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IN THE HIGH COURT OF DELHI AT NEW DELHI

CM(M) 113/2016

GEETA SINGH

..... Petitioner

Through Mr. S.K. Mishra, Adv.

versus

CHAUDHARY RAJINDER PAWAR

..... Respondent

Through Nemo.

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **03.02.2016**

C.M. No.4054/2016 (Exemption)

Exemption is allowed subject to all just exceptions.

Application disposed of.

CM(M) 113/2016 & C.M. No.4053/2016

This petition which has been filed under Article 227 of the Constitution of India has lay challenge to an order dated 05.10.2015. On 05.10.2015, the Civil Judge had disposed of an application under Order XXIII Rule 3 (A) of the CPC filed by defendant No.1. Defendant No.1 is Geeta Singh, the wife of Sarwan Singh. Her submission is that the compromise deed which has been signed by her husband as her attorney agreeing to vacate the property on or before 30.06.2011 (in view of compromise decree dated 07.06.2011) is a nullity and not binding upon her as her husband had no authority to make a statement on her behalf. The application filed by the wife seeking a redressal of her grievance

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and her submission that the compromise decree dated 07.06.2011 was not binding upon her was challenged by moving an application under Order XXIII Rule 3 (A) of the CPC. This application was filed on 23.02.2012. A typed copy of the said application is on record. On an oral submission, learned counsel for the petitioner had earlier pointed out that this application was dated 18.05.2013. Be that as it may, the compromise decree dated 07.06.2011 had been passed on the statement made by the husband of the petitioner (Sarwan Singh) as also the statement of the plaintiff Chaudhary Rajinder Panwar. On 07.06.2011 before the decree was passed, the statement of Sarwan Singh who was holding a special power of attorney on behalf of his wife and proved as Ex.P-1 had been taken on record. This special power of attorney is dated 23.05.2011 executed by the petitioner (Geeta Singh) in favour of her husband Sarwan Singh authorising him to make a statement on her behalf in a pending suit which has been filed by the petitioner Chaudhary Rajinder Panwar. It has been informed on each page by the petitioner. A separate statement of Chaudhary Rajinder Panwar was also recorded wherein in view of the statement given by Sarwan Singh that the suit property will be vacated on or before 30.06.2011, the decree was passed.

The contention before this Court is that Geeta Singh (the petitioner) had an estranged relationship with her husband and the special power of attorney relied upon by her husband is a forged document. It was created by her husband. On a query put to the learned counsel for the petitioner, he admits that as on date Geeta Singh and her

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husband are living together; his submission is that the parties have an on and off relationship and sometimes they are living together and sometimes they are not. This submission of the learned counsel for the petitioner has itself created a doubt in the mind of the Court that challenge laid to the special power of attorney purported to have been executed by Geeta Singh in favour of her husband was in fact suspicious or this plea had now been set up by the petitioner (Geeta Singh) after more than 8 months of the decree only to ward off the execution as admittedly till date (i.e. more than 5 years from the date of the compromise decree,) the suit property is still in possession of the petitioner Geeta Singh. Admittedly as on date, Geeta Singh is living with her husband in the suit property.

It has vehemently been argued that the execution has now been fixed for a date which is two days from today and stay may be granted.

The order impugned before this Court is the order dated 05.10.2015 which has been passed pursuant to a direction dated 18.05.2013 wherein the Court was of the view that for purposes of adjudication of the application under Order XXIII Rule 3 (A) of the CPC certain issues are required to be framed and evidence is required to be led. After issues were framed, evidence was led and the impugned order was passed after trial. The impugned judgment had noted the facts in the correct perspective. The impugned judgment had answered issue No. 1 which reads as under:-

“Whether the judgment and decree dated 07.06.2011 has been obtained by playing fraud by defendant No.1? OPA”

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The findings returned on this issue inter-alia read as follows:-

“The onus to prove this issue was upon the applicant. Despite granted several opportunities the applicant / defendant no. 1 did not address the final arguments. However, from the evidence and the contentions raised by the applicant / defendant no.1 it is stated that the plaintiff / respondent herein has obtained the judgment / decree dated 07.06.2011 by playing fraud upon the court. It is alleged that applicant / defendant no.1 has not given any authority to defendant no.2 for entering into any compromise with the plaintiff and she was never apprised by the defendant no.2 qua the settlement arrived with the plaintiff before the Court and passing of consent decree thereof.

