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

*Date of Decision : 28.01.2021*

+ **CM(M) 596/2020**

SHRI MANOJ KUMAR ..... Petitioner  
Through Mr.Deepak Agarwal, Adv.

versus

SHRI AMIT GUPTA & ORS. .... Respondents  
Through Ms.Kiran Suri, Sr. Adv. with  
Mr.Himanshu Buttan, Adv. for  
R-1 to 4.

**CORAM:**  
**HON'BLE MR. JUSTICE NAVIN CHAWLA**  
**NAVIN CHAWLA, J. (Oral)**

**CM No.30146/2020**

This is an application filed by the petitioner seeking permission to file the present petition as the petitioner is not a party to the suit in which the Impugned Order has been passed.

The application is allowed.

**CM(M) 596/2020 & CM No.30143/2020**

1. This petition has been filed by the petitioner feeling aggrieved of the order dated 23.04.2019 passed by the learned Commercial Civil

Judge (West), Tis Hazari Courts, in suit, being CS No.47/2019, titled ***Amit Gupta & Ors. v. Sunita Verma & Anr.***

2. The respondent nos.1 to 4 filed the above suit against the respondent nos.5 and 6, who are the wife and father of the petitioner herein, making the following averments:

*“2. That the plaintiffs are the joint owners of the property bearing shop Nos.B-14-15-16, total measuring 43.5 sq. mtrs comprising Ground Floor, first floor and second floor with roof rights situated in Main Market, J.J. Colony, Madipur, New Delhi-110063 which is specifically shown red in the site plan, and the shops on the ground floors No. B-14-15 and 16 were let out to the husband of the defendant No. 1 namely Sh. Manoj Kumar on monthly rent of Rs. 1,50,000/- with an increase of 10% after every year, it was further settled that the defendant shall be responsible to deduct TDS and give receipt on quarterly basis and the agreement of the lease was for a period of 36 months starting from 10.01.18 and ending on 09.01.2021.*

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*9. That since the plaintiffs did not wish to continue with the tenancy of the said Manoj Kumar therefore the plaintiffs requested to vacate and handover the vacant physical possession of the suit premises and the Manoj Kumar confirmed to vacate and handover the vacant physical possession of the suit premises. However, despite the assurances and promises given by him he failed to vacate and handover the vacant physical possession of the suit premises to the plaintiffs on one pretext or the other.*

10. That despite the same the plaintiffs have filed an suit for possession against the said Manoj Kumar which is pending disposal in the court of Ms. Sughanda Aggarwal ADJ West Tis Hazari Court, Delhi vide three suits now fixed for 4-4-2019 for plaintiffs evidence.

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12. That in the mean time it was reveled that the said Manoj Kumar was arrested by the police n case FIR No. 296/2018 under section 420/406 IPC with P.S. Punjabi Bagh Delhi as he had cheated the persons and his bail was rejected by the Hon'ble Court and since then he is in J.C.

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14. That in counter blast of the orders of the Hon'ble Court the defendant No. 1 and 2 on 22-12-2018 tried to enter in the first floor of the property as the ground floor shops which are in the possession of the husband of the defendant No. 1 are closed since the day of arrest of the said Manoj Kumar but failed to enter as the stairs of the premises were locked by the plaintiffs as the plaintiffs are in the possession of the entire premises except the ground floor shops.

15. That on the same day i.e 22-12-2018 the plaintiff No. 1 received a call from the Punjabi Bagh and the police officials called the plaintiffs on the complaint of the defendants who claimed that they are in the possession of the entire suit property and the plaintiffs had stolen the articles from the first floor of the property wherein as a matter of fact the plaintiffs are in the possession of the entire property except the ground floor shops and

*when the plaintiffs apprised with the facts to the local police the defendants left the police station.*

*xxx*

*19. That the defendants, instead of paying the arrears and handing over the peaceful and vacant possession of the suit premises to the plaintiffs, are avoiding the plaintiff and even the plaintiff had every apprehension that the defendants may part with the possession of the suit premises to some third person, hence relief of injunction is being prayed for in the present suit.*

