

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

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DATE OF DECISION: 24TH MARCH, 2017

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CS(OS) 206/2016

PAMELA MANMOHAN SINGH Plaintiff

Through: Mr. Mahendra Rana, Adv.

Versus

**HARNAM KAUR (DECEASED THROUGH LEGAL
REPRESENTATIVES) & ORS. Defendants**

Through: Mr. Praveen Kumar, Adv. for D-1 to 3.

CORAM:-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

**CONT. CAS NO. 113/1993, CONT. CAS NO. 45/2007 & CONT. CAS NO.
46/2007**

1. The plaintiff instituted this suit i) for declaration that the sale deeds, all dated 6th December, 1988, executed by the defendant no.4 Sh. K.V. Kohli in favour of defendants no.1 to 3 viz. Mrs. Harnam Kaur, Mrs. Mahinder Kaur and Mr. Jagjit Singh, do not confer any title in the defendants no.1 to 3 and the plaintiff is the owner of 2/3rd of, property No.6-B, Jangpura, Mathura Road, New Delhi; ii) in the alternative for partition declaring that the plaintiff has 2/3rd share in the property No. 6-B, Jangpura, Mathura Road, New Delhi and of division of the property by metes and bounds and putting the plaintiff in possession of her portion of the property.

2. Vide order dated 14th March, 1990, while issuing summons of the suit, the defendants no.1 to 3 were restrained from transferring, alienating or parting with possession of property No.6-B, Jangpura, Mathura Road, New Delhi, wholly or in part, in any manner and from raising any further construction on the said property.
3. Contempt Case No.113/1993 has been filed averring disobedience by the defendants no.1 to 3 of the aforesaid order dated 14th March, 1990. It is pleaded i) that upon the defendants no.1 to 3, in disobedience of the order dated 14th March, 1990, continuing with the construction, the plaintiff applied for appointment of a Commissioner to visit the premises and vide order dated 9th February, 1993, a Court Commissioner was appointed to visit the premises and to report about the construction in existence; ii) that the Court Commissioner visited the property on 1st March, 1993 and filed a report dated 22nd April, 1993 detailing the existing construction in the property; iii) that though as per the report of the Court Commissioner there was only one entrance gate to the property but the defendants no.1 to 3 have thereafter constructed an additional gate; iv) that the defendants no.1 to 3 have also demolished the entire outer block described in the

report of the Court Commissioner; v) that the defendants no.1 to 3 have constructed a room adjacent to the front wall where the additional gate has been constructed; vi) that the defendants no.1 to 3 have converted the tin sheet roof of the main block to a cemented roof and have also constructed doors, windows, ventilators and board panels annexed with the roof; vii) that the defendants no.1 to 3 have made other structural changes; and, viii) that the defendants no.1 to 3 have also parted with possession of the property to owners of “BELTEK”. Reliefs, of sealing of the property, punishing the defendants no.1 to 3 and purging of the contempt have been sought.

4. Contempt Case No.45/2005 has been filed by the plaintiff averring i) that the property No. 6-B, Jangpura, Mathura Road, New Delhi was owned and possessed by the mother of the plaintiff Dr. (Mrs.) R. Kohli and was recorded with the Land & Development Office (L&DO) in the name of Dr. (Mrs.) R. Kohli; ii) that during the pendency of the suit, defendants no.1 to 3 in collusion and conspiracy with the defendant no.4 have forged the plaintiff's signatures on two affidavits dated 17th November, 1989 and 20th September, 1991 to the effect that the plaintiff has no objection if the suit property is mutated

in the name of defendants no.1 to 3 and to the Will dated 7th March, 1986 of Dr. (Mrs.) R. Kohli and have submitted the same before the L&DO; iii) that in this manner, the defendants have on 2nd January, 1992 obtained mutation of the property without disclosing to the L&DO the true facts; iv) that on the application of the plaintiff vide order dated 17th November, 1993, again a Local Commissioner was appointed to inspect the property and to report on the construction thereon; v) that the Court Commissioner has filed a report dated 17th November, 1993 to the effect that the construction was still going on in the property; and, vi) that a comparison of the reports dated 22nd April, 1993 and 17th November, 1993 of the Commissioners appointed, reporting on the construction on the property, shows violation of the order dated 14th March, 1990 by the defendants. Relief, of sealing of the property and appointment of receiver of the property has been sought.

