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

*Date of decision: 23.11.2023*

+ **CM(M) 1881/2023, CM APPL. 59232/2023, CM APPL. 59233/2023 & CM APPL. 59234/2023**

VIJAY KUMAR AGARWAL

..... Petitioner

Through: None

versus

PARTAP SINGH

..... Respondent

Through: None

%

**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 11.03.2020 passed by the ADJ-02, Central District, Tis Hazari Court, Delhi ('Trial Court') in Misc. DJ No. 119/2020 and order dated 18.08.2023 passed by the Trial Court in Misc. DJ No. 174/2021.

1.1. The Trial Court vide impugned order dated 11.03.2020 (1<sup>st</sup> order) dismissed the Petitioner's application (i.e., Misc. DJ No. 119/2020) filed under Order IX Rule 9 of Code of Civil Procedure, 1908 ('CPC') seeking restoration of three applications i.e., MA Nos. 2/2009, 20/2009 and 25/2009, as well as Misc. Appl. No. 61125/2016.

The Petitioner's said Misc. Appl. No. 61125/2016 along with three applications i.e., MA Nos. 2/2009, 20/2009 and 25/2009 were dismissed in default by the Trial Court on 14.08.2018 for non-prosecution.

1.2. The Trial Court subsequently, vide impugned order dated 18.08.2023 (2<sup>nd</sup> order) dismissed the review application filed by the Petitioner under



Section 114 of CPC read with Order XLVII Rule 1 of CPC, against the 1<sup>st</sup> order dated 11.03.2020.

2. The Petitioner on the last date of hearing before this Court i.e., on 17.11.2023, submitted that the facts of this case are self-explanatory and order on this petition may be passed after perusal of the paper book.

3. This Court has perused this paper book and the facts necessary for the adjudication of this petition are as under:

3.1. A civil suit (CS No. 37/2008) was filed by the Respondent (i.e., the plaintiff) against the Petitioner (i.e., the defendant) and three police officers, seeking permanent injunction w.r.t property bearing No. B-15, Acharya Niketan, Mayur Vihar Phase-I, Delhi – 110091 ('suit property'). The said suit was decreed vide judgment dated 25.10.2008.

3.2. Though, the suit was decreed on 25.10.2008, the Petitioner herein subsequently, filed three applications ('concerned applications') i.e.,

- i. MA No. 2/2009 (for correction of an order dated 08.11.2005)
- ii. MA No. 20/2009 (filed under Section 340 of Cr.P.C.)
- iii. MA No. 25/2009 (filed under Section 151 of CPC for correction of judgment dated 25.10.2008 passed in the civil suit)

3.3. The record evidences that the said concerned applications were dismissed in default by the Trial Court on three (3) separate occasions for non-prosecution. A perusal of the paper book shows that between 10.03.2010 (the first default) and 18.08.2023 (the 2<sup>nd</sup> impugned order), the concerned applications have not been argued on merit by the Petitioner till date. The Petitioner consistently defaulted in addressing arguments on merits



and thereafter, resisted adjournments granted by the Trial Court subject to costs.

3.4. A perusal of the record shows that the Petitioner has kept the Trial Court entangled in the said proceedings which led to passing of orders of default dated 10.03.2010, 03.03.2011 and 21.08.2012 against the Petitioner herein.

3.5. This Court however, vide order dated 05.05.2014 passed in CM(M) No. 11/2013 set aside the default orders, restored the concerned applications and gave an opportunity to the Petitioner herein to address arguments on the said applications subject to payment of costs of Rs. 2,500/- ('costs imposed by this Court').

3.6. It is a matter of record that the Petitioner failed to pay the said costs imposed by this Court, despite filing an SLP against the said costs, which was dismissed as withdrawn; as well as a review petition before this Court which was dismissed vide order dated 19.09.2014.

A diligent litigant at this stage would have paid the costs of Rs. 2,500/-

3.7. The Petitioner however, to subvert the process, approached the Trial Court for waiver of costs imposed by this Court. In the opinion of this Court, the Trial Court rightly dismissed the application seeking waiver of costs vide order dated 03.12.2015. The Petitioner however, undeterred filed an application before the Trial Court for recall of the said order dated 03.12.2015 which again was again dismissed by the Trial Court on 01.04.2017; this time with additional costs of Rs. 2,500/- ('costs imposed by Trial Court').



3.8. The Petitioner in absolute disregard of the orders of the Courts neither deposited the costs of Rs. 2,500/- imposed by the High Court (on 05.05.2014) nor the costs of Rs. 2,500/- subsequently imposed by the Trial Court (on 01.04.2017); instead, the Petitioner continued to seek adjournments in the restored applications before the Trial Court.

