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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1339/2023 & CM APPL. 42852/2023 CM APPL. 42853/2023

Date of decision: 25.08.2023

INDERJIT KAUR

..... Petitioner

Through: Mr. Arvind Kumar Gupta and Mr. C. Prakash and Mr. Rishi, Advocates

versus

JAPNEET SINGH & ANR.

..... Respondents

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 03.08.2023 passed by the Civil Judge-03, West District, Tis Hazari Courts, Delhi ('Trial Court') in CS SCJ No. 891/2023, whereby the Trial Court declined the oral prayer made by the Petitioner for restoration of status quo passed in respect of the entire first floor as well as one shop at Ground Floor of property No. 24/14-B, Tilak Nagar, New Delhi ('suit property')

1.1. The Petitioner is the plaintiff and the Respondents are defendants in the civil suit. The civil suit was filed for the relief of mandatory injunction and permanent injunction.

2. The learned counsel for the Petitioner states that the Trial Court on 24.07.2023 had passed an order directing the parties to maintain status quo with respect to the suit property in the presence of counsel for the Respondent No. 2 i.e., defendant No. 2.



- 2.1. He states as on the date of passing of the status quo order, it is the stand of the Petitioner that the shop at ground floor of suit property was lying vacant and closed.
- 2.2. He states that the keys of the shop at ground floor of suit property were in the custody of the father of the Respondent No.1 i.e., defendant no.1.
- 2.3. He states that the Respondent No.2 broke open the lock of shop at ground floor of suit property, on or about 29/30.07.2023 and thus, violated the status quo order granted on 24.07.2023.
- 2.4. He states that the Petitioner herein immediately on 31.07.2023 filed an appropriate application under Order XXXIX Rule 2A read with Section 151 of Code of Civil Procedure ('CPC') before the Trial Court for bringing on record the said fact of violation.
- 2.5. He states that on 03.08.2023, the Petitioner herein in addition made an oral prayer before the Trial Court for restoring the status quo ante qua the shop as the necessary facts for granting the said relief were evident from the record. He states that the violation of the status quo is writ large on the record.
- 2.6. He states however, the oral prayer for status quo ante has been rejected by the Trial Court holding that it does not have the requisite jurisdiction to grant such an order under Order XXXIX Rule 2A of CPC.
- 2.7. He states that the said finding of the Trial Court is incorrect as the Trial Court is vested with inherent jurisdiction under Order XXXIX Rule 2A of CPC and Section 151 CPC separately to grant the order of the status quo ante since, the Respondent No.2 has violated the status quo granted as on 24.07.2023. In this regard, he relies upon the judgment of the High Court of Bombay in ***Rajendra Y. Shah Vs. Amu Shares and Securities Ltd., 2019 SCC OnLine Bom 4101.***



3. This Court has considered the submission of the counsel for the Petitioner and perused the record.

4. This Court finds merit in the submission of the counsel for the Petitioner that the Trial Court has requisite jurisdiction to grant the relief of the status quo ante in exercise of its power under Order XXXIX Rule 2A of CPC as well as in exercise of power under Section 151 CPC; if it comes to the conclusion that Respondent No.2 the status quo order granted by the Trial Court on 24.07.2023.

5. In this regard, it would be instructive to refer the judgment of this Court in **Shri Rajiv K. Khanna Vs. Shri Ravinder K. Nayar & Ors.** passed on 15.12.2008 in CS (OS) No. 701/2008, wherein this Court has held as under:

“23. Order XXXIX, Rule 2A of the Code, stipulates that in case of disobedience or breach of a term of an interim order, property of the violator can be attached and the violator can be also detained in a civil prison. Attachment can continue for a term of one year and if the breach/disobedience continues, the property can be sold and compensation paid to the injured party. Attachment is to compel compliance and comes to an end when compliance is made. Civil imprisonment is a mode of punishment for being guilty of such disobedience (see, Samee Khan versus Bindu Khan reported in (1998) 7 SCC 59). The rule is to ensure enforcement of the interim order and seeks to remedy the effect of disobedience and restore status quo ante. In the present case it will mean demolition of the construction made by defendant Nos. 2 and 3 after the Order dated 22nd July, 2008 and thereafter the said defendants will be at liberty to carry out fresh construction. This may not be proper. In Prestige Lights Ltd. versus SBI reported in (2007) 8 SCC 449 on the question of “purge first, then hearing” it was observed:

.....”