5. Contempt Case No.46/2007 has been filed by the plaintiff averring i) that at the time of institution of the suit, property No. 6-B, Jangpura, Mathura Road, New Delhi was a vacant plot of land; ii) that the defendants no.1 to 3 encroached upon the property by taking

possession thereof from Sh. Khairati Lal who had in Suit No.1080/1979 of this Court undertaken to this Court to hand over possession of the property to Dr. (Mrs.) R. Kohli; iii) that the defendants no.1 to 3 have also abetted in the contempt of the undertaking given by Sh. Khairati Lal to this Court; iv) that the defendants no.1 to 3 after so encroaching upon the property filed suit No.182/1986 against Dr. (Mrs.) R. Kohli for specific performance; in the said suit there were orders dated 23rd January, 1986, 8th April, 1986 and 3rd October, 1986 of *status quo*; in contempt of these orders, the defendants no.1 to 3 got executed sale deeds dated 6th December, 1988 of the property in their favour from the defendant no.4 Mr. K.V. Kohli and have thereafter withdrawn suit No.182/1986; v) that the execution of the sale deed by the defendant no.4 in favour of defendants no.1 to 3 was also in violation of order dated 4th November, 1988 of the High Court of Bombay in Suit No.2951/1987; vi) that since the defendants no.1 to 3 continued to raise construction, on application of the plaintiff another Court Commissioner was appointed to visit the property and to report on the construction thereon and who has also submitted a report dated 11th September,

1998 and which report also demonstrates violation of the order dated 14th March, 1990; and, vii) that the defendants no.1 to 3 had also allowed a charitable dispensary to run from the property. Reliefs, of sealing of the property and appointment of receiver thereof and punishment of the defendants no.1 to 3 and of directing *status quo ante* with respect to the property have been claimed.

6. All the aforesaid contempt cases were filed invoking provisions of Sections 10 and 12 of the Contempt of Courts Act, 1971 and Order XXXIX Rule 2A of the CPC.
7. Upon change in pecuniary jurisdiction of this Court, the suit was transferred to the subordinate courts but these contempt cases were retained in this Court.
8. Vide judgment dated 22nd May, 2008 titled ***Pamela Manmohan Singh Vs. Harnam Kaur*** reported as 2008 (104) DRJ 221 in the aforesaid contempt cases, the defendants no.2 and 3 were held to be in contempt and punished with fine of Rs.2,000/- each; insofar as the reliefs claimed by the plaintiff under Order XXXIX Rule 2A of the CPC were concerned, it was observed that the same could be granted

by the Court which was seized of the suit which was then pending in the Court of the Additional District Judge (ADJ), Delhi. Accordingly, liberty was granted to the plaintiff to seek relief under the provisions of Order XXXIX Rule 2A of the CPC from the suit Court.

9. The suit, till 17th January, 2014, is found to be pending before the Court of ADJ, Delhi.
10. Vide order dated 3rd December, 2014 in CM (Main) No.319/2013, the suit was transferred from the Court of ADJ to this Court to be tried along with other proceedings between the parties pending before this Court. Till then, the ADJ, in accordance with the judgment dated 22nd May, 2008 aforesaid had not decided the claim of the plaintiff for relief under Order XXXIX Rule 2A of the CPC in the aforesaid contempt cases.
11. Vide common order dated 1st August, 2016 in CS(OS) No.238/1989, TEST.CAS. No.19/1997 and TEST. CAS. No.20/1997, no further proceedings were ordered to be required in this suit and the outcome of this suit was ordered to be governed by the outcome of those

proceedings in which consolidated issues were framed vide the said order dated 1st August, 2016.

12. Only the claim of the plaintiff for relief under Order XXXIX Rule 2A of the CPC in these contempt cases remains to be adjudicated. The counsels were heard on 2nd December, 2016 on the said aspect and orders reserved.
13. On 2nd December, 2016, I drew attention of the counsels to the judgment of the Division Bench of this Court in ***Dr. Bimal Chandra Sen Vs. Kamla Mathur*** ILR (1982) II Delhi 407 to the effect that with respect to violation of an order under Order XXXIX Rules 1&2 of the CPC only, Order XXXIX Rule 2A of the CPC can be invoked and not the provisions of the Contempt of Courts Act and which judgment remained to be noticed in the judgment dated 22nd May, 2008 aforesaid. It was further enquired from the counsel for the plaintiff that once this Court has in exercise of jurisdiction under the Contempt of Courts Act already punished the violation of the orders in the suit, can the claim under Order XXXIX Rule 2A of the CPC survive.

