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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Reserved on: 29th November, 2018

Pronounced on: 04th December, 2018

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CM(M) 1007/2018 & CM APPL Nos.34844/2018, 37321/2018

PRAMODA PATEL

..... Petitioner

Through : Mr.K.K.Malviya and Mr.Sanjiv
Joshi, Advocates.

versus

M/S REGAL APARTMENTS PVT LTD

..... Respondent

Through : Mr.N.K. Aggarwal, Advocate with
Ms.Shikha Pahuja and
Ms.Premalata Anand, directors of
respondent company.

CORAM:

HON'BLE MR. JUSTICE YOGESH KHANNA

YOGESH KHANNA, J.

1. Before coming to the petition let me state the brief history of this litigation:-

- (i) on 23.03.2000 a license deed was executed between one Mr.T.R.Anand, since deceased, in favour of Dr.J.K.Patel, husband of the petitioner herein in respect of the subject property on payment of user and occupation charges at the rate of `35,000/- per month, besides water and electricity charges.

Such licence was granted only for eleven months;

- (ii) since Dr.J.K.Patel stopped making payment of licence fee, a Civil Suit No.09/2005 for his vacation and for payment of mesne profits was filed by late Mr.T.R.Anand;
- (iii) since in the said suit it was brought to the notice of this Court that the licence charges were being paid to the company M/s.Regal Apartments Pvt. Ltd. of which Mr.T.R.Anand was merely a director, hence only a decree of mesne profits was passed and the suit for possession was dismissed as Mr.T.R.Anand was not considered as an owner of the subject property;
- (iv) hence a notice under Section 106 of the Transfer of the Property Act was issued by the company to the husband of the petitioner and then a Civil Suit No.48701/2014 for possession as well as recovery of mesne profits was filed in March 2008;
- (v) in the meanwhile an execution of the decree passed in CS No.09/2005 was filed and as Dr.J.K.Patel was unable to make payment of the decretal amount he was imprisoned. It is also alleged Dr.J.K.Patel along with his wife viz., the petitioner herein, tried to forge certain documents qua the ground floor of the subject property claiming them to be the owners of the property but were caught and a FIR was also registered against them;
- (vi) during the pendency of the later suit for possession (Suit No.48701/2014), Dr.J.K.Patel expired and then his wife i.e. the petitioner herein and his children were brought on record. Since the arrears and mesne profits had accumulated to `60,00,000/-

approx., hence the Court tried to intervene to settle the matter. On 21.12.2017 the petitioner also moved an application under Section 151 CPC stating interalia she is ready to pay `5,00,000/- on or before 31.01.2018 and needed some time to vacate the premises. The petitioner was asked to personally appear on 03.01.2018. However on 03.01.2018 since huge arrears of the mesne profits had accumulated and the petitioner herein had showed her unwillingness to vacate the premises, and since was not even willing to clear the arrears, her application under Section 151 CPC dismissed;

- (vii) on 20.01.2018 the petitioner herein moved an application for transfer of this suit but the application was dismissed on 06.02.2018. The petitioner moved yet another application but it was also dismissed with a cost of `10,000/- to be deposited with the Prime Minister National Relief Fund (PMNRF). It has not been deposited so far;
- (viii) on 18.04.2018 the judgment was passed in Civil Suit No.48701/2014 wherein the petitioner was directed to deliver the possession of flat No.9, Pratap Singh Building, New Delhi, viz., first floor and a room on second floor and to pay the damages. An RFA 603/2018 was then filed by the petitioner herein but it was also withdrawn on 31.07.2018 while the Court was dictating the judgment. The petitioner even filed objections in the execution petition which were also dismissed by the

impugned order dated 14.08.2018 and against the said order the petitioner is before this Court.

2. In this petition the petitioner has raised these two issues; **(a)** the respondent company is not an owner of the property in dispute; **(b)** the suit property still exist in the name of Sharma's in L&DO record which the petitioner was not aware earlier and hence a fraud is committed by the respondents upon this Court.

3. Admittedly the petitioner's husband was making payment of licence fee to the respondent company and hence cannot say the title of petitioner or her husband was better than of the respondent company. Also on record there is a copy of sale deed dated 16.08.1985 executed by Mr.M.C.Sharma s/o R.S.Sharma in favour of the respondent company qua the subject property. Though it is urged by the learned counsel for the petitioner that the subject property is still owned by Mr.Thakur Dass and Mr.Meher Chand Sharma who are shown as co-lessees in the record of L&DO even today and that Mr.M.C.Sharma alone could not have transferred the suit property in favour of the respondent company, as is shown in Sale Deed dated 16.08.1985 hence Sale Deed is a forged document, but whether one of the co-lessee could have transferred the property or not is none of the concern of the petitioner herein since her husband was merely a licensee of the respondent company and the respondent being a land lord/ licensor was well within its right to recover the possession from the licensee or his heirs on non-payment of licensee fee and hence no fault can be found in the judgment or in the impugned

order which rightly dismissed the objections against the judgment dated 18.04.2018.

4. Admittedly the petitioner has neither paid the huge arrears of user charges which have now accumulated to approximately `1 crore and instead is conveniently occupying the premises in the heart of the city at Connaught Place. The petitioner even had not deposited the cost of `10,000/-, as was directed to be paid vide order dated 06.02.2018 in the Prime Minister Relief Fund. Not only this Court had already dismissed the prayer in the petition qua setting aside of the impugned order dated 14.08.2018 and it was only upon the request of the petitioner's counsel the notice of this petition was issued to a limited extent qua petitioner's request for the extension of time to vacate the premises, yet the petitioner insisted on hearing on merits, which conduct was uncalled for.

5. Considering the facts, especially the petitioner being not paying any user or occupation charges for so long and yet is enjoying the premises by openly flouting the orders, the petition is dismissed but subject to cost of `50,000/- to be paid to the respondent within a period of four weeks from today, lest respondent shall be at liberty to approach this Court by way of appropriate petition.

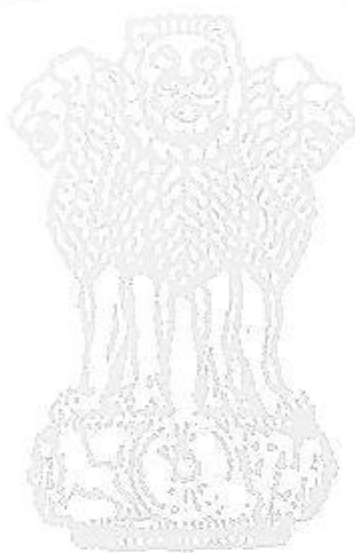
6. Pending applications also stands disposed of in terms of above.

YOGESH KHANNA, J.

DECEMBER 04, 2018

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HIGH COURT OF DELHI



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