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

Date of decision: 13th November, 2019

+ CRL.REV.P. 889/2017 & CRL.M.A. 19411/2017, CRL.M.A.
35224/2018

VRINDA AHUJA

..... Petitioner

Through: Mr. K.K. Manan, Sr. Advocate with
Mr. Mukul Aggarwal, Ms. Komal
Vashisht, Mr. Ajit Singh, Ms. Adiiti
Dalal, Mr. Charanpreet Singh, Mr.
Arjun Marwah and Ms. Honey Uppal,
Advs.

versus

RAVEEN AHUJA

..... Respondent

Through: Ms. Geeta Luthra, Sr. Adv. with Mr.
Altamish Siddiki, Adv. with
respondent in person
Mr. Ashok, Adv. Public notary along
with original register

CORAM:

HON'BLE MR. JUSTICE SURESH KUMAR KAIT

J U D G M E N T (O R A L)

1. Vide the present petition, the petitioner seeks direction thereby to set aside the impugned judgment and order dated 24.10.2017 and further to set aside the order dated 15.11.2017 passed by the Court of Ld. ASJ-02, South East, Saket Court, New Delhi in CA. 69/2017.

2. The present petition has been filed on the ground that the learned Appellate Court erroneously turned a blind eye to the forged and fabricated agreement to sell dated 09.10.2015. The Respondent had filed two different versions of agreement to sell dated 09.10.2015 on the basis of which the Respondent was intending to sell the property.

3. Learned senior counsel appearing on behalf of petitioner submits that the Ld. Appellate Court erroneously dismissed the application under section 340 Cr.P.C wherein the various contradictory stands as per the convenience of Respondent has been taken by him. The said affidavits clearly show that the respondent has been filing affidavits as per his convenience, merely to frustrate the end of justice.

4. During arguments, learned counsel for the petitioner submits that the memorandum of family settlement which took place between the family members of the respondent is forged and is created in the year 2015 but given a back date of 10.10.2012.

5. To satisfy the aforesaid aspect, this Court passed order on 11.09.2019 as under:-

“I Vide the present petition, the petitioner has challenged the order dated 24th October, 2017 whereby the learned Court disposed of the appeal filed by the petitioner by recording that the ex-parte order dated 11th January,

2017 which restrained the appellant as well as the respondent from selling/ alienating/transferring or creating any third party interest in property No. 2009, Bank Street, Karol Bagh, New Delhi was set aside and only after hearing the other party i.e. the respondent herein, the learned Metropolitan Magistrate will considered such a prayer before passing the order under Section 23 (2) of DV Act. It is clarified by the learned Court that in case the property is disposed off then $\frac{1}{3}^{\text{rd}}$ of the sale proceeds thereof, out of the share of the appellant shall be kept in a fixed deposit by the appellant in any Nationalized Bank under intimation to trial court and the amount so kept shall not be utilized in any manner by the appellant without the permission of the trial court and the trial court shall pass appropriate order qua this amount at appropriate stage.

2. Mr. K.K. Manan, Senior Counsel for the petitioner submits that he admitted at various stages the in Court of DV proceedings and in matrimonial Court that the respondent has $\frac{1}{3}^{\text{rd}}$ share in the property in question, however, the respondent has deposited an amount of ₹13,88,890 lacs which is contrary to the order passed in appeal filed by the respondent.

3. In Para-26 of the impugned order it is submitted by the counsel for the respondent that the respondent has $\frac{1}{3}^{\text{rd}}$ share in the property in question but a family settlement was entered between the respondent/appellant and his father and brother, by virtue of which, the respondent has shared his $\frac{1}{3}^{\text{rd}}$ share in the property with his father and brother, therefore, in fact, his share in the property would remain ultimately as $\frac{1}{9}^{\text{th}}$ share. It is not in dispute that the petitioner herein filed the petition under Section 340 Cr.P.C. against the forgery made by the respondent, however, the same has been dismissed and the order of the same has not been challenged.

4. Learned counsel for the petitioner still argued strongly that the respondent has $\frac{1}{3}^{\text{rd}}$ share in the property in question, however, the said respondent has prepared the

MOU/ family settlement deed on 10th October, 2012 but in the year 2010 to frustrate the claim of the petitioner.

5. Learned counsel for the respondent submits that the issue on the property started somewhere in the year 2014. The mother of the petitioner raised the issue in the year 2014 and the petitioner filed the DV petition in the year 2015. Thus, there was no occasion to forge the MOU of the year 2012 as mentioned above.

6. The MOU dated 10th October, 2012 has been notarised by Ashok Kumar Notary Public having license No. 4448 issued by the Govt. of India and the same was attested on for 26th October, 2012.

7. The respondent is directed to produce the original MOU on the next date of hearing.

8. The above named i.e. Ashok Kumar Notary Public shall personally remain present in Court with entry register of dated 26th October, 2012 on the next date of hearing. As informed, the seat of Ashok Kumar Notary Public is at Patiala House Courts, New Delhi, accordingly this order be served to said Notary Public through the President of Patiala House, Bar Association by SHO Tilak Marg.”

