

\$~39

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

+ CM(M) 475/2017

PROMILA SIROHI

..... Petitioner

Through: Mr.Aditya Singh, Advocate

versus

LATA MANGESH SAXENA & ORS

..... Respondent

Through: None

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

%

01.05.2017

CM No.16344/2017

Exemption allowed, subject to all just exceptions.

Application stands disposed of.

CM(M) 475/2017

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India impugning the order dated 6th April, 2017 whereby the application under Section 151 CPC filed by the petitioner/defendant No.1 in Civil Suit No.222/17 has been dismissed by learned Trial Court.

2. Learned counsel for the petitioner has submitted that in view of the various litigations going on between the parties it is now not safe for the petitioner to live with the respondents under the same roof. After passing of the order dated 27th April, 2015, situation has changed to the extent that the

order dated 27th April, 2015 as well order dated 8th March, 2017 required modification. Learned counsel for the petitioner has relied upon Ramesh & Others vs. State of Haryana (2017) 1 SCC 529 submitting that the petitioner is now a witness and for protection it became necessary to modify the above two orders. The learned Trial Court without correctly appreciating the facts and the situation of the petitioner, has dismissed both the applications and that the impugned order being not passed on correct appreciation of facts and law need to be set aside.

3. Perusal of the record shows that CS(OS) No. 3573/2014 was filed in the High Court seeking decree for declaration, permanent and mandatory injunction by the respondent No.1, Lata Mangesh Saxena; her husband, respondent No.2, Suresh Chand and her son, respondent No.3, Arvind Kumar impleading the petitioner herein as defendant No.1 and her father and brother to be defendant No.2 and 3 respectively. Sh.Suresh Garg, Sh.Surender Lal Jawa and Harvinder Kumar were impleaded as defendant Nos.4 to 6. Arvind Kumar, respondent No.3 herein is the husband of the petitioner herein (defendant No.1 in Civil Suit No.3573/2014).

4. Initially the Civil Suit being CS(OS) No.3573/2014 was filed in the High Court wherein on 27th April, 2015 following order was passed:-

“SHO, police station Govind Puri along with Investigating Officer SI Rajinder Singh is present in Court. This Court has been informed that pursuant to the order of status quo dated 18.02.2015 wherein both the parties had undertaken to maintain status quo qua the suit property, on 19.02.2015 when SI Rajinder visited the suit premises he found prima facie evidence of the plaintiffs living in the suit property; he has orally submitted in Court that on that date the defendant had also come to the suit property and there were certain belongings of the defendant also lying in the suit property. Prima facie it appears that both the parties were in possession

of the suit property. As on date the plaintiffs have been ousted from the suit property. This Court notes that the plaintiff nos.1 and 2 are in-laws of defendant no.1 and plaintiff no.3 is the estranged husband of defendant no.1. The parties are in litigation. Apart from the present suit a complaint under Sections 498A/406 of the IPC as also a separate FIR under Section 354D of the IPC has been lodged on the complaint of defendant no.1. Learned counsel for defendant no.1, has no objection if the plaintiffs are put back in the possession of the suit property. The plaintiffs are accordingly, entitled to the status quo ante order which was passed on 18.02.2015. They shall be put back in the suit property. The defendant ensures and undertakes before this Court (present in Court) that no untoward incident will take place inter se the parties. The same undertaking has been furnished by the learned counsel for the plaintiffs on behalf of the plaintiffs. Written status report in terms of the submissions made by the Inspector (SHO, P.S.Govind Puri) shall also be filed in Court through concerned Investigating Officer SI Rajinder Kumar.

CS(OS) 3573/2014 & I.A.No.3567/2015 (u/O 39 R. 2 A CPC) and I.A.No.2304/2015 (u/O 7 R. 11 CPC), I.A.No.23229/2014 (u/O 39 R. 1& 2 CPC) and 2568/2015 (u/O 39 R. 1& 2 CPC)

For completion of pleadings list before Joint Registrar on 09.9.2015.”

5. With the enhancement of the pecuniary jurisdiction of the District Court, the above civil suit stood transferred to the District Court at Saket. On 8th March, 2017, the following order was passed:-

“08.03.2017

Case received by way of transfer. Let it be checked and registered.

