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

+ CM(M) 896/2013 and CM APPL.13545/2013 (stay)

VIRENDER SINGH & ORS

..... Petitioners

Through: Mr. J.K. Jain, Advocate

versus

SIS RAM & ORS

..... Respondents

Through: Ms. Gita Dhingra, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

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09.03.2018

1. The civil suit (suit no. 188/2012) in which the impugned order was passed by the Civil Judge that was reversed by the first appellate Court passing an order against the petitioners was instituted by the first respondent (the plaintiff) impleading the petitioners as the defendants. In the context of an application for *ad interim injunction* moved by the plaintiff, such relief having been denied, the matter had earlier reached before the first appellate Court where, with consent, the said appeal (MCA 163/90) was disposed of on 17.10.1990 directing the parties “ *to maintain status quo in respect of flour mill, Fodder Cutting Machine and the Electric connection till disposal of the suit*”.

2. The plaintiff had moved an application subsequently alleging the breach of the abovesaid order, as noticed by him in July 1997, the lock on the premises of the flour mill having gone missing and certain articles from

the flour mill viz., motor, scales, temperature meter and voltage stabilizer having been removed. The application seeking initiation of action in terms of Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) moved by the plaintiff was dismissed after inquiry in which evidence was recorded by the Civil Judge by his order dated 12.02.2013. The plaintiff then took out appeal (Miscellaneous Appeal no.04/2013) which was allowed by the Senior Civil Judge by his judgment dated 31.05.2013 holding the petitioners to have acted in breach of the *status quo* order with regard to goods lying in the premises, though its status not having been disturbed and in that wake imposing a fine of Rs. 10,000/- on each of them, half of such fine amount to be deposited with the Legal Services Authority of the concerned district and the balance half to be paid to the plaintiff and, in case of default, the petitioners being held liable to undergo civil imprisonment for 15 days each.

3. At the outset, the counsel for the petitioners submitted that the civil suit of the first respondent has been dismissed by the trial Court by order dated 25.01.2018. The counsel for the respondent/plaintiff fairly conceded that the suit has since been dismissed and further that no appeal against the judgment of dismissal has been preferred till date.

4. Be that as it may, having heard the learned counsel on both sides and having gone through the record, this court finds that the view taken by the first appellate court in its judgment dated 31.05.2013 cannot be approved of or upheld. It is noted that it has been admitted case of the plaintiff that he himself was not an eye witness to the alleged act of removal of the goods from the premises of the flour mill. His evidence as a witness at the inquiry

(AW2), thus, is of no consequence. He had referred to the eye witness account of two persons named Maha Singh and Daya Nand. He did not examine Daya Nand in support. Maha Singh was examined as a witness (PW-6) but his deposition was never completed in that after part cross-examination he was not tendered again for completion of the said exercise. In this view, the learned first appellate judge himself observed in para 15 of the impugned judgment that the deposition of PW-6 cannot be considered.

5. A perusal of the judgment of the first appellate court reveals that it has gone more on the basis of certain admissions in the evidence of the petitioners. Reference was made to the depositions of fourth petitioner Sultan Singh (DW3) and third petitioner Attar Singh (DW1) about removal of certain goods from the premises of the flour mill. Noticeably, DW3 in his testimony had admitted that he had removed certain “*machinery articles*” from the premises of the flour mill, but qualifying it stating that it was within six months from 29.08.1995. It is unfair to read this admission of the act of removal of any goods post *status quo* order dated 17.10.1990.

6. The consent order passed on 17.10.1990 by the first appellate court was in respect of flour mill which concededly has remained undisturbed and about the “*fodder cutting machine*” besides the electric connection. The articles which were allegedly removed giving rise to the application under Order XXXIX Rule 2A CPC being moved having been described as a motor, scales, temperature meter and voltage stabilizer, it is not clarified either in the pleadings or in the evidence as to how these articles allegedly removed are to be construed the same as “*fodder cutting machine*” referred to in the *status quo* order.

7. In the above facts and circumstances, the plaintiff himself having not discharged burden of proof in respect of allegations in the application under Order XXXIX Rule 2A CPC, it was unjust and improper on the part of the first appellate court to draw conclusions from some stray admission in the statements of the petitioners.

8. In the above facts and circumstances, the application under Order XXXIX Rule 2A CPC ought not have been allowed by the first appellate court.

9. Even otherwise, the consequences that have been meted out to the petitioners, after they had been held guilty of breach of the *status quo* order by the first appellate court, are found to be not in consonance with the prescription of Order XXXIX Rule 2A CPC. For disobedience, if proved, the property of the party in question could have been ordered to be attached or it could be directed to be detained in civil prison. The order imposing fine was wholly without jurisdiction.

10. For above reasons, the petition is allowed, the impugned order is set aside.

11. The order dated 12.02.2013 of the civil judge is restored. The application of the respondents under Order XXXIX Rule 2A CPC shall stand dismissed.

R.K.GAUBA, J.

MARCH 09, 2018

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