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

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CONT.CAS.(CRL.)No.9/2016

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Date of decision : 15th March, 2017

COURTS ON ITS OWN MOTION

..... Petitioner

Through : Ms. Leena Tuteja and Ms.
Diksha Bhatia, Advs. for
plaintiff in CS(OS)No.
3379/2015.

versus

NEHA DATTA AND ANR.

... Respondents

Through : Mr. Bharat Bhatia, Mr.
Akshay Bhatia and Mr.
Sharad Baijal, Advs.
Ms. Aashaa Tiwari, APP
along with S.I. Sandeep
Yadav and Insp. Kumar
Kundan, P.S. Mehrauli.

CORAM:

HON'BLE MS. JUSTICE GITA MITTAL

HON'BLE MS. JUSTICE ANU MALHOTRA

JUDGMENT (ORAL)

GITA MITTAL, J.

1. A suit being CS(OS)No.3379/2015 was filed by M/s Capitol Art House (P) Ltd. (the plaintiff) seeking, *inter alia*, a decree for injunction against the present respondents and others. Along with the suit, the plaintiff had filed an application being I.A.No.24089/2015 (under Order XXXIX Rules 1 and 2 of the C.P.C.) as well as I.A.No.24090/2015 (under Order XXVI Rule 9

of the C.P.C.). It is clarified by Ms. Leena Tuteja, ld. counsel appearing for the plaintiff in CS(OS)No.3379/2015 that the plaintiff had made allegations of contumacious conduct only against the respondent no.1 herein.

2. The suit and these applications were listed before the ld. Single Judge on the 23rd of November 2015 when summons were issued in the suit; and an order was passed appointing a Local Commissioner to report the exact status with regard to the suit premises, more particularly the shop on the ground floor as well as the first floor above the said shop as also the staircase leading to the first floor of the premises No.4/1-14(A-1/4), Eleven Style Mile, Ward 1, Mehrauli, New Delhi.

3. Pursuant to the said order, the Local Commissioner visited the spot on 28th November, 2015 along with the Director of the plaintiff company and counsel representing them when the defendants did not permit execution of the commission.

4. On examination of the report of the Local Commissioner, by the order dated 2nd December, 2015, the court issued fresh directions to the Local Commissioner to again visit the suit premises at the earliest along with adequate police aid. The Local Commissioner was directed to take the photographs of the suit premises and videograph the entire proceedings.

5. Pursuant to this order, the local commission was therefore, executed on 3rd December, 2015 and on consideration of the

second report, the court found the resistance by the defendant Nos.1 and 2 (mother and daughter respectively) who are the respondents herein.

6. The Id. Single Judge noted the fresh constructions effected as well as the construction material in the suit premises. The Id. Single Judge also noted the obstruction to the Local Commissioner's proceedings on the part of the defendants.

7. The defendants were represented before the court on the 14th of December 2015. In view of the fresh constructions, the court issued directions again to the Local Commissioner to again visit the spot on the 18th of December 2015 and to affix his own locks on the doors leading to the front balcony of the first floor and the inner side of the door leading to the first floor of the building. The court *inter alia* also directed sealing of this portion with the keys to be deposited in the court along with the report.

8. On the 10th of August 2016, while considering I.A.No.24089/2015 (under Order XXXIX Rules 1 and 2 of the C.P.C.), I.A.No.1189/2016 (under Order XXXIX Rule 4 of the C.P.C.) as well as the several reports of the Local Commissioner the Id. Single Judge noted the conduct of the defendant Nos.1 and 2 in obstructing the work of the Local Commissioner and in violating the orders of this court with a view to presenting it with a *fait accompli*. The court *prima facie* viewed the conduct of the defendant Nos.1 and 2 as causing obstruction in the administration of justice and constituting criminal contempt as defined under

Section 2(c)(iii) of the Contempt of Courts Act, 1971. As such, the ld. Single Judge issued *suo motu* notice of contempt to the defendant No.2 – Neha Datta (respondent no.1 herein) which was accepted by defendant No.2 and she was permitted to file an affidavit in response thereto.