*20. That the cause of action arose in favour of the plaintiffs and against the defendant when the property was let out to the husband of the defendant No. 1 by virtue of lease agreement dated 10.01.2018, it arose on various dates when the husband of the defendant no.1 time and again failed to pay the rent in time, it further arose on different date when the plaintiffs filed the suit for possession against Manoj Kumar the husband of the defendant No. 1 and the son of the defendant No.2 and it arose on 22-12-2018 when the defendants tried to enter in the suit premises and again on 25-12-2018, the cause of action arose on 3-1-2019 when the defendant No.1 tried to enter in the suit premises and threatened the plaintiff No.1 to involved him in some false criminal matter. The cause of action is still subsisting as the defendants are still trying to enter in the suit property to get the illegal possession of the property of the plaintiffs. The cause of action is still subsisting.”*

3. In the plaint, the following prayer has been made by the respondents:

*“a. pass a decree of permanent injunction thereby restraining the defendant his agents, assignees, servants, successors or whosoever working on their behalf from entering, and from taking forceful possession, alienating or parting with the possession of the suit property bearing property Nos. B-14-15-16, total measuring 43.5 sq. mtrs comprising Ground Floor, first floor and second floor with roof rights situated in Main Market, J.J. Colony, Madipur, New Delhi-110063 which is specifically shown red in the site plan.*

*b. Cost of the suit be awarded to the plaintiff.”*

4. On 01.02.2019, the learned Trial Court was pleased to pass the following order in the suit:

*“01.02.2019*

*Present: Sh. Vijay Kr. Sehgal, Ld. Counsel for the plaintiff.*

*Defendants no. 1 & 2 in person.*

*Perused the file.*

*Defendants seek time to file the Written Statement as well as reply to the application U/o 39 rule 1 & 2 CPC.*

*Heard. Perused. Allowed in the interest of justice.*

*Advance copy of W.S. as well as reply to the application U/o 39 rule 1 & 2 be supplied to the opposite party atleast two weeks before the next date of hearing.*

*Be listed for reply and arguments on the application U/o 39 rule 1 & 2 CPC for 21.02.2019.*

*At this stage, both the defendants submit that they will not enter the suit property till next date of hearing.*

*Heard. In view of the submissions made by the defendants, both the parties are directed to maintain status-quo till the next date of hearing.”*

5. Thereafter, the respondent nos.1 to 4 filed an application under Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 (CPC) *inter-alia* alleging as under:

*“5. That suddenly, on **07.04.2019 around 12:30 PM**, the plaintiff namely Sh.Amit Gupta received an information from the local shop keepers that Smt Sunita Verma and the husband of the contemnor/Defendant No.1 i.e. Sh.Manoj Kumar alongwith their servant namely Bahadur, are roaming nearby to the properties/shops of the plaintiffs and trying to enter into the aforementioned properties/shops.*

*6. That thereafter, the plaintiffs reached at their own properties/shop at about **1:35 PM** and found that the contemnors /defendants and her husband namely Sh.Manoj Kumar alongwith their servant namely Bahadur, have entered into the aforementioned properties/shops and are standing inside the properties/shops when particularly they have no locus to enter into the properties/shops and when the plaintiffs reminded them about the orders dated 01.02.2019 and 21.02.2019 passed by this Hon'ble Court, they openly told on the face of the plaintiffs that they don't care for any such order/s and extended threats for dire consequences and openly told to the plaintiffs to forget the properties/shops else they will eliminate/kill the plaintiffs as they have contacts with local Goondas/police authorities. The Originals photographs taken at the spot thereby showing their conduct as well as their presence*

*into the property/shops of the husband of the contemnor/Defendant No.1 i.e. Sh.Manoj Kumar, alongwith his associates and contemnors/defendants is produced herewith as Annexure P-4 (Colly).*”

6. The following prayer was also made in the said application:

*“a) Take the cognizance into the present matter on the basis of the facts placed on record against the contemnors/defendants and the husband of the contemnor/Defendant No.1 i.e. Sh.Manoj Kumar, alongwith their servant namely Bahadur, for committing contempt within the meaning of Section 2(b) of the contempt’s of courts Act.”*

7. The learned Trial Court by its Impugned Order dated 23.04.2019 passed the following injunctions:

*“23.04.2019*

*Present: Sh. Himanshu, Ld. Counsel for plaintiff along with plaintiff.*

*Sh. Pulkit Kaushik, Ld. Counsel for defendant.*

*Perused the file.*

*Advance copy of reply to the application U/O 39 R 2A CPC supplied today. Defendant seeks time to file reply on record.*

