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

+ CM(M) 909/2015 and CM No. 21724/2015

PREM CHAND Petitioner
Through Mr.V.K.Khurana, Adv.

versus

RAMESH DUTT (SINCE DECEASED)
THR LRS & ANR Respondents
Through Mr.D.V.Khatri, Adv. for R-1

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **11.07.2016**

1. Learned counsel for the petitioner points out that he has filed an affidavit with the tracking report of the postal department showing that respondent No.2 has been served. This affidavit was filed on 16.5.2016 vide file No,12943. Accordingly, respondent No.2 has been served.
2. The present petition is filed to impugn the order of the Trial Court dated 28.05.2015.
3. The background facts of this case are that the petitioner filed a civil suit for possession under Section 6 of the Specific Relief Act with respect of property bearing No. 3371, Chowk Singhara, Qutab Road, Sadar Bazar, Delhi-6. The suit was decreed by an ex parte judgment dated 06.09.1997. Respondent No.1 on coming to know of the ex parte decree moved an application under Order IX Rule 13 CPC. The matter was contested before the Trial Court, Senior Civil Judge and also before this court but respondent

No.1 did not succeed. The petitioner through warrant of possession got physical possession of the suit property from respondent No.1. Respondent No.1, however, filed appropriate petition before the Supreme Court and vide order dated 24.11.2004, the ex parte judgment and decree dated 06.09.1997 in favour of the petitioner was set aside. The matter was remanded back giving an opportunity to the parties to file their pleadings as well as to lead evidence.

4. Subsequent to the order of the Supreme Court, respondent No.1 moved an application under Section 144 CPC seeking restitution of possession of the suit property. On 27.09.2007, the application of respondent No.1 for restitution was allowed. The petitioner filed CM(M) 201/2008 before this court. However, on 15.02.2008 this court dismissed the same on the ground that the order was an appealable order. The petitioner preferred an appeal before the ADJ which was also dismissed on 03.04.2008.

5. The petitioner thereafter filed objections to the execution proceedings initiated by respondent No.1 but the same were also dismissed. The appeal was also dismissed on 27.09.2007. The petitioner thereafter filed CM(M) 845/2011 before this court. The same was dismissed as withdrawn on 26.07.2011.

6. In the meantime, an application was filed on behalf of one Shri Bhupender Kumar who stated that he is in possession of the suit shop and sought impleadment under Order I Rule 10 CPC. On 10.04.2012, the statement of the petitioner in person was recorded wherein he stated that he is in possession of the suit property for about 4-1/2 years and that Shri Ajay Gupta, respondent No.2 is the owner of the property and that Shri Bhupender Kumar (applicant in the application) is living in the property as a

tenant. Based on this statement of the petitioner, the Trial Court noted that the suit being for possession under Section 6 of the Specific Relief Act, the relief claimed by the petitioner has become infructuous against the defendant and the suit is accordingly dismissed. As the suit was dismissed, the application filed by Shri Bhupender Kumar under Order I Rule 10 CPC was also dismissed.

7. The petitioner thereafter filed an application under Section 151 CPC for recall of the order dated 10.04.2012 dismissing the suit as infructuous. It was submitted before the Trial Court that the presence of a proxy counsel Ms.Nirmal Kumari was recorded on behalf of the petitioner on 10.04.2012 whereas no such person or proxy counsel was ever authorised by the petitioner or his counsel to appear on the said date. It was further averred that the petitioner was not able to understand the repercussion of his statement. What he meant was that the said shop was in possession of Shri Bhupender Kumar as his tenant and a sub-tenant for respondent No.2, the owner. The petitioner, it was averred, is illiterate and as he was not represented by his counsel and hence, he was not made to understand the nature of his statement. It was further averred that the petitioner handing over possession of the suit property to Shri Bhupender Kumar as a sub-tenant does not dislodge the petitioner from the right, title and interest qua the said suit shop. It was also urged that Ms.Nirmal Kumari, Advocate had no authority to appear without any instructions.

8. The Trial Court noted that there is nothing on record to show that the statement of the petitioner was made under pressure or coercion or that the petitioner did not understand the repercussion of his statement. Further no complaint has been lodged against Ms. Nirmal Kumari, Advocate.

Accordingly, the application was dismissed.

9. I have heard the learned counsel for the petitioner and respondent No.1. Learned counsel for the petitioner has strenuously repeated the contentions made before the Trial Court. He has urged that Ms.Nirmal Kumari, Advocate appeared in collision with Sh.Bhupender Kumar who is a sub-tenant. He has also urged that he remains in possession of the property and mere induction of a sub-tenant with the consent of the owner/respondent No.2 does not in any manner prejudice his case as has been wrongly recorded by the Trial Court in its order dated 10.04.2012. He has also stressed that the only ground on which the impugned order has been passed is that no complaint has been lodged against Ms.Nirmal Kumari, Advocate by any of the parties which he submits is not a material irregularity. He stressed that the petitioner was misguided to make a wrong statement.

10. A perusal of the record shows that the order of restitution was passed against the petitioner and in favour of respondent No.1 on 27.09.2007. The petitioner has continuously resisted the said order on one ground or the other and continued to hold possession well after the order passed dismissing the suit i.e. 10.04.2012. In fact, respondent No.1 had to resort to execution of the order to regain possession. The petitioner had filed objections to the execution petition which were dismissed on 26.05.2011. Thereafter, an order was passed issuing warrants of possession on 17.10.2013 by the Trial Court. Against the same CM(M) 1193/2013 was filed which was also dismissed by this court. This court noted in the said order that the petitioner has intentionally and deliberately not handed over possession to respondent No.1 despite various directions issued and despite setting aside the decree by the Supreme Court and kept the possession for himself for more than 8

years.

11. A question was posed to the learned counsel for the petitioner as to when the petitioner informed the Trial Court about the factum of having sub-let the property in question to Sh.Bhupender Kumar. The answer was that for the first time, it was on 10.04.2012.

12. In my opinion, there is no merit in the contention of the petitioner. The statement of the petitioner is categorical that Sh.Bhupender Kumar is living in the property as a tenant for about 4-1/2 years. Even otherwise, a person who has indulged in so many litigations cannot be ignorant about his rights and would not make a wrong statement regarding the possession of the property.

13. Further the sub-letting of the property to Sh.Bhupender Kumar appears to have been done after the restitution petition was allowed on 27.09.2007. This appears to be another attempt on the part of the petitioner to thwart the execution of the restitution order.

14. The petition lacks bona fide. Accordingly, the petition is dismissed.

JAYANT NATH, J

JULY 11, 2016

n/rb