14. The counsel for the plaintiff stated that notwithstanding the judgment in *Dr. Bimal Chandra Sen* supra, since in this proceeding vide judgment dated 22nd May, 2008 liberty has been given to the plaintiff, the plaintiff is entitled to press the relief. The counsel for the plaintiff also contended that since the defendants in their replies to Contempt Case Nos. 45/2007 and 46/2007 have denied any contempt, the entitlement of the plaintiff to relief under Order XXXIX Rule 2A of the CPC should be put to trial. On request of the counsel for the plaintiff, the counsel for the plaintiff was also permitted to file judgments if any sought to be relied by him within one week.
15. The counsel for the plaintiff has on 23rd December, 2016 instead of filing copies of the judgments filed written arguments referring to i) *Ashok Nagar Welfare Association (Regd.) Vs. Jawahar Lal* 69 (1997) DLT 591 (DB); ii) *Shobha Shrestha Vs. Jay Randolph Vass* 2009 (159) DLT 364; iii) *Vidya Charan Shukla Vs. Tamil Nadu Olympic Association* AIR 1991 Madras 323 (FB); iv) *C. Elumalai Vs. AGL Irudayaraj* (2009) 4 SCC 213; v) *Tayabbhai M. Bagasarwall Vs. Hind Rubber Industries Pvt. Ltd.* AIR 1997 SC 1240; vi) *Satyabrata Biswas Vs. Kalyan Kumar Kisku* (1994) 2 SCC

266; vii) *Mohammad Idris Vs. Rustam Jehangir Babuji* (1984) 4 SCC 216; viii) *Sujit Pal Vs. Prabir Kumar Sun* AIR 1986 Calcutta 220; ix) *Century Flour Mills Ltd. Vs. S. Suppiah* AIR 1975 Madras 270 (FB); x) *All Bengal Excise Licensees Association Vs. Raghabendra Singh* (2007) 11 SCC 374; xi) *Patel Rajnikant Dhulabhai Vs. Patel Chandrakant Dhulabhai* (2008) 14 SCC 561; xii) *Delhi Development Authority Vs. Skipper Construction Co. (P) Ltd.* (1996) 4 SCC 622; xiii) *National Highways Authority of India Vs. You One-Maharia (JV)* 169 (2010) DLT 222; xiv) *Samee Khan Vs. Bindu Khan* AIR 1998 SC 2765; xv) *The Commissioner, Karnataka Housing Board Vs. C. Muddaiah* AIR 2007 SC 3100; xvi) *Kanjimull & Sons Vs. Ansal Properties & Industries Ltd.* 102 (2003) DLT 952; xvii) *Yu Televentures Pvt. Ltd. Vs. Teleforaktiebolaget LM Ericsson (PUBL)* 2016 (154) DRJ 71; xviii) *ATV Projects India Ltd. Vs. Bharat Heavy Electricals Ltd.* 157 (2009) DLT 13; xix) *Central Bank of India Vs. Current Transport Finance (P) Ltd.* ILR (198) 1 Delhi 233; xx) *Zahira Habibullah Sheikh (5) Vs. State of Gujarat* (2006) 3 SCC 374; xxi) *Maharaj Jagat Singh Vs. Lt. Col. Sawai Bhawani Singh* 1993 Supp (2) SCC

313; xxii) *Raj Singh Gehlot Vs. Padiam Exports Pvt. Ltd.* 174 (2010) DLT 693 (DB); xxiii) *Montreaus Resorts Pvt. Ltd. Vs. Ascot Hotels & Resorts Ltd.* 174 (2010) DLT 439; xxiv) *Arjan Singh Vs. Punit Ahluwalia* (2008) 8 SCC 348; xxv) *Capital Land Builders Pvt. Ltd. Vs. Shaheed Memorial Society* 158 (2009) DLT 610; and, xxvi) *Komal Nagpal Vs. Kamal Nagpal* 206 (2014) DLT 745.

16. I have considered the controversy.
17. I may at the outset, with respect to the averments in Contempt Case No.46/2007, state that this Court in exercise of powers under Order XXXIX Rule 2A of the CPC cannot adjudicate contempt or violation of undertaking if any given by Sh. Khairati Lal in Suit No.1080/1979 of this Court or violation of order of status quo in Suit No.182/1996 of this Court or of the order dated 4th November, 1988 of the High Court of Bombay in Suit No.2951/1987.
18. This Court in this proceeding, confined to Order XXXIX Rule 2A of the CPC, is concerned only with the violation if any of the orders made in this suit.

