

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

+ **FAO 259/2022**

Date of Decision: 12.12.2022

**IN THE MATTER OF:**

**KAPIL CHOPRA**

..... Appellant

Through: Mr. Sanjeev Bhandari, Mr. Sushant Bali, Mr. Kunal Mittal, Mr. Alok Sharma, Mr. Udit Kumar and Mr. Pawan Kumar, Advocates

versus

**MALINI ISRANI & ORS.**

..... Respondents

Through: Mr. Gaurav Raghav and Mr. Ashish Upadhyay, Advocates for respondent No. 1.  
Mr. Nishit Agrawal, Advocate for respondent No. 2.  
Ms. Vidhi Gupta, Advocate for Mr. Anand Prakash, Advocate for respondents No. 3 and 4

**CORAM:**

**HON'BLE MR. JUSTICE MANOJ KUMAR OHRI**

**JUDGMENT**

**MANOJ KUMAR OHRI, J. (ORAL)**

1. By way of present appeal, the appellant seeks setting aside of the order dated 16.08.2022 passed by the learned ADJ-05 (South-East District), Saket Courts, New Delhi in CS DJ No. 260/2022, whereby his application

filed under Order XXXIX Rules 1 and 2 read with Section 151 CPC was dismissed.

2. Mr. Sanjeev Bhandari, learned counsel for the appellant while assailing the impugned order, contended that the Trial Court failed to appreciate that the appellant is the sole, absolute and registered owner of the car make-*Mercedes Maybach S500* bearing Registration No. DL-1CX-2759 (hereinafter, referred to as '*the Car*'), and that it was illegally retained by respondent No. 1 by claiming it to be a gift received in her son's marriage with the appellant's daughter. In support of his submissions, learned counsel for the appellant has placed reliance on the decision of the Supreme Court in Deoraj v. State of Maharashtra & Others reported as (2004) 4 SCC 697.

3. *Per contra*, Mr. Raghav, learned counsel for respondent No. 1 submitted that the appellant had gifted the Car to the answering respondent at the time of marriage of their children i.e., marriage of respondent No. 3 with respondent No. 4. He has referred to Sections 122 and 123 of the Transfer of the Property Act, 1882 to submit that the factum of 'gift' stood established by the delivery of the Car. While referring to Section 41(g) of the Specific Relief Act, 1963, it was further submitted that in the present case, no injunction could be granted as the appellant had also acquiesced in respondent's retaining the Car with herself. Lastly, it was submitted that the appellant's application was rightly dismissed as the prayer sought in the application and the suit are same and allowing the application would have amounted to decreeing the suit itself.

4. I have heard learned counsels for the parties and also gone through the entire material placed on record.

5. In the suit, it was claimed that the appellant had purchased the Car on 01.09.2017 from M/s Silver Arrows for a total consideration of Rs.1,80,48,832/- out of which, the appellant paid an amount of Rs.50,00,000/- upfront through cheque and the remaining balance was paid in equal instalments lasting upto October, 2020. Besides the aforesaid amount, an amount of Rs.22,74,389/- was also paid by the appellant towards insurance and registration charges. The Registration Certificate of the Car was issued in the appellant's name.

6. It was averred that the appellant's daughter, namely, *Ms. Kriti Chopra* (respondent No. 3) got married with *Mr. Dushyant Israni* (respondent No. 4) on 23.11.2017 and while *Mr. Ved Prakash Israni* (respondent No. 2) is the father-in-law, *Ms. Malini Israni* (respondent No. 1) is the step mother-in-law of the appellant's daughter. The appellant out of his love and affection, gave the Car to his daughter and son-in-law for temporary use. Both respondent Nos. 3 and 4 were residing with respondent Nos. 1 and 2 at their house *D-968, Second Floor, New Friends Colony, New Delhi*. Later, in April, 2019, though respondent Nos. 3 and 4 shifted to a separate premises situated at *D-857, New Friends Colony, New Delhi* but due to lack of parking space, they continued to park the Car at the house of respondent Nos. 1 and 2. It has further been averred that till date, the appellant has been paying insurance premium towards the Car.

In the suit, the appellant prayed for being declared the owner of the Car and along with other ancillary reliefs, also sought its possession. In the application filed under Order XXXIX Rules 1 and 2 read with Section 151 CPC, the appellant had claimed possession of the Car during the pendency of the suit and in the alternative appointment of a receiver to take possession

of the same and to do all such acts which may be necessary in the best interest of the car.