6. Accordingly, Mr. Ashok Kumar, advocate, the Notary Public who attested the above mentioned agreement, produced the original entry register for perusal of this Court and the same was found in proper nature and entry has been made therein on 26.10.2012.

7. Brief facts of the case are that the petitioner filed the petition under Section 12 of the DV Act alleging therein that the respondent (namely Raveen Ahuja) is her father, who alongwith his family members i.e. Satish Ahuja and Prem Kant Ahuja (grand father and grand mother of the

petitioner), has subjected her to domestic violence and has deprived her from financial aid to support her education. Apart from this, she has levelled allegations of the abuse and taunts. Her mother, Sneha Ahuja has already filed a petition u/s 12 of DV Act bearing CC No.2010/3/2015 alleging domestic violence and seeking various reliefs u/s 18, 19, 20 etc.

8. The petitioner also filed an application u/s 23 (2) of DV Act for grant of interim ex-parte order.

9. In this application, she had sought various interim reliefs, one of them being a restraining order qua the respondent herein from selling / alienating / transferring or creating any third party interest in property No.2009, Bank Street, Karol Bagh, New Delhi in which he has 1/3rd share.

10. Ld. Metropolitan Magistrate after hearing the application of Vrinda Ahuja, passed the order on 11.01.17 stating therein, inter alia, that there is an apprehension of the alienation of property No.2009, Bank Street, Karol Bagh, New Delhi and hence, an ex-parte order for grant of prayer as per clause (e) of application u/s 23 (2) of DV Act is warranted at this stage. The respondent No.1 was restrained from alienating property bearing No.2009, Bank Street, Karol Bagh, New Delhi till further orders.

11. After passing this order on 11.01.17, notice was directed to be issued

to the respondents in the said petition for 10.04.17.

12. The respondent herein, aggrieved of the above stated order dated 11.01.17, filed an application u/s 25 of DV Act for modification of this order. However, prior to that, the appeal u/s 29 of the DV Act was filed on 15.02.17 by the respondent. Since an objection was taken by the petitioner herein that the respondent cannot choose two forums to seek similar relief, the counsel for the appellant/respondent herein made submission opting to withdraw the application u/s 25 of the DV Act before the Ld. Metropolitan Magistrate and it was informed that the said application had been withdrawn on 18.08.17.

13. In reply to the appeal, the petitioner had taken various grounds to challenge the appeal, one of them being that the respondent had also filed an application u/s 25 of the DV Act. Since the said application had been withdrawn, this ground to contest the appeal, that simultaneously to the appeal, the respondent was also seeking remedy before the trial court u/s 25 of the DV Act, was not considered.

14. The main ground taken before the Appellate Court was that the ex-parte order had been passed without affording a reasonable opportunity to the respondent herein. The similar relief which was sought in the complaint

case bearing CC No.2010/3/2015 was declined on 10.12.15.

15. The mother of the petitioner, Sneha Ahuja is the petitioner in CC No.2010/3/2015, and the application u/s 12 of the DV Act, in which the order dated 11.01.2017 was passed, had been filed by Ms. Vrinda Ahuja (petitioner herein) through her attorney/mother namely Ms. Sneha Ahuja.

16. The order dated 11.01.17 had also been assailed on the ground that it was devoid of any reasoning and the Ld. MM had not recorded any satisfactory reasons regarding the existence of any domestic violence. Another ground to challenge the above said order was that the impugned order has been passed in absence of any urgency when similar relief had already been declined. Another ground to challenge the impugned order was that the respondent is one of the share holders of the commercial property and the petitioner Vrinda Ahuja, being the daughter, cannot claim any right in the said property for restraining the respondent from dealing with the property as per law.

17. After considering rival contentions of the parties, the Ld. Court below observed that a relief of the nature provided u/s 18 (e) is granted after hearing the aggrieved person and the respondent. Thus, while granting a relief ex-parte u/s 23 (2) of the Act, there must exist a circumstance of great

urgency and there must be an observation by the trial court regarding the said urgency before passing any ex-parte interim order of the nature as provided in section 18 (e) of the Act. Section(s) 19 to 22 of DV Act do not lay down such condition as laid down in section 18 of DV Act. Section(s) 19 to 22 of DV Act provide various types of reliefs which can be granted while disposing application under Section 12 of DV Act. It is only section 18 of DV Act which says that relief of the nature provided under Section 18 of DV Act can be granted after hearing aggrieved person and respondent. Section 23 (2) of DV Act, however, provides for ex-parte order on the basis of "*affidavit*" only after recording satisfaction of act of domestic violation. Such ex-parte order can be qua any relief provided under section 18 to 22 of DV Act.

