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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CONT.CAS(C) 64/2017 & CM APPL. 3204/2017

BANK OF BARODA

..... Petitioner

Through

Mr. Arun Aggarwal, Advocate

versus

GULSHAN KUMAR & ORS

..... Respondents

Through

None

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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06.02.2017

Present contempt petition has been filed alleging wilful disobedience of the orders dated 23rd May, 2016 and 01st June, 2016 passed by a Coordinate Bench of this Court in W.P.(C) No.4756/2016 whereby the respondents undertook to hand over vacant peaceful physical possession of their respective portions of the property bearing No.18, Pocket-2, Block-B, Sector-11, Rohini, Delhi, on or before 31st December, 2016. The relevant portion of the said order are reproduced hereinbelow:-

A) The order dated 23rd May, 2016:-

“8. The petitioner no.1 for himself and on behalf of his brother petitioner no.2 Mr. Khajan Singh undertakes to this Court:-

- (i) to handover vacant peaceful physical possession of the portions aforesaid of the property on or before 31st December, 2016.*
- (ii) to pay electricity and water charges of the premises till the date of vacation.*

- (iii) *not to induct any other person(s) into possession of the said portions or to part with possession in favour of any other person.*
- (iv) *to pay compensation for use and occupation of the said portions to the respondent no.1 Bank at the rate of Rs.5,000/- per month by petitioner no.1 and at the rate of Rs.4,000/- per month by the petitioner no.2 w.e.f. the month of May, 2016 and till the month of vacation of their respective portions in advance for each month, month by month, by the 15th day of the month; the amount for the month of May, 2016 shall be paid along with the amount due for the month of June, 2016.*

9. Needless to state that the petitioner no.1 being an Advocate understands the consequences of breach of undertaking given to the Court.

10. The undertaking of the two petitioners is accepted and the petitioners are ordered to be bound thereby.

11. The petition is dismissed with the following clarifications:-

- (a) the respondent no.1 Bank shall in accordance with the impugned order of the Chief Metropolitan Magistrate take possession of the ground floor and of any other portions of the property except the portions aforesaid in possession of the two petitioners except the terrace/roof;*
- (b) subject to the petitioners complying with their undertaking, the possession of the portions aforesaid in possession of the petitioners shall not be taken till 31st December, 2016;*
- (c) however if the petitioners or any of them are in default of their undertakings aforesaid, the respondent no.1 Bank, besides initiating proceedings against the petitioners for breach of undertaking given to the Court, shall be entitled to take possession immediately;*
- (d) the aforesaid will not come in the way of the respondent no.1 Bank taking further steps for sale, transfer etc. of the property and/or of selling/transferring the property and in which case the petitioners shall remain bound to in accordance with their undertaking give possession to the purchaser/transferee from the respondent no.1 Bank;*
- (e) the petitioners shall hand over vacant peaceful physical*

possession to Mr. Rakesh Jha of the respondent no.1 Bank or to any other person of the transferee/purchaser authorised by the said Mr. Rakesh Jha on or before 31st December, 2016;

(f) the petitioners shall be entitled to participate in the proceedings if any undertaken by the respondent no.1 Bank for sale of the property; however, the said participation and/or any disputes arising therefrom shall not affect the undertaking given by the petitioners and with which the petitioners shall remain bound.

(g) the liability of the petitioners hereunder shall be joint and several. No costs. Dasti.”

B) The order dated 1st June, 2016:-

“3. The applicants and Mr. Devraj undertake to this Court: (i) to handover vacant, peaceful and physical possession of the entire portion of the property, besides the portion with respect to which undertaking has already been given by the petitioners i.e. Mr. Gulshan Kumar and Mr. Khajan Singh, to the respondent No.1 Bank of Baroda (BoB) on or before 31st December, 2016;.....

4. The applicants, Mr. Devraj and the petitioner No.1/Advocate for himself and on behalf of petitioner No.2 Mr. Khajan Singh state that besides them, none other is in possession and control of the entire property and that the possession of the entire property shall be handed over to the respondent No.1 BoB at the same time i.e. on or before 31st December, 2016 and that they are in a position to comply with the undertaking given to the Court and have understood the consequences of breach of undertaking given to the Court.

5. In the aforesaid view of the matter, the applications are dismissed with the following clarifications/directions:

(I) Subject to the applicants, Mr. Devraj and the petitioners complying with their undertakings, the respondent No.1 BoB shall till 31st December, 2016 not take possession of property No.18, Pocket-2, Block-B, Sector-11, Rohini, Delhi in accordance with the order of the Chief Metropolitan Magistrate (CMM);

(II) However, if the applicants, Mr. Devraj or the petitioners or any of them are in default of any of their undertakings as recorded hereinabove and as recorded in the order dated 23rd May, 2016, the respondent No.1 BoB, besides initiating proceedings against the applicants, Mr. Devraj and the petitioners for breach of their undertakings, shall also be entitled to take possession of the property immediately;

(III) The aforesaid will not come in the way of the respondent No.1 BoB taking further steps for sale or transfer etc. of the property and / or selling or transferring of the property and in which case the applicants and the petitioners shall remain bound to, in accordance with their undertakings, give possession to the purchaser / transferee from the respondent No.1 BoB;

(IV) The applicants, Mr. Devraj and the petitioners shall handover vacant, peaceful and physical possession of the property to Mr. Rakesh Jha, Chief Manager of the respondent No.1 BoB or to any purchaser / transferee authorised by Mr. Rakesh Jha, Chief Manager of the respondent No.1 BoB on or before 31st December, 2016;

(V) Mr. Rakesh Jha, Chief Manager of the respondent No.1 BoB for the purpose of taking over possession of the premises may visit the premises on 1st January, 2017 at 1100 hours, if vacant, peaceful and physical possession of the premises is not delivered earlier;”

Learned counsel for petitioner-Bank states that despite the aforesaid orders as well as order dated 06th December, 2016, dismissing the CM Appl. 44898/2016 filed by the respondents seeking extension of time to vacate the aforesaid property, the respondents have not handed over vacant physical possession of the said property to the petitioner-Bank till date.

In the opinion of this Court, respondents by giving their undertakings on 23rd May, 2016 had obtained an order eclipsing the right of the petitioner to take over possession of the premises till 31st December, 2016 in accordance with the order dated 4th May, 2016 of the Court of Chief Metropolitan Magistrate, North District, Rohini, Delhi in Case No. 40/S/16. Since the

eclipse period is now over and no stay has been granted by the Division Bench in LPA Nos. 701/2016 and 25/2017, this Court is of the view that the order dated 4th May, 2016 of the Court of Chief Metropolitan Magistrate, North District, Rohini, Delhi in Case No. 40/S/16 is capable of implementation forthwith. The time period between 23rd May, 2016 and 31st December, 2016 shall be excluded while counting the period of ninety days as during this period the petitioner was restrained from taking over possession of the premises in question by an order passed by a Coordinate Bench of this Court.

Consequently, as petitioner has an alternative effective remedy of taking over immediate vacant physical possession of the premises in question without any further ado, this Court is not inclined to entertain the present contempt petition. The local police is under an obligation to render all assistance. Accordingly, with the aforesaid liberty, present petition and application are disposed of.

In the event, the petitioner for any reason is not able to take over the possession of the property in question, it is given liberty to seek revival of the present contempt petition.

Order dasti under the signature of Court Master.

MANMOHAN, J

FEBRUARY 06, 2017

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