

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

% **Date of decision: 28th July, 2017**

+ **CM(M) 1354/2016**

MOHD IRFAN (SENIOR CITIZEN).

..... Petitioner

Through: Mr. M. Sufian Siddiqui, Mr.
Rakesh Bhugra & Mr. M. Tabish
Zia, Advs.

Versus

MEHTAB SINGH & ORS.

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

CM Nos.47264-65/2016 (for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

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3. This petition under Article 227 of the Constitution of India impugns the order [dated 18th October, 2016 in Civil Suit No.117/2016 (Old Civil Suit No.618/2014) of the Court of Civil Judge-02, Central District, Tis Hazari Courts, Delhi] of dismissal of the application of the petitioner / plaintiff under Section 151 CPC.

4. Though this petition came up before this Court first on 21st December, 2016 but has been adjourned from time to time without notice thereof having been issued.

5. The counsel for the petitioner / plaintiff has been heard.

6. The petitioner / plaintiff has instituted the suit from which this petition arises for permanent injunction to restrain the respondents / defendants in the suit from interfering with the petitioner's / plaintiff's peaceful possession and enjoyment of property No.8052, Ground Floor, Gali Tyre Wali, Bara Hindu Rao, Delhi and to restrain the respondents / defendants from interfering with the plaintiff's removal of *malba* from the said property and with the plaintiff repairing / renovating / altering the property to bring it to a habitable condition.

7. Vide order dated 9th October, 2015 on the application of the petitioner / plaintiff under Order XXXIX Rules 1 and 2 of the CPC, it was ordered that the petitioner / plaintiff is free to reconstruct and remove the debris from the suit property with prior permission of the Municipal Corporation of Delhi (MCD) and following the MCD Rules and Policies and that the respondents / defendants have no rights to create any hindrance in the same.

8. The petitioner / plaintiff filed the application under Section 151 CPC against the order of dismissal whereof this petition has been preferred averring that the respondents / defendants were not permitting the petitioner / plaintiff to remove the debris / *malba* or to carry out the repairs and seeking a direction to the Station House Officer (SHO) of the police station concerned to provide police protection to the petitioner / plaintiff as and when required by the petitioner / plaintiff for removing the debris / *malba* and for carrying out repairs as per law.

9. The order dated 9th October, 2015 having permitted the petitioner / plaintiff to carry out the works with the prior permission of the MCD, I have at the outset asked from the counsel for the petitioner / plaintiff to show the said permission.

10. The counsel for the petitioner / plaintiff states that vide the order dated 9th October, 2015, MCD was also impleaded as a party to the suit and in its reply has stated that for carrying out repairs within the meaning of Clause 6.4.1 of the Building Bye-laws for Union Territory of Delhi, 1983, no permission is necessary.

11. I have however enquired from the counsel for the petitioner / plaintiff, whether there is any site plan or other document to show the nature and extent of the works which the petitioner / plaintiff is wanting to carry out inasmuch as it appears that the order dated 9th October, 2015 is vague in this regard. Under the garb of such order, works which do not fall within Bye-law 6.4.1, cannot be permitted to be carried out.

12. No such document has been shown and no site plan also of the property has been filed.

13. The learned Civil Judge in the impugned order has held that the allegations of the petitioner / plaintiff of having not been permitted to remove the *malba* or to carry out the repairs were not supported by any concrete proof and that various other effective civil remedies were available to the petitioner / plaintiff for non compliance if any by the respondents / defendants under Order XXXIX Rules 1 and 2 of the

CPC and the Civil Court could not on such pleas issue any direction to the police.

14. I have also enquired from the counsel for the petitioner / plaintiff, whether not the remedy of the petitioner / plaintiff, for alleged breach by the respondents / defendants of the order under Order XXXIX Rules 1 and 2 CPC, is by an application under Order XXXIX Rule 2A of the CPC, and or under Order XXI of the CPC which is titled “Execution of Decree and Orders” and which in Rule 32 thereof provides mode for execution of such an order. Section 36 of the CPC provides that the provisions thereof relating to execution of decree are also applicable to execution of orders.

15. Both, Order XXXIX Rule 2A of the CPC as well as Order XXI Rule 32 of the CPC provide for detention of the respondents / defendants in prison and attachment of their property. The purport of providing for imprisonment in execution / enforcement of the orders of the said nature is that once the person in disobedience of the order / decree is removed from the site by being lodged in the prison, the grievance would disappear and the works can be carried out.