18. It is the settled proposition of law and cannot be disputed that the litigants must come to the court with clean hands and should not conceal the facts from the court. The sanctity of the judicial proceedings need to be maintained. Any fact which could have a bearing on the decision of the court must be placed before the court. The petitioner, being the daughter of the respondent, has filed the petition claiming that she has been subjected to domestic violence as she has been deprived of financial support since 2015,

however, her mother Ms. Sneha Ahuja is bearing the expenses of her education by arranging loans. Undisputedly, the petition has been filed by petitioner through her mother Ms. Sneha Ahuja who had sought the similar relief in the court in her petition. It was incumbent on the petitioner therefore, to disclose the facts that a similar relief had already been declined by the court with a detailed order.

19. In the case of *Satish Khosla v. M/s Eli Lilly Ranbaxy Ltd. (1998) 71 DLT 1*, this Court has deprecated the conduct of the party who had refrained from disclosing in subsequent suit that the interim relief sought in the second suit was declined at earlier occasion. The facts of present case are also similar. The petitioner herein had not disclosed that the same relief was declined earlier by the court, though it was mentioned that mother of the petitioner had also filed an application under section 12 of DV Act against respondent herein. The petitioner, therefore, has kept the court in dark in this regard. A litigant is expected to bring to notice of the court all the facts and stating half truth also amount to concealment.

20. Notwithstanding the fact that the petitioner did not disclose about the previous order dated 10.12.15 passed in CC No.2010/3/2015, the court also required to justify the order while granting exparte relief and in case of grave

urgency, when it becomes imperative to grant an ex-parte interim injunction, however, it should be granted for a specified period and short duration.

21. On perusal of the order passed by learned MM, it is noticed that the Ld. MM passed the order on 11.01.17 and adjourned the matter for 10.04.17. The learned Court below has observed that it is against the judicial dicta that ex-parte injunction should be for short duration.

22. So far as the question of urgency is concerned, it was found mentioned in the impugned order itself that the agreement to sell was executed in October, 2015. More than one year had passed when the alleged agreement to sell was executed. There was no averment about the time for execution of the sale deed in this agreement to sell. Therefore, when there was no information regarding the date of execution of sale deed, any urgency to restrain the respondent from alienating the property was without any basis.

23. Accordingly, the learned Court below observed that justifying an ex-parte restrain order, the Ld. MM could have given a short notice to the respondent in the petition to respond to the contentions raised in the application u/s 23 of the DV Act.

24. The Ld. Counsel for the petitioner argued that the appellate court

should not superimpose its opinion when an ex-parte stay has been granted.

25. The contention raised before the court during the course of arguments was that the property in question i.e. No.2009, Bank Street, Karol Bagh, New Delhi is the only asset on which the respondent can rely for financial resources. It is not in dispute that the property in question is not owned by the respondent only. However, he has only 1/3rd share. The Court below observed that firstly, court should have restrained itself to put restriction on the right of other co-owner of this property to dispose of the same. As any such order affecting a person's right without his liability towards the party claiming the relief, would be against the principle of natural justice. The respondent is having only 1/3rd share in the said property. Though in the appeal, he had stated that his share would come to 1/9th because of an MOU being executed within his family, whereby his 1/3rd share in the property in question would be shared by his father and brother. The petitioner in the petition u/s 12 of the Act had described the movable and immovable properties and assets of the respondent herein in detail. Apart from 1/3rd share in the property in question, he has share in partnership business and also in movable and immovable properties. So, the assets which the respondent mentioned in the application u/s 12 of DV Act would show that

the property in question is not the only immovable asset in his possession. Therefore, Ld. MM should have taken into account the nature of property qua which the restraining order was sought and also assessed, prima facie, the capacity of the respondent herein to maintain the petitioner financially, who happens to be his daughter.

26. At this stage, it is not required by this court to go into the fact whether there was prima facie material to establish the existence of the domestic violence.

27. Keeping in view of the aforesaid observation, the Court below allowed the respondent to sell the property with the direction that 1/3rd of the sale proceeds thereof, out of the share of the respondent, shall be kept in a Fixed Deposit by the respondent in any '*Nationalized Bank*' under intimation to trial court and the amount so kept shall not be utilized in any manner by respondent without the permission of the trial court and the trial court shall pass appropriate order qua this amount at appropriate stage, as it would deem just and proper.

28. The grievance of the petitioner herein is that the respondent has 1/3rd share in the property in question, but he has not complied with the order dated 24.10.2017 as he has not deposited the amount, whereas, case of the

respondent is that he has 1/9th share in the property in question, in view of the MOU entered into on 10.10.12. Therefore, 1/3rd of the share of the respondent which has been received by him, has already been deposited in Court. This fact has not been disputed by learned counsel for the petitioner on instructions from the mother of his client, who is present in court.

29. Keeping in view the discussion above and legal position, I am of the considered view, there is no illegality and perversity in the order 24.10.2017 passed by the court below.

30. Accordingly, I find no merit in the present petition and the same is accordingly dismissed.

31. Pending applications stand disposed of.

(SURESH KUMAR KAIT)
JUDGE

NOVEMBER 13, 2019
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