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

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Judgment delivered on: 26.11.2015

+ **FAO(OS) 472/2015**

SUMIT TULI

..... Appellant

versus

PREM NATH TULI & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Appellant in person.

For the Respondents : Mr Arun Francis, Mr C.V. Francis
and Ms Sindhu Mohan, Advocates for
respondent No.1.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

HON'BLE MR JUSTICE SANJEEV SACHDEVA

JUDGMENT

BADAR DURREZ AHMED, J (ORAL)

CM No.16225/2015 (for condonation of delay)

The delay is condoned.

The application stands disposed of.

FAO(OS) 472/2015 & CM No.16224/2015 (stay)

1. We have heard the appellant in person as also the counsel for the respondent. The impugned order holds that the appellant was in contempt. The entire case turns upon the allegation as to whether the status quo order passed on 19.12.2011 had been served on the appellant on 21.12.2011 or not. It is the case of the appellant that he came to know of it for the first time on

12.01.2012 when the appellant had gone to Tis Hazari Court Complex in connection with his case pending before Tis Hazari between the same parties. The appellant states that a copy of the order dated 19.12.2011 passed by a learned Single Judge and other documents including the plaint were handed over to him on 12.01.2012. Prior to that, the said documents had not been served on him.

2. From the suit record and the office noting it is evident that the *dasti* copy of the order dated 19.12.2011 to be issued to the counsel for the plaintiff (respondent herein) was approved for issuance only on 21.12.2011. In fact, the learned counsel for the respondents have been candid in admitting that the *dasti* copy of the order was taken by them on 02.01.2012 after the court recess. It was thereafter served on the appellant on 12.01.2012 as stated by the appellant.

3. In view of this, and the fact that the appellant disputes the service of the Registered letter said to have been sent to him on 19.12.2011 and alleged to have been served upon him on 21.12.2011, it was incumbent upon the learned Single Judge to have allowed parties to lead evidence in this matter. That had not been done. In any event, a copy of the Court order was not sent along with the alleged registered letter dated 19.12.2011 and the same was served upon the appellant only on 12.01.2012 for the first time. The alleged transactions which are stated to be in violation of the status quo order dated 19.12.2011 had taken

place prior to 12.01.2012. Therefore, in our view, strictly speaking, the appellant cannot be hauled up for contempt. Therefore, the impugned order is set aside.

4. Before parting with this appeal, we may point out that as per the respondents, the appellant has a 1/4th share in the subject property which is R-74/2, Rishabh Nagari, Model Town, Delhi. This would entitle the appellant to one floor in the said property. It is, however, the appellant's case that the entire property belongs to him. Insofar as the power of attorney given in favour of his wife with regard to the third floor is concerned, the same has been produced before us. The appellant's wife Smt Vandana Tuli has also been heard today. Both the appellant and Smt Vandana Tuli state that no transactions would be conducted pursuant to the said registered power of attorney. The original registered power of attorney is taken on record. The same shall be placed in a sealed cover and shall be attached with the main suit i.e. CS(OS) 3158/2011 till further orders of the learned Single Judge.

5. It is clearly understood by the parties that in case the suit succeeds, the 1/4th share which, essentially translates to one floor of the said property of the appellant, would be the second floor in respect of which he has transacted with the third party.

6. The appeal stands allowed as above.

7. The appellant shall be bound by the status quo order passed by the learned Single Judge in respect of the remainder of the property.

BADAR DURREZ AHMED, J

SANJEEV SACHDEVA, J

NOVEMBER 26, 2015
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