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

+ **CONT. CAS.(CRL) 6/2017**

MS NISHA SOLANKI

..... Petitioner

Through: Mr. L. S. Solanki, Advocate

versus

RAKESH SHARMA & ANR

..... Respondents

Through: Mr. M N Dudeja, Advocate for R-1, present
in person.

Mr. Surender Singh and Mr. Manoj Kohli, Advocates
for R-2, present in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

HON'BLE MR. JUSTICE MANOJ KUMAR OHRI

ORDER

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27.11.2018

1. The present petition has been filed in relation to the proceedings dated 10th October, 2017, in RFA No.854/2017 filed before this Court.
2. The respondent no.1 had filed a suit for possession and declaration against the petitioner which was dismissed by the Court of Ld. ADJ, Delhi vide order dated 31st July, 2017. The respondent No.1 had filed the captioned Regular First Appeal against the said order in the High Court.
3. After going through the record, it is evident that the above RFA No.854/2017 was listed before a Single Judge of the High Court on 10th October, 2017, on which date, the following order was passed:

“RFA 854/2017 & CM No.36375/2017(Stay)

Notices be issued to the respondents, on filing of process fee, both in the ordinary method as well as by registered AD post, returnable on 20th February, 2018.”

4. It is an admitted case that on 10th October, 2017, no stay was granted by the Court and only notice was issued, returnable for 20th February, 2018. It is also an admitted case that the respondent no.2 had appeared as a counsel for the respondent no.1 in the said appeal.

5. It is the case of the petitioner that despite the fact that no stay was granted by the Court, the respondents falsely communicated not only to her, but also to the government authorities that the High Court had directed the parties to maintain status quo with regard to the suit property, till the next date of hearing. The said letter was duly signed by both the respondents and sent to the petitioner. It is further the case of the petitioner that a copy of the said letter was pasted by the respondent no.1 at the suit property and at that time, he had man-handled the labourers and others present there. The petitioner had also received the said letter dated 10th October, 2017, dispatched by speed post on 26th October, 2017, at her residential address.

6. Later on, while enquiring about the above orders, the petitioner came to know that no such orders of status quo had been passed by the High Court on 10th October, 2017. She then filed a complaint on 26th October, 2017 with P.S. Samaypur Badli vide DD no.68-B and the same was converted into FIR no.1149/2017 under Section 420/120B IPC. Vide letter dated 17th November,

2017, the petitioner also sought sanction from the Government of NCT for initiating criminal contempt proceedings. The said sanction was granted. The present petition has been filed by the petitioner thereafter against both the respondents under Section 2(c) read with Section 12 of the Contempt of Courts Act, 1971. The respondents/contemnors have entered appearance and filed their respective reply affidavits in the present proceedings.

7. In the affidavit filed by the respondent No.1, while tendering an unconditional apology to the Court, he has averred that he did not deliberately commit any contempt and had bonafide acted upon the letter dated 10th October, 2017, issued by his counsel, respondent No.2, who had conveyed to him the fact that on 10th October, 2017, a status quo order has been passed by the learned Single Judge in RFA No.854/2017 in respect of the suit property. Based on the information in said letter, respondent No.1 had conveyed the order of status quo to all the parties concerned. The affidavit further states that the respondent no.1 had never visited the suit property, as alleged by the petitioner.

8. The respondent No.1 is present in the Court and on enquiring from him as to whether the purported order of status order conveyed to him by his counsel was pasted by him at the suit property, he admits having gone there and done so. That being the position, the averments made to the contrary in para 4 of the affidavit, are untrue.

9. The respondent No.1 has further averred that even otherwise, the petitioner having already constructed the entire building in question upto four storeyes, she has not suffered any financial loss on the basis of the status quo order pasted at the premises. This in our opinion, is hardly a worthwhile explanation for conveying a status quo order to the petitioner, when no such

order had been passed by the High Court.

10. Coming next to the respondent No.2, the only explanation offered by him in para 3 of his affidavit is that on 10th October, 2017, when RFA No.854/2017 was listed before a learned Single Judge of this Court, notice was issued to the respondents therein and *“owing to the failure on the part of the deponent to understand the order fully, he wrongly conveyed the message to his client that the court has been pleased to issue status quo order with regard to the suit property”*. Respondent No.2 tenders an unconditional apology for his conduct.

11. Mr. Dudeja, learned counsel for respondent No.1 states that on 04th August, 2018, his client has filed a complaint with the Bar Council of Delhi against the respondent No.2 for his professional misconduct. On enquiring from the respondent No.2 as to whether he is a member of the Bar Council of Delhi, he states that he is only a member of the Bar Council of UP and was enrolled at Allahabad in September, 2015. Mr. Dudeja, learned counsel states in that event, he will advise his client to file a complaint against the respondent No.2 with the Bar Council of U.P.

12. We have enquired from the learned counsel for the respondent No.2 as to whether after communicating the purported status quo order in the letter dated 10th October, 2017 to the concerned authorities including the petitioner, he took any steps to inspect the file of the captioned RFA or apply for a certified copy of the order passed on 10th October, 2017. Surprisingly, the reply is in the negative. The respondent No.2 seeks to explain that he is unaware of the legal procedure. At the same time, he admits that he has been practicing in Delhi since September, 2015 and prior to that, he had worked for 15 years as a court clerk, attached to an advocate on the criminal side.

13. In view of the past experience of the respondent No.2 for 15 years as a clerk, and as a practicing advocate, w.e.f. September, 2015, we do not find any substance in his plea that he is not well versed with the court procedure of inspecting the record or of obtaining a certified copy of orders passed. It appears to be a deliberate attempt on part of the respondent No.2 to mislead the respondent No.1, by giving him an impression that a status quo order had been passed by the Court in the captioned RFA, when no such order was actually passed.

14. On considering the evidence as well as the submissions made, we are of the view that the contumacious acts of the respondents fall under Section 2(c)(ii) of the Contempt of Court Act. The act of the respondents in communicating to the petitioner that an order directing status quo had been passed by the Court, when no such orders were passed, amounts to interfering with the due course of judicial proceedings.

15. At this stage, both the respondents state that they have suffered enough due to their omissions and follies as they were arrested in FIR no.1149/2017 registered with P.S. Samaypur Badli under Section 420-B IPC. Respondent No.2 states that he has undergone judicial custody for 25 days and the respondent No.1 states that he has undergone judicial custody for 62 days. They express contrition and assure the Court that they will be very careful in future.

16. In view of the submissions made above and the apology tendered, we are of the opinion that the matter need not be taken any further. The apology is accepted and proceedings are closed. The respondents No.1 and 2 are let off with a warning to be more cautious in the future. This shall however not

preclude the respondent no.1 from filing a complaint against the respondent No.2 with the Bar Council of U.P., for professional misconduct.

17. The petition is disposed of.

HIMA KOHLI, J

MANOJ KUMAR OHRI, J

NOVEMBER 27, 2018/sm/j