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

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Judgment delivered on: 17.11.2017

+ **LPA 731/2017**

VIKRAM NAYAR

..... Appellant

versus

COMMISSIONER OF POLICE & ORS

..... Respondents

Advocates who appeared in this case:

For the Appellant : Mr Anurag Ojha, Advocate with Mr Vikram Nayar, Appellant in person.

For the Respondent : Mr Gautam Narayan and Mr R.A.Iyer, Advocates for GNCTD.

CORAM:-

HON'BLE MR. JUSTICE S. RAVINDRA BHAT

HON'BLE MR. JUSTICE SANJEEV SACHDEVA

S. RAVINDRA BHAT, J. (OPEN COURT)

CM Nos.41429 /2017 & 41431/2017(exemption)

Allowed, subject to all just exceptions.

LPA 731/2017 & CM No.41430/2017(delay in filing appeal for 22 days)

1. The Appellant/Writ Petitioner impugns order dated 08.08.2017, whereby the petition, seeking a declaration that arrest of the petitioner on 06.07.2015 is illegal, unjustifiable and unconstitutional beyond the

powers of respondents, was dismissed.

2. The Petitioner being a tenant of property bearing No.L-19A, South Extension-II, New Delhi, was directed to be evicted by a decree of possession dated 01.12.2012. In the appeal filed by the Appellant against the said decree, the appellant gave an undertaking to vacate the premises by 31.03.2014 to the Court. Notwithstanding the undertaking to vacate the premises, the Appellant failed to vacate the same.

3. The Appellant, in the meantime, filed an application seeking extension of time, however, the application for extension of time was rejected by order dated 19.03.2014. Despite the lapse of time and rejection of the application, the applicant failed to vacate the premises, consequent to which, the respondent No.3 – landlord filed a contempt petition {Contempt Case (Civil) No.226/2014}.

4. On 04.04.2014, directions were issued to the Appellant to appear in person on 21.04.2014. On 21.04.2014, at the request of the Appellant, the petition was adjourned to 17.07.2014. Appellant was directed to remain present on the said date. On 17.07.2014, noticing that the appellant was not present despite being so directed and had also not vacated the premises, at the request of the Appellant's counsel, the contempt petition was re-listed on 21.07.2014, on which date the Appellant was granted time till 12 noon on 22.07.2014 to vacate the premises, failing which he was directed to be personally

present on 22.07.2014 at 2.30 PM.

5. The Appellant even thereafter failed to comply with the order and neither vacated the premises nor appeared before the Court on 22.07.2014. Non-bailable warrants were issued against the Appellant. On 31.07.2014, it was noticed that the warrants had been received back unexecuted. The Appellant was directed to remain present on the next date. The Appellant thereafter filed an application seeking recall of the non-bailable warrants, however, the warrants were not recalled and the application remained pending.

6. On 06.07.2015, once again, the Appellant was not present in Court. The Court noticed that on 22.07.2014, the Appellant had been *prima facie* held guilty of contempt and non-bailable warrants had been issued, which remained unexecuted. In these circumstances, the Court directed the Deputy Commissioner of Police {(DCP(South))} to ensure that order dated 22.07.2014 was executed at the earliest and also to ensure that disciplinary proceedings be initiated against the delinquent official, who had failed to execute the non-bailable warrants.

7. The Appellant was thereafter arrested on 06.07.2015 pursuant to the non-bailable warrants issued in terms of order dated 22.07.2014. He was subsequently granted bail on 09.07.2015. The Contempt Petition thereafter was dismissed as withdrawn and the non-bailable warrants issued against the Appellants were cancelled on

06.10.2015, in view of an amicable settlement between the parties.

8. It is this arrest on 06.07.2015 which the Appellant had sought to be declared in the writ petition as being illegal, unjustifiable and unconstitutional.

9. The learned Single Judge, noticing facts as noticed hereinabove, was of the view that the Appellant had been avoiding the process of the Court and despite the undertaking given, had failed to vacate the premises in question and further despite orders, directing him to appear in person, had failed to do so.

10. We may also observe that non-bailable warrants, which were issued pursuant to the orders dated 22.07.2014, had not been recalled. Merely because an application seeking recall of the non-bailable warrants is filed, does not *ipso facto* imply that the warrants stood withdrawn. The Appellant having failed to appear repeatedly, despite being so directed by the Court, had made himself liable for being arrested by execution of the non-bailable warrants. The arrest of the appellant, on 06.07.2015, was consequent to the non-bailable warrants issued in terms of order dated 22.07.2014 and the subsequent order dated 06.07.2015 of the Court directing the DCP(South) to ensure that the order dated 22.07.2014 is executed. No fault can be found with the action of the respondents in executing the non-bailable warrants in terms of orders dated 22.07.2014 & 06.07.2015.

11. We find no infirmity in the impugned order. For the above reasons, the Court is of the opinion that there is no merit in the Appeal.

12. The Appeal is accordingly dismissed.

**S. RAVINDRA BHAT
(JUDGE)**

**SANJEEV SACHDEVA, J
(JUDGE)**

**NOVEMBER 17, 2017
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