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

+ **CONT.CAS(C) 549/2024 & CM APPL. 19752/2024 (stay)**

**RAJESH KUMAR** ..... Petitioner

Through: Mr. Manu Nayar, Adv.

versus

**SH. JAGESH & ORS.** ..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE GIRISH KATHPALIA**

**ORDER (ORAL)**

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**02.05.2024**

**[Physical Hearing/Hybrid Hearing (as per request)]**

1. By way of this petition, the petitioner/tenant seeks initiation of contempt proceedings against the respondents/landlords on two grounds, namely the present respondents concealed before the execution court about their knowledge of filing of SLP against order dated 30.11.2023 of the predecessor bench passed in RC.REV. 256/2020 and the respondents further failed to file affidavit in terms with para 18 of the said order.
2. So far as the alleged knowledge of filing of SLP and the alleged concealment before the execution court is concerned, on last date, learned counsel for petitioner fairly admitted that the contempt if any, in that regard does not pertain to this Court.
3. So far as the failure to file affidavit in terms with para 18 of order dated 30.11.2023 is concerned, on last date learned counsel for petitioner sought adjournment to bring case laws on this aspect.
4. Therefore, today the issue of the alleged contempt is confined to the



allegation of the petitioner that the respondents failed to file affidavit in terms with para 18 of order dated 30.11.2023. I have heard learned counsel for petitioner.

5. The order dated 30.11.2023 of the predecessor bench basically dealt with CM APPL. 58962/2023 for affixation of use and occupation charges. By way of the said order, the learned predecessor bench allowed the application, thereby directing the petitioner/tenant to pay use and occupation charges in the manner fixed by that order. Para 18 of the said order, contempt whereof has been alleged reads as follows:

*“ 18. The Respondents/landlord is directed to file an Affidavit submitting that this is subject to restitution in the event that should the Petitioner/tenant succeed in its Revision Petition. ”*

6. According to the petitioner, the affidavit in terms of para 18 extracted above was filed subsequent to last date of hearing in this contempt petition. Since para 18 of the said order did not fix any period for filing the said affidavit, the present contempt petition could have been withdrawn upon filing of the same. But the petitioner has opted to press this contempt petition.

7. In support of his arguments, learned counsel for petitioner placed reliance on certain judicial precedents, which are dealt with as follows.

7.1 The judgment in the case of **Sonali Bhatia vs. Abhivansh Narang**, CONT.CAS(C) 429/2021 decided by a division bench of this Court on 25.11.2021 referred by the learned counsel for petitioner through para 6-8 of the judgment, basically dealt with a situation pertaining to non-compliance with order of grant of interim maintenance in a matrimonial dispute, which is on a completely different footing. Failure to file an affidavit of the nature



described in para 18 of the order dated 30.11.2023 cannot be equated with the serious impact of failure to pay interim maintenance. Even if the landlord fails to file affidavit of the manner described above, the legal position is well settled that in a case where the tenant succeeds, the use and occupation charges paid to the landlord during pendency of revision proceedings have to be refunded.

7.2 The other judgment relied upon by learned counsel for petitioner is in the case of ***Rama Narang vs. Ramesh Narang & Anr***, 2006 AIR (SC) 1883 in support of his contention that merely because a consent decree would be executable, it does not mean that violation of the same would not lead to contempt proceedings. There is no dispute qua this legal proposition, but that is not the issue in the present case.

7.3 Learned counsel for petitioner has referred to a series of orders passed by a coordinate bench of this Court in this case of ***K.C. Chopra & Sons H.U.F.& Anr vs. Adarsha Bhalla (deceased) through LRs & Ors***, RFA, 980/2019. In the said case, the coordinate bench, while hearing a Regular First Appeal directed the appellant vide order dated 18.01.2022 to file an affidavit stating as to how much amount was lying in the account of the appellant as on 29.08.2018 and dates of withdrawal of such amounts and how he intends to secure such amounts since there existed a judgment against him. Thereafter, vide order dated 21.03.2022, the coordinate bench granted two weeks time to the appellant to file the said affidavit. Thereafter, on 22.03.2022 the coordinate bench dismissed the contempt application for the reason that the appellant had already been granted more time to file that affidavit. Although, nature of the affidavit directed to be filed in the said case was completely different from the present case, but going by the said



order cited on behalf of petitioner, in the present case since the affidavit in question has admittedly been filed, the present contempt petition ought to have been withdrawn in all fairness. But the petitioner opted to press this contempt petition.

8. To recapitulate, the affidavit of the respondents/landlords that they would return the use and occupation charges in case the petitioner succeeds in the revision proceedings has admittedly been filed, though belatedly; and the legal position is trite that whether such affidavit is filed or not, the landlord has to refund the use and occupation charges to successful tenant, so the ultimate outcome is not dependent upon that affidavit.

9. I am of the view that this contempt petition has been filed with oblique purposes to browbeat the respondents/landlords and is a complete abuse of process.

10. Therefore, the petition is dismissed with costs of Rs. 20,000/- to be deposited by the petitioner with Delhi High Court Legal Services Committee (DHCLSC) within one week. In order to ensure compliance qua costs, a copy of this order be sent to the DHCLSC and be also placed on record of RC.REV. 256/2020.

11. Accordingly, the pending application also stands dismissed.

**GIRISH KATHPALIA, J**

**MAY 2, 2024/*rk***

*Click here to check corrigendum, if any*