9. Inasmuch as criminal contempt proceedings has to be placed before a Division Bench in accordance with Section 15 of the Contempt of Courts Act, 1971, the reference came to be placed before us. Before us, the respondent no.1 has been personally appearing on each date of hearing. She has filed an affidavit dated 22nd September, 2016 unequivocally declaring that she had no intention to violate any of the orders passed by the court and that she has highest regard and esteem for the court and the orders passed. The respondent no.1 has made a detailed reference in the affidavit to an extensive harassment suffered by her after the demise of her father. She submitted that she belonged to an extremely poor family, that her father used to run a small confectionary shop in the suit premises; that after the demise of her father, her mother, sister and herself were extremely depressed and had somehow started running the same confectionary shop for their livelihood; that her grandmother and other relatives started harassing and pressurizing them to give the possession of the shop to them and that several litigations have been initiated by her grandmother and other legal heirs in the District Court of Saket against them claiming possession of the said shop. The respondent

no.1 has categorically submitted that as a result, the financial condition of the family worsened and that the respondent no.1 as well as her mother and sister became mentally depressed and financially in dire straits unable to manage such a terrible situation. To aggravate their problems, the respondent no.1's mother, somewhere in October, 2015, was diagnosed as suffering from fourth stage cancer and the respondent no.1 had no funds at all for the treatment of her mother.

It has been submitted that all these problems came to be faced by the respondent no.1, aged 29 years, in a period of six months. It is during this very period that she had no financial resources to support her critically ill mother.

10. In addition to these problems, the respondent no.1 was compelled to face litigation by the plaintiff in the suit who had also lodged FIR No.3232/2015. The respondent no.1 has submitted that she had no intention of being aggressive towards the Local Commissioner.

11. We may note that apart from tendering this explanation for her conduct, as complained of and noted by the Local Commissioner, as being the outcome of the extreme financial penury and depression on account of the extreme hardships faced by her, the respondent no.1 has regretted and tendered her unequivocal and unconditional apology for the same.

12. It is noteworthy that apart from this affidavit, the respondent has filed a further affidavit dated 17th October, 2016 (at page 46) stating that the entire first floor balcony and staircase of the said property stands sealed pursuant to the order dated 14th December, 2015 of the Id. Single Judge. She has also tendered an undertaking to this court that, without prejudice to her rights and contentions on merits in the litigation, she shall not disturb the said seal and will not occupy the first floor of the said property till the disposal of the suit bearing CS(OS)No.3379/2015. She has again reiterated her unconditional apology for the conduct and behaviour noted by the Local Commissioner and stated that she would never repeat the same.

13. We may note that yet another affidavit was filed with regard to restoration by her of the *status quo ante* in terms of the orders of the Id. Single Judge. This position stands verified by the Local Commissioner in his report dated 6th of January 2017 who visited the spot pursuant to the order dated 5th January, 2017 passed by us.

14. We may note that the respondent no.1 has filed an affidavit dated 14th March, 2017 setting out three places where the respondents state that they have been residing for want of any permanent accommodation in view of the peculiar and hard circumstances being faced by her as well as her mother and sister. The respondent no.1 has once again reiterated her unconditional apology for her contumacious conduct.

15. The explanation tendered by the respondent no.1 for her conduct in obstructing the Local Commissioner which led to the Id. Single Judge initiating the contempt proceedings by the order dated 10th of August 2016 has been considered by us. Certainly the conduct of the respondent no.1 is contumacious and may not be pardonable. However, the above narration shows extreme hardships and difficulties faced by the respondent no.1 and that she is placed in peculiar circumstances. The respondent no.1 has also explained the litigations which she is defending on behalf of her widowed mother as well as her sister without any financial resources or backing. The litigation has been initiated not only by outsiders as the plaintiff but by her close relatives. The respondent no.1 has explained that apart from this litigation for the only property which they are occupying, her problems stand multiplied by her mother being diagnosed with cancer which was at the fourth stage without the family having any money to support her treatment.

16. To show her *bona fide*, the respondent no.1 has restored the premises in the shape in which it was when the Local Commissioner first visited the spot. The Local Commissioner has also sealed the property in terms of the orders of the Id. Single Judge and the respondent no.1 has tendered an undertaking to this court that the same would be maintained in the same condition till final disposal of the proceedings on the original side.

17. We accept the undertaking given by the respondent no.1 with regard to the maintenance of the position in terms of the orders of the Id. Single Judge.

18. The respondent no.1 has repeatedly begged this court for mercy and has tendered unconditional apology for her conduct.

Keeping in view the above extremely hard circumstances, we accept the explanation as well as unconditional apology tendered by the respondent no.1 Neha Dutta with regard to her conduct. The respondents shall remain bound by the undertaking given to this court.

19. Notice issued to the respondents shall stand discharged.

20. We make it clear that nothing herein contained is an expression of opinion on any aspect of the matters which are pending in CS(OS)No.3379/2015 before the Id. Single Judge or in any other litigation or court.

21. Dasti to parties.

GITA MITTAL, J

ANU MALHOTRA, J

MARCH 15, 2017

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