7. A perusal of the record would show that respondent No. 1 has claimed that the Car was gifted to her by the appellant at the time of marriage of his daughter. Apparently, after marriage of their son, the relations between respondent Nos. 1 and 2 turned sour. In fact, respondent No. 1 filed a complaint against her husband under the Domestic Violence Act, 2005 before the *Mahila* Court. Alongwith the said complaint, she had filed an affidavit attested on 28.12.2020 disclosing assets held by her and by respondent No. 2. Under the heading 'moveable assets' and 'transport', she claimed possession of only an Audi A6 car bearing Registration No. DL-8C AK-3273 and the Car i.e., *Maybach S500* was shown as an asset of respondent No. 2.

The appellant had filed a complaint dated 09.12.2020 against respondent No. 1 with the Commissioner of Police, New Delhi for dishonest misappropriation of property.

8. Learned counsels appearing for respondent Nos. 2, 3 and 4 discountenanced the stand taken by respondent No. 1 that the Car was ever gifted to her by the appellant. On the other hand, they supported the appellant's case by submitting that the Car continues to belong to him. It was also submitted that the answering respondents have no objection to the grant of the prayer made in the instant appeal.

9. At this stage, learned counsel for the appellant, on instructions, submitted that, in case, the possession of the Car is handed over to the appellant, he undertakes not to sell or transfer the same without prior permission of the Trial Court and further, would also secure the present

value of the car by depositing an equivalent amount before the Trial Court. In this regard, he has placed on record a valuation report from T & T Motors Pvt. Ltd. as per which, the present-day value of the Car is Rs.78,00,000/-. The valuation is not disputed by respondent No. 1.

10. In view of the averments made in the plaint and the stand taken by other respondents, who are husband, daughter-in-law and son of respondent No. 1 respectively as well as the respondent's own affidavit filed before the *Mahila* Court, I am of the *prima facie* opinion that, reliance placed on Sections 122/123 of the Transfer of the Property Act and Section 41(g) of the Specific Relief Act is misplaced as she has failed to show that the Car was gifted to her in the marriage or that the appellant had acquiesced in any manner to her retaining the Car. Except for making a bald averment in this regard, the respondent No. 1 has failed to substantiate her claim by any material or document/photograph. Further, it does not stand to reason as to why the appellant would gift a luxury car not to his own daughter but to her step mother-in-law. Insofar objection taken to the grant of relief in the application for temporary injunction is concerned, the following observations by the Supreme Court in Deoraj (Supra) are relevant:

*“11. The courts and tribunals seized of the proceedings within their jurisdiction take a reasonable time in disposing of the same. This is on account of fair-procedure requirement which involves delay intervening between the previous and the next procedural steps leading towards preparation of case for hearing. Then, the courts are also overburdened and their hands are full. As the conclusion of hearing on merits is likely to take some time, the parties press for interim relief being granted in the interregnum. An order of interim relief may or may not be a reasoned one but the factors of prima facie case,*

*irreparable injury and balance of convenience do work at the back of the mind of the one who passes an order of interim nature. Ordinarily, the court is inclined to maintain status quo as obtaining on the date of the commencement of the proceedings. However, there are a few cases which call for the court's leaning not in favour of maintaining the status quo and still lesser in percentage are the cases when an order tantamounting to a mandamus is required to be issued even at an interim stage. There are matters of significance and of moment posing themselves as moment of truth. Such cases do cause dilemma and put the wits of any judge to test.*

*12. Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of the main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case — of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of the case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by compelling circumstances, where the injury complained of is immediate and pressing and would cause*

*extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.”*

11. Based on the foregoing discussion, this Court is of the opinion that the appellant has established a *prima facie* case. The balance of convenience also lies in his favour. He would suffer an irreparable loss, in case, the possession of the Car is not handed over to him. Accordingly, the impugned order is set aside and respondent No. 1 is directed to handover the Car being *Mercedes Maybach S500* bearing Registration No. DL-1CX-2759 to the appellant on or before 30.12.2022. The aforementioned undertaking given on behalf of the appellant is accepted and taken on record. He is made bound by the same. The appellant shall deposit a sum of Rs.1 Crore with the Trial Court on or before 25.12.2022.

12. Consequently, the present appeal is allowed. Pending application, if any, is disposed of as infructuous.

13. Nothing stated hereinabove shall be construed as an expression on the merits of the case. The observations are only *prima facie* and have been made to dispose of the instant appeal.

**(MANOJ KUMAR OHRI)**  
**JUDGE**

**DECEMBER 12, 2022/v**

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By:SANGEETA ANAND  
Signing Date:20.12.2022  
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