(Emphasis Supplied)

6. Similarly, this Court in another judgment in **A.K. Chatterjee vs. Ashok Kumar Chatterjee, 2008 SCC OnLine Del 1327: (2009) 156 DLT 475**, has specifically held that under Section 151 of CPC as well, the Civil Court has the power to pass appropriate orders to ensure that any violation of the order



of injunction is remedied by the party in breach. The relevant extract of the judgment in **A.K. Chatterjee** (Supra) reads as under:

“7. Thus it follows that a sale deed of immovable property executed in violation/contempt of interim order of injunction is not non est or void, as contended by the plaintiffs in the present case. It also cannot be said that no right in immovable property subject matter of suit has passed to the applicants, under such a sale deed. In a given case, where sale deed is executed in violation of interim order, the Court may direct status quo ante by ordering reconveyance to be executed by the erring parties or asking the erring parties to join in execution of conveyance in favour of party ultimately found entitled to the same. The Apex Court in Gurunath Manohar Pavaskar v. Nagesh Siddappa Navalgund, (2007) 13 SCC 565 : AIR 2008 SC 901, has held that the Courts can pass an interlocutory order in the nature of mandatory injunction in exercise of its jurisdiction under Section 151 CPC on the premise that a party against whom an order of injunction was passed acted in breach thereof and so as to relegate the parties to the same position as if the order of injunction has not been violated. This again implies that the conveyance in violation of interlocutory order is not void, inasmuch as if it was so, there would be no need for reconveyance.”

(Emphasis Supplied)

7. Therefore, in view of the authoritative judgments of this Court, the finding of the Trial Court that it does not have the requisite jurisdiction to order status quo ante under Order XXXIX Rule 2A of CPC or Section 151 of CPC is incorrect. This is subject to the Trial Court returning a finding that the status quo granted by the Court on 24.07.2023 has been violated by the defendants. Accordingly, the impugned order to the extent that it holds that the Trial Court has no power to grant status quo ante is set aside. The relevant portion of the order which is set aside read as under:

“There is no gainsaying that the relief prescribed under Order XXXIX Rule 2A of CPC cannot be granted to the applicant on his mere asking and the aforementioned jurisdictional facts have to be duly proved. Further, the relief of restoration of the status as on 24/07/2023 also cannot be granted under an application filed under Order XXXIX Rule 2A of CPC, which merely entails consequences upon the breach of the injunction. Even if the contention of the applicant, is to be believed, that the defendant was not in the possession of the said shop premises, the admitted dispossession of the plaintiff would give rise to a separate



cause of action, relief qua which can be claimed only as per the prescribed procedure under CPC. Thus, oral prayer for restoration of the status of the suit property is hereby rejected and further in light of the reason cited above, the present application is directed to be registered separately.”

8. Accordingly, the Petitioner is directed to file a fresh written application before the Trial Court within a period of ten (10) days seeking an appropriate relief of status quo ante. The Trial Court is requested to take up the application, when the same is filed and adjudicate the same in accordance with law.
9. It is made clear that this Court has not examined the contention of the Petitioner that whether as a matter of fact there has been any violation by the defendants of the status quo granted *vide* order dated 24.07.2023. The said issue will be examined by the Trial Court after considering the reply of the defendants.
10. With the aforesaid direction, the present petition is disposed of.

MANMEET PRITAM SINGH ARORA
(JUDGE)

AUGUST 25, 2023/hp/aa

Click here to check corrigendum, if any