Act was enacted were governed by the Punjab Municipal Act, 1911. Under the said Act, action for demolition of unauthorized construction even if any could be taken only within six months of the construction. It has been held by the Division bench of this Court in *NDMC Vs. H.K. Choudhary* MANU/DE/1985/2009 that the NDMC could not take any action for demolition of any unauthorized construction carried out prior to 27th May, 1984. Thus the question whether the construction of the premises in the tenancy of the appellant / his father was legal or illegal is now not relevant. Further, the NDMC having wrongfully demolished the said construction on the complaint of the respondent No.2 company of the same

being illegal, cannot now object to reconstruction / restoration thereof.

- (T) The principles of restitution would apply to such reconstruction/restoration of premises to the original condition and the procedure applicable to raising new construction would not apply. The action of reconstruction/restoration to original condition which has been directed, is nothing but undoing of what has been found to be done illegally. Both, respondents no.1 to 3 as well as NDMC are privy to such illegality and cannot now object to such restitution on the grounds raised.
- (U) We, in arriving at the aforesaid conclusion, have been guided strongly by our view that to say that the orders of the Rent Controller and Rent Control Tribunal are unimplementable and unenforceable has the tendency of making the law and the Court, a laughing stock. The perception of “the law” as Mr. Bumble (in Oliver Twist) said “is a ass – a idiot” will be cemented if the Courts themselves hold their own orders to be unimplementable and unenforceable. It is the duty of every Court to prevent its machinery from being made a sham,

thereby running down the Rule of Law and rendering itself an objection of ridicule. The House of Lords, in *Attorney General Vs. Guardian Newspaper Ltd.* [1987] 1. W.L.R. 1248 observed that public interest requires that we have a legal system and courts which command public respect and if the courts were to make orders manifestly incapable of achieving their avowed purpose, law would indeed be an ass. Justice Krishna Iyer in *Bushing Schmitz Private Ltd. Vs. P.T. Menghani* (1977) 2 SCC 835 also held each Court to be clothed with the purpose to prevent, its process from being rendered a parody and the rule of law from becoming an objection of public ridicule and the law, a laughing stock. We are of the opinion that to allow the orders aforesaid of Rent Controller and Rent Control Tribunal from remaining unimplemented on the grounds which were considered while making the said order, would indeed make the law a laughing stock and frustrate justice.

- (V) The Division Bench of this Court in *Prof. Ram Prakash Vs. Bengali Sweet Centre* ILR (2012) Delhi 808 has also held that the Courts, if owing to shackles of technicalities, do not grant

the relief, if found to be due, would be doing disservice rather than service and that the Courts, if do not come to the rescue of a litigant entitled to relief, would not be rendering justice for which the Courts have been set up. It was observed that justice is a virtue which transcends all borders and neither the rules of procedure nor technicalities of law can stand in its way. Reliance was placed on *M.S. Grewal Vs. Deep Chand Sood* (2001) 8 SCC 151 laying down that Court will lose their efficacy if they cannot possibly respond to the needs of the society.

- (W) Here, we have a large corporate (respondent no.2) controlled by one of the most influential residents of the city (respondent no.3) pilled against a small tenant who has only the Courts to rely upon. The respondents no.1 to 3 have succeeded in, first illegally dispossessing the said tenant from the premises in its tenancy and after the tenant, by litigating for nearly nine years obtained an order of repossession/restoration, now for the last nearly three years, from implementation thereof. The Supreme Court in *Krishnadevi Malchand Kamathia Vs. Bombay*

Environmental Action Group (2011) 3 SCC 363 observed that justice is only blind or blindfolded to the extent necessary to hold its scales evenly; it is not and must never be allowed, to become blind to the reality of the situation, lamentable though that situation may be.

17. We accordingly allow this appeal by directing:

- (i) that the appellant shall be entitled to forthwith reconstruct / restore the premises in its tenancy as shown in the site plans referred to in the orders aforesaid of the Rent Controller and neither the NDMC nor the respondents No.1 to 3 or anyone else on behalf of the respondent No.2 company shall cause any disruption in the said works;
- (ii) if either of them cause any disruption, the appellant shall be entitled to apply for appropriate measures in this proceeding itself;
- (iii) if the respondents comply with this order, the contempt case against them shall stand discharged; however, if

they cause or allow to be caused any interference in the reconstruction / restoration of the premises, this Court will be constrained to proceed further with the contempt case to its logical conclusions;

- (iv) the respondent No.2 company is also burdened with costs of Rs.20,000/- of this appeal payable to the appellant within 15 days hereof.

RAJIV SAHAI ENDLAW, J

CHIEF JUSTICE

MAY 1, 2015
'pp/gsr'