19. This Court in judgment dated 22nd May, 2008 in ***Pamela Manmohan Singh*** supra, on going through the report of the Local Commissioners appointed and the evidence affidavits filed by the plaintiff and which were not controverted by the defendants, found that the defendants no.2&3 to have willfully disobeyed the order dated 14th March, 1990 by changing the nature of the property and by making changes in the property when they were prohibited from doing by order dated 14th March, 1990 and imposed a fine as aforesaid of Rs.2,000/- on each of the defendants no.2&3 and thereafter observed “insofar as the reliefs claimed by the petitioner under Order 39 Rule 2A CPC are concerned, the same can be granted by the Court which is now seized of suit No.609/2009. Consequently, the petitioner is granted liberty to seek the relief under the provisions of Order 39 Rule 2A, CPC from the learned Additional District Judge, Tis Hazari, who is seized of Suit No.609/2006. The reliefs sought under Order 39 Rule 2A, CPC shall be dealt with expeditiously by the said transferee court. The record of Suit No.609/2006 be sent back immediately.”
20. The Division Bench of this Court in ***Dr. Bimal Chandra Sen*** supra and which as aforesaid remained to be noticed in the judgment dated

22nd May, 2008 held i) the Court which passes injunction order has the power to commit for contempt in case of breach – this is the unquestioned rule since 1882; ii) the Code of Civil Procedure, 1908 embodies the same Rule in Order XXXIX Rule 2A of the CPC; iii) a disobedience of an order of injunction is a contempt of Court; iv) Sub-rule (1) of Order XXXIX Rule 2A confers on Court the power to punish such contempt and further prescribes the punishment therefor; v) Sub-rule (1) of Order XXXIX Rule 2A of the CPC provides for the punishment not only of disobedience of the temporary injunction but also of breach of any of the terms subject to which the injunction may have been granted; while High Courts as Courts of record have inherent jurisdiction to commit for contempt, other Courts have no such power apart from the provisions of Rule 2A of the CPC; vi) the High Court has power under Section 10 of the Contempt of Courts Act but the exercise of that power is discretionary; vii) Order XXXIX Rule 2A of the CPC is a far more adequate and satisfactory remedy in such cases; viii) any detailed inquiry must be left to the Court which has passed the order and which is fully acquainted with the subject matter of its own order of temporary prohibitory injunction; ix) it is

clearly more desirable that the Court which made the order of injunction should go into the facts and ascertain the truth of the alleged disobedience and extent to which it is willful; x) if the order of injunction is disobeyed by a person other than a party to the lis, being agent or servant of the party to the lis, the Court granting the injunction has undoubted powers to punish him; xi) a person who has got an effective alternative remedy of the nature specified under Order XXXIX Rule 2A of the CPC should not be permitted to skip over that remedy and take resort to initiate proceedings under the Contempt of Courts Act – that would not be a proper exercise of discretion on the part of the High Court to exercise its jurisdiction under the Contempt of Courts Act when such an effective and alternative remedy is available to any person; xii) when special procedure and special provision is contained in the Order XXXIX Rule 2A of the CPC for taking action for the disobedience of an order of injunction, the general law of contempt of Court cannot be invoked; xiii) if such a course is encouraged, it is sure to throw open a floodgate of litigation under contempt jurisdiction; every decree-holder can rush to the High Court stating that the decree passed by a

subordinate Court is not obeyed– this is not the purpose of the Contempt of Courts Act; and, xiv) however under Order XXXIX Rule 2A of the CPC, action against a non-party to the lis cannot be taken even if he has aided or abetted the violation of the interim order of injunction and against whom no order of injunction was made.

21. From the aforesaid, it follows that the power of the Civil Court under Order XXXIX Rule 2A of the CPC is in the nature of contempt of court to the extent of violation of its own orders under Order XXXIX Rules 1 & 2 of the CPC. Order XXXIX Rule 2A of the CPC empowers the Civil Court to, in exercise of the said power, order the property of the person guilty of disobedience or breach to be attached and to order such person to be detained in civil prison for a term not exceeding three months. Sub-rule (2) of Order XXXIX Rule 2A of the CPC empowers the Court to sell the attached property and out of the proceeds, award such compensation as the Court thinks fit to the injured party. Per Section 12 of the Contempt of Courts Act, civil contempt also is punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to Rs.2,000/- or with both.

22. It will thus be noticed that the power to punish, under Order XXXIX Rule 2A of the CPC and under the Contempt of Courts Act are also similar, with the length of imprisonment under the Contempt of Courts Act being double the length of imprisonment in Order XXXIX Rule 2A of the CPC.
23. This Court, though as per the judgment of the Division Bench in **Dr. Bimal Chandra Sen** supra, in exercise of power under the Contempt of Courts Act, was not entitled to punish for disobedience of the interim injunction in the suit but nevertheless proceeded to do so and imposed the punishment of fine of Rs.2,000/- on each of the defendants no.2&3. In my opinion in exercise of parallel powers under Order XXXIX Rule 2A of the CPC, no further punishment can be inflicted on the defendants. The same would amount to double jeopardy i.e. punishing defendants for the same violation twice, once under the Contempt of Courts Act and again under the Order XXXIX Rule 2A of the CPC and which in my opinion is not permissible. I am therefore of the further opinion that no further action can be taken against the defendants no.2&3 under Order XXXIX Rule 2A of the CPC.