*Heard.*

*Be awaited at 10.45 a.m.*

*At 11.00 a.m.*

*Present: Sh. Himanshu, Ld. Counsel for plaintiff along with plaintiff.*

*Sh. Pulkit Kaushik, Ld. Counsel for defendant.*

*Perused the file.*

*Part arguments heard at length.*

*One of the Stenographers has been withdrawn.*

*Status quo be maintained against Sh. Manoj Kumar also till the next date of hearing. Both the Ld. Counsel submits that copy of this order be given dasti.*

*Heard. Perused. Allowed.*

*Put up on **03.06.2019** for reply and further arguments on application.”*

8. The present petition has been filed being aggrieved of the above order.

9. The learned counsel for the petitioner submits that even as per the case of the respondent nos.1 to 4, the petitioner is a tenant with respect to the shops on the ground floor of the property bearing no.B-14-15 and 16, Main Market, J.J. Colony, Madipur, New Delhi-110063. The said respondents have in fact, filed suits seeking possession of the said premises from the petitioner, being CS Nos.861/2018, 862/2018 and 863/2018, which are pending adjudication and no order of possession has been passed in favour of the said respondents herein.

10. The learned counsel for the petitioner submits that in any case, the petitioner has not been impleaded in the suit in question till date.

In fact, the learned senior counsel appearing for the respondent nos.1 to 4 admits that only after filing of the present petition, an application under Order I Rule 10 of CPC has been filed seeking impleadment of the petitioner herein in the suit, on which application, admittedly, no order has been passed by the learned Trial Court. The learned counsel for the petitioner submits that therefore, the Impugned Order cannot be sustained having been passed in absence of the petitioner being a party to the suit and further dispossessing the petitioner when the suit for eviction is pending before another Court.

11. The learned senior counsel appearing for the respondent nos.1 to 4, on the other hand, submits that merely a *status quo* order has been passed by the learned Trial Court. She submits that the said *status quo* order will not inure towards the shops on the ground floor of the property, which the said respondents admit to be in possession of the petitioner as a tenant and for which the Eviction suits have been filed. She submits that the *status quo* order will only inure towards the first and second floor of the property which are in possession of the said respondents.

12. I do not find any merit in the submission made by the learned senior counsel for the respondent nos.1 to 4. The Impugned Order does not reflect what has been contended by the learned senior counsel appearing for the said respondents. There is no dispute that the suits seeking eviction of the petitioner from the shops on the ground floor of the property have been filed by the respondent nos.1 to 4. On 01.02.2019, the statement of the respondent nos.5 and 6 was recorded

to the effect that they will not enter into the suit property, including these shops, and on basis thereof, the *status quo* order was passed by the learned Trial Court. This order of *status quo* has now been extended to the petitioner, which clearly means that the petitioner cannot enter into these shops. In any case, the Impugned Order does not reflect that the same is not to inure towards the shops.

13. As far as the suit is concerned, it is premised on the basic averment that the petitioner has been imprisoned in some criminal case and the respondent nos.5 and 6 are trying to enter into the possession of the property. There is no averment in the suit with respect to the entitlement of the petitioner to the suit property.

14. The learned counsel for the petitioner submits that in fact, the petitioner has filed suits challenging the documents on the basis of which the respondent nos.1 to 4 are claiming title to the suit property being CS No.123/2020, ***Shri Manoj Kumar & Anr. v. Shri Amit Gupta & Ors.***

15. In any case, the petitioner not being a party to the suit had no opportunity to defend the claim in the said suit before the Impugned Order was passed as there was not even an application filed by the respondent nos. 1 to 4 seeking impleadment of the petitioner in the said suit.

16. In view of the above, the Impugned Order dated 23.04.2019 cannot be sustained and is accordingly, set aside. It is made clear that this Court has not expressed any opinion on the entitlement of the

parties to the suit property which shall be open for adjudication in an appropriate proceeding. It is further clarified that all proceedings, including applications filed in the present suit, shall be determined by the learned Trial Court in accordance with law remaining uninfluenced by any observation on merit of such claim made in the present order.

17. In view of the above, the present petition is allowed. There shall be no order as to cost.

**JANUARY 28, 2021/Arya**

**NAVIN CHAWLA, J**



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