In these circumstances, the Trial Court vide order dated 14.08.2018 after taking note of the wilful non-compliance by the Petitioner dismissed the concerned applications for default and for non-prosecution with additional costs of Rs. 5,000/-. The Trial Court observed that the Petitioner had made a mockery of the entire judicial system. The relevant portion of the order of the Trial Court 14.08.2018 reads as under:

*“Perusal of the record shows that on the last date of hearing also, adjournment was granted to the applicant/defendant on the same ground subject to production of relevant order sheet showing appearance of the applicant/defendant before the learned Addl. Sessions Judge, Kkd Courts, Delhi as well as order in terms of the order dated 27.2.2018 failing which the applicant/defendant would pay cost of Rs. 2,000/- to the non applicant/plaintiff.*

*Further, record shows that on 27.2.2018, adjournment was granted to the applicant/defendant on the premise that he had to appear before the Hon'ble High Court of Delhi and on the said date also, he was directed to produce the relevant order sheet showing his appearance before the Hon'ble High Court. But the applicant/defendant has not produced any of the order sheets, till date.*

*No document is annexed with the application in compliance with the directions of this Court. Further, the application is also not supported by affidavit. In these circumstances, I observe that the applicant/defendant has been misusing the liberty granted by the court and as such, abusing the process of law. He has not paid even the cost imposed by the Hon'ble High Court as well as by this Court, till date despite directions several times. Vide order dated 05.05.2014, Hon'ble High Court restored applicant/defendant's three applications being*

- (i) Miscellaneous application no. 20/09 under section 340 Cr.PC r/w section 151 CPC,*
- (ii) Misc. application under Order 6 rule 17 CPC; and*
- (iii) Misc. application under Order 9 rule 9 CPC r/w section 151 CPC,*



*subject to costs of Rs. 2500/- to be deposited with Prime Minister's Relief Fund and further directed this court to hear those applications on merits. Amazingly, more than four years have lapsed, but the applicant/defendant has not deposited the said costs till date on one or the other pretext. Meanwhile, my Ld. Predecessor, vide his order dated 01.04.2017 also, dismissed another application of the applicant/defendant made under section 44 of the Indian Evidence Act r/w section 151 and section 152 of CPC, with further costs of Rs. 2500/- to be paid to the non- applicant/plaintiff. But, the applicant/defendant has not paid the said costs also till date. In this background, I may observe that the applicant/defendant Sh. Vijay Kumar Aggarwal has made mockery of the entire judicial system, it can not be permitted to proceed under any circumstances.*

*In the above-mentioned circumstances, the applicant/defendant cannot be permitted to proceed with his applications made (i) under Section 340 Cr.PC, (ii) under Order VI Rule 17 CPC and (iii) under Order IX Rule 9 CPC, and as such, the same are dismissed in default and for non-prosecution with costs of Rs. 5,000/-."*

(Emphasis Supplied)

3.9. Thus, as on 14.08.2018, the Petitioner was in default of non-payment of costs of Rs. 2,500/- imposed by this High Court vide order dated 05.05.2014, non-payment costs of Rs. 2,500/- imposed by the Trial Court vide order dated 01.04.2017 and non-payment costs of Rs. 5,000/- imposed by the Trial Court vide order dated 14.08.2018. The Petitioner became liable to pay total costs of Rs. 10,000/-.

3.10. It is stated in this petition that in the aforesaid circumstances, after six (6) years on 06.03.2020, the Petitioner elected to pay the costs of Rs. 2,500/- imposed by the High Court vide order dated 05.05.2014.

3.11. The Petitioner continued to remain in wilful non-compliance of the payments of the costs (Rs. 2,500 + Rs. 5,000) imposed by the Trial Court vide order dated 01.04.2017 and 14.08.2018.

3.12. The Petitioner's applications seeking waiver of the said costs and restoration of the concerned applications was dismissed by the Trial Court



vide order dated 11.03.2020 and the review application against said order stands dismissed vide order dated 18.08.2023.

4. However, despite the successive dismissals, the Petitioner continues to remain in wilful non-compliance of the payment of costs of Rs. 2,500/- imposed by the Trial Court vide order dated 01.04.2017 and the cost of Rs. 5,000/- imposed by the Trial Court vide order dated 14.08.2018.

5. This Court is of the considered opinion that the Petitioner has kept the Trial Court entangled in a disposed off suit for the past fifteen (15) years and has failed to exhibit any due diligence in pursuing the concerned applications filed in the disposed of suit.

6. In addition, the Petitioner by not making payment of costs (Rs. 2,500 + Rs. 5,000) has shown lack of regard for the orders of the Trial Court. The payment of costs of Rs. 2,500/- imposed by this High Court after six (6) years exhibits lack of regard for the authority of the Court. A party which fails to comply with the orders of the Court cannot be permitted to invoke the extraordinary jurisdiction of this Court as it is clear evidence of abuse of process of law.

7. In the facts of this case, this Court is of the opinion that no ground warranting interference of this Court in its supervisory jurisdiction is warranted. The petition is accordingly, dismissed for being without any merits. Pending applications stand disposed of.

**MANMEET PRITAM SINGH ARORA, J**

**NOVEMBER 23, 2023/aa and msh**

*Click here to check corrigendum, if any*