Ld. Counsel for plaintiff / respondent argued that applicant / defendant no.1 has admitted her signatures over the compromise deed Ex. C-2 as well as her affidavit supporting the compromise Ex. C-1. It is further argued that the present application is merely an afterthought to defeat the rightful claim of the plaintiff / respondent. It is further argued that AW-1 has failed to produced on record any cogent evidence to show her ownership over the suit property. Rather she has come before this Court with unclean hands disputing the title of the plaintiff / respondent in whose favour a valid decree has been passed and nothing on record suggest that the same has been procured by playing fraud upon the Court. Hence, it is prayed that the application be dismissed.

It is very important to note here that applicant / defendant no. 1 who examined herself as AW-1 has admitted her signatures over the compromise deed and affidavit in support thereof. Applicant /

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defendant no.1 has denied her signatures over the special power of attorney Ex. D-1 by virtue of which she has empowered the defendant no.2 to enter any compromise with the plaintiff on her behalf. AW-1 has not disputed categorically her thumb impression appended on Ex.D-1. The onus to prove that the said document was not executed by her was upon the applicant /defendant no.1 herself which remained undischarged. It is further important to note here that applicant / defendant no.1 is a graduate and therefore, the plea taken by her that her husband procured her signatures on blank papers is apparently a flimsy ground taken in the application which cannot be believed by any prudent person. Especially when AW-1 admitted her signatures over the compromise deed and the affidavit supported with the same. No complaint has ever been filed by applicant / defendant no.1 against the defendant no.2 i.e. her husband for such alleged misuse of the blank signed documents.

In her application u/o XXIII Rule 3A CPC in para no. 7 applicant /defendant no.1 claimed to have gathered the information qua the proceedings pending before the Court in the month of May 2011 when she received the summons whereas in her evidence by way of her affidavit she makes a completely contradictory statement in para no. 5 when she says that she came to know about the proceedings upon receiving of notice in the execution petition. It is to be seen further that applicant / defendant no.1 has failed to prove on record by leading any cogent evidence that she is the owner of suit property rather I agree with the argument put forth by Ld. Counsel for plaintiff that the present

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application has been filed as an after thought to defeat the claim of the plaintiff in which the applicant / defendant no.1 has succeeded to an extent that almost four years have been passed in the present proceedings and the plaintiff / respondent is unable to obtain the possession of the suit premises in view of the consent decree passed.

In view of the evidence led, this Court can safely conclude that the applicant / defendant no.1 has miserably failed to discharge the onus lying upon her. Nothing on record proves that the judgement / decree is obtained by the plaintiff / respondent by playing fraud. Accordingly, this issue stands decided against the applicant / defendant no.1 and in favour of the plaintiff / respondent.

As a consequence to my findings on the above mentioned issue, application u/o XXIII Rule 3A CPC is hereby dismissed. Application stands disposed off accordingly.”

The present petition which has assailed this finding appears to be nothing but an abuse of the process of the Court; it is a travesty of justice that insptie of an undertaking having been given by the petitioner (through her husband) as way back as on 07.06.2011, even after five years, the landlord has not been able to get back the suit property. Warrants of possession are stated to have been ordered by the Executing Court but even at this stage, learned counsel for the petitioner has vehemently argued that the warrants of possession be stayed. There is absolutely no case made out in favour of the petitioner.

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This petition is nothing but an abuse of the process of law. It is malafide. It is dismissed with costs quantified at Rs.10,000/-.

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INDERMEET KAUR, J

FEBRUARY 03, 2016

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