*Present: Mr.K.B.B. Singh, counsel for plaintiff
Mr. Parth Kaushik, counsel for defendant no. 1, 2
and 3 with defendant no. 1 and 2 in person*

Learned counsel for plaintiff submitted that reply to the application u/o. 7 rule 11 CPC was filed before transfer of this

case from Hon'ble High Court and the copy was sent to defendant by registered post. Reply is on record along with proof of service.

Learned counsel for defendants submitted that he does not have copy of same. Copy has been supplied to learned counsel for defendants by learned counsel for plaintiff, who can file rejoinder, if any, on or before the next date of hearing with advance copy to plaintiff.

List for arguments on this application on 19th May, 2017.

At the request of learned counsel for plaintiff, cost of ₹5,000/- will be paid on the next date of hearing. It is made clear that if, the cost is not paid on the next date of hearing, legal consequence will follow.

Learned counsel for plaintiff submitted that order dated 27.4.2015 passed by Hon'ble High Court of Delhi has not been complied with by defendants. This assertion is strongly contested by learned counsel for defendant submitting that defendants never created any hindrance in the way of plaintiff's coming back in the property, however, plaintiff are creating troubles for defendants.

SHO PS Govind Puri will ensure that order dated 27.04.2015 passed by Hon'ble High Court of Delhi, is duly complied with by both parties. SHO PS Govind Puri will render all possible assistance to plaintiff in getting back in the possession of property. However, if any disturbance is caused by plaintiff while going back in the property, same will be immediately reported to concerned SHO.

Copy of this order be given to both parties. Copy of this order be sent to SHO PS Govind Puri.

Sd/-

*Addl. District Judge-03 (South East)
Saket Courts, New Delhi/08.03.2017"*

6. The application seeking modification of the above two orders was filed by the petitioner herein on the ground referred to in para No.2 of the impugned order dated 6th April, 2017 which reads as under:-

"2. Defendant no.1 to 3 seek modification of the order dated 27.04.2015 and order dated 08.03.2017 mainly on the ground

that much water has flown down during interregnum period from 27.04.2015 till now and lot of developments have taken place which substantially affects the continuity of impugned order dated 27.04.2015. Civil contempt pending against plaintiffs has also been cited as one of ground of modification of order dated 27.04.2015. It is also stated in the application that plaintiffs have committed several offences against defendant No.1 for which various FIR's have been registered against plaintiffs. The proceedings initiated by defendant No.1 under Protection of Women from Domestic Violence Act are also referred to in the application. It is contended in the application that plaintiffs themselves has abandoned the suit property and kept silence for two years and thus have give a go bye to the order dated 27.05.2015. It is also mentioned in the application that defendant No.1 and her minor daughter are living in the suit property and they are facing threats to their security from plaintiffs. It is further mentioned in the application that order dated 08.03.2017 was passed when main counsel for defendants no.1, 2 and 3 was not present and matter was listed for some other purpose.”

7. Learned Trial Court has dismissed both the applications seeking modification of the orders dated 27th April, 2015 and 8th March, 2017 for the following reasons:-

(i) The order dated 27th April, 2015 was passed in view of the no objection given by defendant Nos.1 to 3 (petitioner is the defendant No.1 in Civil Suit No. 3573/2014) that they have no objection if the plaintiffs i.e. the husband of defendant No.1 and his parents are put back in possession of the suit property.

(ii) The order dated 8th March, 2017 was nothing but to enforce the compliance of the order dated 27th April, 2015 passed by this Court in its original jurisdiction.

8. Registration of the FIR or filing of a case under Protection of Women

from Domestic Violence Act in itself was no ground to modify the said order for the reason that even in the order dated 27th April, 2015 this Court has recorded not only the presence of SHO Police Station Govind Puri along with IO SI Rajinder Singh but also noted that parties are in litigation and apart from Civil Suit No.3573/2014 a complaint under Section 498-A/406 IPC as well separate FIR under Section 354-D IPC has been lodged on the complaint of defendant No.1 i.e. the petitioner herein.

9. The order dated 27th April, 2015 compliance of which was sought on 8th March, 2017 was passed noting all the above facts and in the peculiar facts, reliance placed on Ramesh & Others vs. State of Haryana by learned counsel for the petitioner is of no assistance to the petitioner.

10. The impugned order does not suffer from any illegality or perversity so as to warrant interference by this Court in exercise of its power under Article 227 of the Constitution of India.

11. The petition is dismissed.

CM No.16343/2017

Dismissed as infructuous.

PRATIBHA RANI, J.

MAY 01, 2017

'pg'