

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

% *Date of Judgment: 26.10.2018*

+ **C.R.P. No.225/2018**

DIL BAHADUR Petitioner
Through: Mr. Devender Kumar, Advocate.

versus

ARYA SAMAJ MANDIR ...Respondent
Through: None.

**CORAM:
HON'BLE MR. JUSTICE VINOD GOEL**

VINOD GOEL, J. (ORAL)

C.M. No.42630/2018 (for delay)

For the reasons explained in the application, the delay in filing the present petition is hereby condoned. The application is disposed of accordingly.

C.R.P. No.225/2018 & C.M. No.42628/2018 (for stay)

1. The impugned order dated 19.04.2018 passed by the learned Civil Judge, South-East District, Saket Courts, New Delhi in Civil Suit No.51103/2016 is the subject-matter of challenge in the present Civil Revision Petition. By order dated 19.4.2018, the application of the petitioner/defendant to review the order dated 26.7.2017 under Order 39 Rule 10 CPC was dismissed. In this application, the respondent/plaintiff sought a direction to the petitioner/defendant to pay or deposit in the court a sum of

Rs.30,000/- per month or such other sufficient amount as is considered appropriate.

2. The respondent/plaintiff-Arya Samaj, Greater Kailash-II and Greater Kailash Enclave-II through its President Sh. Priya Vrat has preferred a suit for mandatory injunction directing the petitioner/defendant to vacate its premises known as Arya Samaj Mandir, Road No.1, M-Block, Greater Kailash Part-II, New Delhi-110048 consisting of two rooms, one kitchen and a common latrine and bathroom, used by the petitioner/defendant as his residence and shown with red colour in the site plan annexed with the plaint. The respondent/plaintiff also prayed for a direction to the petitioner/defendant to remove all his goods and handover the possession of the said premises and to recover damages as well as water and electricity charges.
3. It is pleaded by the respondent/plaintiff in para No.1 of the plaint that it is a registered society and Sh. Priya Vrat is its President, who being conversant with the facts of the case, is authorized to sign, verify and file the plaint. The respondent/plaintiff pleaded in para No.2 of the plaint that the petitioner/defendant had been working as a Sevadar for the last about 35 years and on account of his working as a Sevadar, he was allowed to use the said property as his residence. In para No.3 of the plaint, it is pleaded that the services of all the employees/Sevadars including the petitioner/defendant shall come to an end on attaining the age of 65 years. By

communication dated 9.6.2015, the respondent/plaintiff informed the petitioner/defendant that he would retire as Sevadar on 1.1.2016 on attaining the age of 65 years.

4. In his written statement, the petitioner/defendant *inter alia* pleaded that he has been working in Arya Samaj Mandir from the date of its construction till date and has been issued a false and fabricated order dated 9.6.2015 for his retirement. He pleaded that the Arya Samaj Mandir was registered after 11 years of its construction and that he has been working as a Sevadar since 11.7.1979. He pleaded that the respondent/plaintiff has never given him salary and other benefits under Minimum Wages Act. He pleaded that he has been working as a Sevadar for his whole life in Arya Samaj Mandir and residing with his children, and being a poor person, he has no other accommodation to live except the suit premises.
5. The petitioner/defendant has not denied the contents of paras 1 & 2 of the plaint as mentioned hereinbefore in corresponding para of his written statement which are deemed to have been impliedly admitted. He has not disputed that the respondent/plaintiff is a registered society and Sh.Priya Vrat, its President being conversant with the facts of the case is authorized to sign, verify and file the present suit. He has also not denied the fact that the petitioner/defendant has been working as a Sevadar with the respondent/plaintiff for the last 35 years and on account of his working as a Sevadar with the

respondent/plaintiff, the petitioner/defendant was allowed to use two rooms, one kitchen and common latrine and bathroom as his residence in the premises in question.

6. Order 39 Rule 10 CPC stands attracted where the subject-matter of a suit is money or some other thing capable of delivery and any party to the suit admits that he holds such money or other thing as a trustee for another party, or that it belongs to or is due to another party, the Court is empowered to direct the same to be deposited in the court or deliver to such last-named party, with or without security, subject to further directions. Section 151 CPC empowers the court to make such orders as may be necessary for ends of justice to prevent the abuse of the process of the court.
7. The petitioner/defendant has admitted that he has been working as a Sevadar with the respondent/plaintiff-Arya Samaj Mandir. As per Wikipedia, Sevadar is a Punjabi word for a volunteer who offers his or her services to a Gurudwara or to the Sikh community free of charge. It is a term used to refer to a person who performs seva (work/service/assistance) of any kind without looking for any physical or spiritual reward or payment of any kind. A Sevadar helps purely because of his/her dedication to Guru/God as part of his/her duty to the wider community: People of every religion are also included in this service.

8. In *A. Shanmugam vs. Ariya Kshatriya Rajakula Vamsathu Madalaya Nandhavana Paripalanai Sangam represented by its President And Others*; (2012) 6 SCC 430, the Apex Court held “*The watchman, caretaker or a servant employed to look after the property can never acquire interest in the property irrespective of his long possession. The watchman, caretaker or a servant is under an obligation to hand over the possession forthwith on demand. According to the principles of justice, equity and good conscience, the courts are not justified in protecting the possession of a watchman, caretaker or servant who was only allowed to live into the premises to look after the same.*”
9. Learned counsel for the petitioner argued that the petitioner/defendant has acquired a lifelong interest in the property in question in view of his long possession since 11.07.1979. This contention is without merit and the Hon’ble Supreme Court has further held in *A. Shanmugam’s case (supra)* “*The watchman, caretaker or agent holds the property of the principal only on behalf of the principal. He acquires no right or interest whatsoever in such property irrespective of his long stay or possession.*”
10. The petitioner/defendant has been enjoying the property in question without payment of any charges which is not permissible in law. The petitioner/defendant has been holding the said property on behalf of the respondent/plaintiff which is

capable of delivery and therefore, the court is empowered to direct the petitioner/defendant to deposit such money as it thinks fit, particularly, to prevent the abuse of the process of the court and meet the ends of justice.

11. I do not find any illegality or infirmity in the order passed by the learned Civil Judge. The petition and the pending application is accordingly dismissed with no order as to costs, being without any merit.

OCTOBER 26, 2018
‘AA’

(VINOD GOEL)
JUDGE



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