

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

+ **CM(M) 792/2009 & CM 12878/2014 (for dismissal of petition by R-2&3)**

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Decided on: 20th January, 2015

DEVINDER KUMAR

..... Petitioner

Through

Mr. Yashpal Bharti, Mr. Bhavesh,
Advts.

versus

B.S.E.S.YAMUNA POWER LTD. & ORS.

..... Respondent

Through

Mr. Rahul Malhotra, Adv. for R-1.
Ms. Sunita Tiwari, Adv. for R-2&3.

Coram:

HON'BLE MS. JUSTICE MUKTA GUPTA

MUKTA GUPTA, J. (ORAL)

1. The present petition impugns the order dated 23rd August, 2008 passed by the learned Civil Judge declining to grant interim relief of directing the officials of respondent No.1 to install the meter and to restrain the respondents No.2 and 3 from preventing the respondent No.1 from installing the connection and the order dated 12th February, 2009 whereby the Civil Judge dismissed the application for review of the order dated 23rd August, 2008 and thereby praying directions to the respondent No.1 to install the meter and restrain the other respondents from preventing respondent No.1 from installing the connection.

2. A brief narration of facts which led to the filing of the present petition is that the petitioner herein filed a Civil Suit No.199/2010 (earlier

No.192/2007) before the learned Civil Judge, Karkardooma Courts, Delhi for permanent and mandatory injunction against the respondents claiming himself to be the adopted son of late Nathu Singh Bodh and a co-sharer of the suit property, thereby seeking directions against respondent No.1 for installing an electricity meter in his name in the suit property and restraining respondents No.2 and 3 from creating hindrance in the installation. In the said suit the petitioner filed an application under Order XXXIX Rule 1 and 2 CPC which was dismissed by the learned Civil Judge vide order dated 3rd May, 2007. An appeal against the said order was also dismissed by the learned ADJ being Misc. Civil Appeal No.41/2007 on 9th October, 2007 finding no prima facie case in favour of the petitioner. Thereafter the petitioner again filed an application under Section 151 CPC seeking the same interim relief which was dismissed vide the impugned order dated 23rd August, 2008. The petitioner filed an appeal against the said order but later withdrew the same on 19th September, 2008 and filed a review petition before the learned Civil Judge against the order dated 23rd August, 2008 which was dismissed on 12th February, 2009 which is also impugned before this Court.

3. Besides the Civil Suit No.199/2010 the petitioner also filed a suit for partition, possession, permanent and mandatory injunction against the respondent No.2 and 3 herein being Suit No.15/2004 which was dismissed by the learned Civil Judge vide order dated 30th July, 2005 returning a finding that Smt. Ram Kaur, the respondent No.2 herein, was the sole owner of the suit property. The appeal against the said judgment dated 30th July, 2005 being Civil Appeal No.40/2007 has also been dismissed by the learned

ADJ on 26th April, 2008. Subsequent thereto the respondent No.2 herein filed a suit for possession, declaration, damages, etc. against the petitioner being Civil Suit No.775/2006 before the learned Civil Judge seeking eviction of the petitioner from the suit property. The said suit No.776/2006 was decreed in favour of respondent No.2 by the learned Senior Civil Judge vide judgment dated 1st April, 2010. The petitioner also filed another suit for partition, permanent and mandatory injunction and possession against respondent No.2 and 3 herein and two more persons being Civil Suit No.304/2008 which was also dismissed by the learned Senior Civil Judge on 1st April, 2010. The petitioner filed an appeal against the judgment and decree passed in Suit No.776/2006 vide RCA No.56/2010 which was dismissed on 20th October, 2012 by the learned Additional District Judge, Karkardooma Courts. Further the appeal against the order dated 1st April, 2010 dismissing the Civil Suit 304/2008 filed by the petitioner was also dismissed by the learned Senior Civil Judge on 20th October, 2012. The respondent No.2 herein filed an Execution Petition No.38/2010 in terms of the judgment and decree dated 1st April, 2010 passed in Suit No.776/2006, wherein the learned executing Court passed an order of warrant of possession and attachment of properties by breaking open the locks and doors with the help of Police aid.

4. By the impugned order dated 23rd August, 2008, the learned Judge noted that a similar application under Order 39 Rule 1 and 2 CPC filed in suit was dismissed by the Court on 3rd May, 2007 and appeal against the said order was also dismissed on 9th October, 2007. The learned Civil Judge held that while dismissing the earlier application the Court had noted that the

plaintiff had not come to the Court with clean hands and had suppressed material facts i.e. dismissal of the other suit filed by him being Suit No.15/2004 vide order dated 30th July, 2005 wherein the respondent No.2 herein was held to be the owner of the premises. After finding of a competent Court that the plaintiff had no right in the suit property and that the respondent No.2 was the sole owner of the suit property, the plaintiff could not have claimed to have a prima-facie strong case in his favour seeking interim injunction. There was neither any error apparent in the order dated 23rd August, 2008 nor any illegality, however still the petitioner filed the review petition which was dismissed by the other impugned order dated 12th February, 2009 whereby it was noted that all the contentions of the petitioner have been noted and dealt with and thus no ground for review was made out.

5. A perusal of the facts as noted above would show that the petitioner filed repeated suit and repeated applications for the same cause of action and thus misused the due process of law. Before this Court also petitioner has not been able to either show a prima-facie case in his favour or balance of convenience or that an irreparable injury would be caused to him in case the interim injunction is not granted. As noted above judgment and decree of possession followed by warrant of attachment has already been passed against the petitioner and in favour of the respondent No.2. The petitioner in the present petition did not bring to the notice of this Court that the suit for partition, possession, permanent and mandatory injunction filed by him against respondent No.2 and 3 was dismissed by learned Civil Judge on 30th

July, 2005 holding that Smt. Ram Kaur was the sole owner of the suit property.

6. In view of this material concealment and there being no illegality in the impugned orders, the present petition is dismissed with costs of ₹10,000/- to be paid by the petitioner to the Delhi High Court Legal Services Committee within four weeks.

7. CM 12878/2014 (for dismissal of petition by R-2 and 3) is disposed of.

(MUKTA GUPTA)
JUDGE

JANUARY 20, 2015
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