16. The counsel for the petitioner / plaintiff contends that the stage for the petitioner / plaintiff to apply under Order XXXIX Rule 2A of the CPC would arise only after the petitioner / plaintiff has attempted enforcement / implementation of the order and for which the application under Section 151 CPC was filed. The said argument is pegged on the dicta of the Single Judge of the High Court of Madras in *J. Rajagopalan Vs. Uma Maheswari* (2014) 1 CTC 365.

17. I have perused the view taken by the High Court of Madras. There can be no doubt that the Civil Court has the power to issue directions to the police, without police being a party to the suit, for ensuring compliance of its orders. The source of such power can be traced to Section 94(e) and / or Section 151 of the CPC. At the same time it cannot be forgotten that it has been held in ***Durgesh Sharma Vs. Jayshree*** (2008) 9 SCC 648 and ***Ram Prakash Agarwal Vs. Gopi Krishan (dead through LRs)*** (2013) 11 SCC 296 that the occasion for invoking the residuary powers under Section 151 CPC arises only when there is no provision in the CPC for the contingency which has arisen. However in the present case, there is a provision in the CPC, namely Order XXXIX Rule 2A and Order XXI Rule 32 of the CPC and which are capable of providing relief against the grievance urged by the petitioner. The proceedings before the Civil Court are governed by the CPC and the CPC having made a specific provision for enforcement of the orders / decrees, including of the nature as is the order dated 9th October, 2015 in the present case, the provisions of Section 151 of the CPC cannot be invoked at the asking and without making out a case of the same being not adequate for the contingency.

18. It cannot also be lost sight of that the police authorities cannot at the drop of a hat be involved in civil disputes and for enforcement of orders of the Civil Court and the same if allowed will adversely affect the role of the police in enforcement of law and prevention of offences. The Division Bench of High Court of Andhra Pradesh in ***Polavarapu Nagamani Vs. Parchuri Koteswara Rao*** 2009 SCC OnLine AP 754 (DB) holding that police have no role in civil

adjudication and the Courts should be very cautious and vigilant not to introduce police intervention in civil adjudication in an indirect manner at the instance of a clever and resourceful plaintiff, for the guidance of civil Courts laid down that (i) when a party obtaining an order of injunction complains that the said order has been violated, an application seeking police protection would not lie; (ii) the aggrieved party has to necessarily file execution petition under Order XXI Rule 32 or an application under Order XXXIX Rule 2A of the CPC seeking attachment and / or arrest of the violator for contempt of the Court; (iii) when a petition is filed seeking police protection, an order for police protection cannot be passed in a routine manner; (iv) the standard of proof required in the case of threat of disobedience of injunction should be very high and should be in between the standard of beyond reasonable doubt and a standard of balance on probabilities. To the same effect is ***D. Tulja Devi Vs. Margam Shankar*** 2009 SCC OnLine AP 797 (DB). Same is the view of the Division Bench of the High Court of Kerala in ***Geroge Joseph Vs. The Sub Inspector of Police Vellarda*** 2015 SCC OnLine Ker 20749 (DB). I respectfully agree.

19. Once the petitioner/plaintiff makes an application under the appropriate provision of law seeking appropriate relief of imprisonment of the respondents / defendants and /or of attachment of their property, in that application, either by trial if required or on affidavit, first the question of, if at all the respondents / defendants are in violation and if so what should be the order thereon shall be adjudicated.

20. In fact, the counsel for the petitioner / plaintiff during the hearing has stated that a large number of other persons who are agents of the respondents / defendants are acting at the behest of the respondents / defendants. It is not known at this stage whether the persons who are coming in the way of removal of *malba* and carrying out repairs by the petitioner / plaintiff are the agents of the respondents / defendants or are third parties whose independent rights are affected by the proposed works by the petitioner / plaintiff.

21. The effect of issuing the direction as sought, to the police authorities, would be to allow the order to be enforced even against those who are not parties to the suit and on whom the order dated 9th October, 2015 is not binding.

22. Rather, from the argument of the counsel for petitioner, of police aid being required to attempt enforcement / implementation of the order, it appears that the petitioner, till now has not even attempted to carry out the works and the application for police aid was filed on mere apprehensions.

23. The petitioner, in the application for grant of police protection also has merely stated that when he went to the property on 4th August, 2016 “to make necessary arrangements for removal of *malba*”, he was threatened. Though it is stated that “due to intervention of police officials of Police Station Sadar Bazar, the matter was pacified” but no complaint of the petitioner having been prevented from carrying out the works is pleaded even to have been

made. On the said pleadings, no case for grant of police protection is made out.

24. Thus no ground for interference with the impugned order is made out.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J.

JULY 28, 2017
'gsr'..



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