24. As far as the judgments relied upon by the counsel for the plaintiff are concerned:

- i) ***Ashok Nagar Welfare Association (Regd.)*** supra cited on the proposition that an application under Order XXXIX Rule 2A of the CPC cannot be ordered to remain pending till the disposal of the suit and has no application to the present controversy;
- ii) ***Shobha Shrestha*** supra has been cited on the proposition that i) interim orders till vacated are binding and cannot be flouted and if flouted are punishable even if had been subsequently vacated; and, ii) that the power under Article 215 of the Constitution of India or under the Contempt of Courts Act to punish is inherent power and is not ousted by Order XXXIX Rule 2A of the CPC – however this judgment is of a Single Judge and again does not notice the Division Bench judgment in ***Dr. Bimal Chandra Sen*** supra;
- iii) ***Vidya Charan Shukla*** supra on the proposition i) that High Court, besides remedy provided under Rule 2A of Order XXXIX, can also exercise inherent powers under Article 215 of

the Constitution of India – however as aforesaid, the view of the Division Bench of this Court is different from the view of the Full Bench of the Madras High Court; and, ii) that in exercise of powers under Order XXXIX Rule 2A of the CPC and Article 215 of the Constitution of India *status quo ante* can be ordered (this part is discussed hereunder);

- iv) ***C. Elumalai*** supra also to the effect that in exercise of powers under the Contempt of Courts Act and under Order XXXIX Rule 2A of the CPC *status quo ante* can be ordered (this part is discussed hereunder)
- v) ***Tayabhai M. Bagasarwall*** supra, where on a finding under Order XXXIX Rule 2A of the CPC of disobedience of the order, imprisonment was ordered and has no applicability to the present controversy;
- vi) ***Satyabrata Biswas, Mohammad Idris, National Highways Authority of India, The Commissioner, Karnataka Housing Board, Kanjimull & Sons, ATV Projects India Ltd., Zahira Habibullah Sheikh (5) and Capital Land Builders (Pvt.) Ltd.***

supra where on facts violations were found and again have no applicability to the present controversy;

- vii) ***Sujit Pal, Century Flour Mills Ltd., All Bengal Excise Licensees Association, Skipper Construction Co. (P) Ltd., Raj Singh Gehlot , Montreaus Resorts Pvt. Ltd. & Arjan Singh***

supra on the proposition that *status quo ante* can be ordered in exercise of powers under Order XXXIX Rule 2A of the CPC;

- viii) ***Patel Rajnikant Dhulabhai*** supra on finding violation of the orders, imprisonment was ordered and has no application to the present controversy;

- ix) ***Samee Khan*** supra on the proposition that both attachment and imprisonment can be ordered and which has no application to the present controversy;

- x) ***YU Televentures Pvt. Ltd.*** supra on the proposition that non-parties cannot be punished under Order XXXIX Rule 2A of the CPC;

- xi) ***Central Bank of India*** supra which is on breach of undertaking and has no application;

- xii) ***Maharaj Jagat Singh*** supra where administrator was appointed on violation being found and has no application;
- xiii) ***Komal Nagpal*** supra on the proposition that apology is not sufficient and which again has no application to the present controversy.

25. As far as the claim of the plaintiff for restoration of *status quo ante* is concerned, it is not as if this Court in exercise of jurisdiction under the Contempt of Courts Act could not have ordered so. The judgments cited by the counsel for the plaintiff himself are an authority therefor. However this Court in judgment dated 22nd May, 2008 did not deem it proper and once it has not been so deemed proper under the Contempt of Courts Act, no case for ordering the same in exercise of powers under Order XXXIX Rule 2A of the CPC is made out.

26. Moreover, as would be obvious from the order dated 1st August, 2016 in all the proceedings between the parties and relating to the property, it is otherwise not equitable that at this stage, construction of the

property be directed to be restored to the condition in which it was as reported in the first report of the Court Commissioner.

27. I, therefore hold that no further orders in exercise of powers under Order XXXIX Rule 2A of the CPC are required in the contempt cases.

MARCH 24, 2017
'gsr'

RAJIV SAHAI ENDLAW, J.

