

COCN No. 3076 of 2015

Date of decision: 09.02.2016

Rekha Sharma

.....**Petitioner**

versus

Mahesh Kumar

.....**Respondent**

Coram: Hon'ble Mr. Justice Rakesh Kumar Jain

Present: Mr. Vineet Sehgal, Advocate
for the petitioner.

Mr. S.S.Sodhi, Advocate
for the respondent.

Rakesh Kumar Jain, J.(Oral)

This petition is filed for the alleged willful disobedience of the order dated 3.07.2015, passed in Civil Revision No. 199 of 2015.

In short, one Vishwanath @ Somnath was the owner/landlord of Stall No. 35, Sector 23-B, Chandigarh which was in possession of the respondent-contemner Mahesh Kumar. The landlord had filed a suit for possession under Section 6 of the Specific Relief Act, 1963. The said suit was decreed by the trial court against which Mahesh Kumar/contemner filed Civil Revision No. 199 of 2015. The matter was referred to the Mediation and Conciliation Centre of this Court on 19.02.2015. The parties arrived at an amicable solution and following terms and conditions were laid down:-

a) *That it is agreed between the parties that the first party-Sh.Mahesh Kumar shall vacate the Stall*

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No.35 situated in Sector 23-D, Chandigarh(the property in dispute) on 31.10.2015 and the petitioner shall pay a lump sum of Rs.70,000/- (Rupees Seventy Thousand only) as full and final settlement to the second party-Vishwa Nath @ Som Nath four using the said premises till 31.10.2015.

b) It is further agreed between the parties that the aforesaid amount shall be paid in seven equal instalments @Rs.10,000/- per month. The first instalment shall be paid on or before 07.04.2015 and thereafter the other instalments @Rs.10,000/- shall be paid on or before 07th of every month. The last instalment shall be paid on or before 07th of every month. The last instalment shall be paid on or before 07.10.2015. The aforesaid instalments shall be paid by the first party(petitioner) through demand draft in favour of the second party (respondent).

c) That the first party undertakes that he shall hand over the vacant possession on the second party positively on 31.10.2015.

d) That it agreed between the parties that if the first party fails to pay the aforesaid instaments by the 7th of every month till October, 2015, then the second party shall be entitled to get the premises vacated.

e) That it is further agreed between the parties that they will abide by the aforesaid terms and conditions and in case the first party fails to pay the balance amount then the amount paid by him shall stand forfeited.

f) It is agreed between the parties that they will withdraw all the civil and criminal cases pending between them, if any and in case they

petitioner/first party fails to pay the aforesaid instalments on 7th of every of month till October, 2015, then the second party shall be entitled to revive the Execution Petition.”

The revision petition was thus not pressed by Mahesh Kumar/contemner.

According to the terms and conditions, the respondent had to pay an amount of ₹ 70,000/- as full and final settlement and for using the premises of Vishwanath @ Somnath till 31.10.2015. Out of ₹ 70,000/-, ₹ 60,000/- had already been paid to Vishwanath @ Somnath but unfortunately he expired on 27.09.2015.

However, the respondent could not deliver the vacant possession of the demised premised on 31.10.2015 because of the reason that there was a dispute between the members of the family of Vishwanath @ Somnath.

Shri S.S.Sodhi, counsel appearing on behalf of the respondent has informed the Court that Vishwanath @ Somnath was a bachelor. He died issueless on 27.09.2015.

This petition is filed by his brother's daughter-in-law, claiming herself to be the only legal heir of Vishwanath @ Somnath on the basis of the registered Will dated 16.02.2015. But at the same time, the brother of deceased Vishwanath @ Somnath namely, Om Parkash has also filed a suit for declaration against his sons Mahesh Kumar, Manmohan Sharma and Mukesh Sharma. Mahesh Kumar claiming himself to be the only legal heir of his brother to inherit his properties both movable and immovable including Stall No. 35, Sector 23-B, Chandigarh. In the said suit,

the present petitioner is not made a party nor the Will set up by her on 16.02.2015 has been challenged.

Counsel for the respondent has submitted that he has no difficulty in handing over the possession but he is in dilemma as to whom the possession shall be delivered because the relations of deceased Vishwanath @ Somnath are now in Court. He has suggested that he may be allowed to retain the possession till the civil suit is decided.

On the other hand, counsel for the petitioner has submitted that so far, since the registered Will dated 16.02.2015 has not been challenged, therefore, the petitioner has a legal right over the property in dispute because as soon as Vishwanath @ Somnath (since deceased) breathed his last, succession on the basis of customary document opened in her favour and she has succeeded his property by virtue of the said Will, in exclusion of the natural heirs, if any. He has further suggested that at present, respondent may not be allowed to retain the possession of the property and she may be allowed to take the possession subject to the outcome of the suit.

I have heard learned counsel for the parties and after examining the available record, am of the considered opinion that in any case, the respondent cannot be allowed to retain the possession of the demised premises after 31.10.2015 and shall have to hand over the possession to the petitioner as per the registered Will, purported to have been executed by deceased Vishwanath @ Somnath. However, it is made clear that

the possession of the property in dispute, delivered under the order of court shall not confer any right on the petitioner to further alienate the said property till the civil suit filed by Om Parkash, father-in-law who is claiming himself to be the only legal heir of the disputed property, as decided by the court one way or the other especially when he would challenge the Will in favour of the petitioner.

As a result of the aforesaid discussion, the respondent is directed to hand over the possession of the demised premises to the petitioner on or before 25.02.2016 and shall also pay ₹ 10,000/- to her which was yet to be paid to Vishwanath @ Somnath out of ₹ 70,000/-. In case, the order is not complied with, the respondent shall be prosecuted and may be convicted also.

9th February, 2016
Shivani Kaushik

[Rakesh Kumar Jain]
Judge