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

+ **CONT.CAS(C) 702/2021**

SMT. VEENA DEVI & ANR.

..... Petitioners

Through: Mr. Vivek Kumar Tandon & Ms.
Prerna Tandon, Advs. DHCLSC
M: 9810277733
Email: vktlawchambers@gmail.com

versus

MR. PRAVEEN KUMAR & ORS.

..... Respondents

Through: Mr. Hansh Chandra and Mr. Tarun
Chandra, Advs.
M: 9811517113

CORAM:

HON'BLE MS. JUSTICE MINI PUSHKARNA

ORDER

02.05.2024

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1. The present contempt petition has been filed alleging non-compliance of the directions contained in judgment dated 22nd March, 2021 passed in *RSA No. 181/2019*, whereby, the respondents were directed to handover the vacant and peaceful physical possession of the property bearing *No. 5308, Shora Kothi, Paharganj, New Delhi* to the petitioners. Since the respondents failed to comply with the orders and did not handover the property in question to the petitioners, the present contempt petition came to be filed.

2. Learned counsel appearing for the petitioners has drawn the attention of this Court to the various orders to contend that it has categorically been recorded in the present proceedings that the respondents are in default and have not complied with the directions as passed in the judgment dated 22nd March, 2021. He submits that the vacant and peaceful physical possession of the property in question was taken by the petitioners only by way of filing



execution proceedings.

3. Learned counsel appearing for the petitioners submits that directions passed in the judgment dated 22nd March, 2021 was to handover the possession of the property in question to the petitioners forthwith. However, the petitioners had to struggle a lot and had to resort to the execution proceedings, before possession of the property in question was handed over to the petitioners.

4. Per contra, learned counsel appearing for the respondents submits that the earlier counsel of the respondents had not intimated the respondents about the judgment dated 22nd March, 2021 and they were not aware of the decree. It is further submitted that respondents had no intention to not comply with the directions passed by this Court.

5. Learned counsel appearing for the respondents further extend an unconditional apology to this Court, for any default that may have been committed by the respondents.

6. Having heard learned counsels for the parties and having perused the record, at the outset, it is pertinent to take note of the judgment dated 22nd March, 2021, wherein the following directions were passed:

“xxx xxx xxx

43. Thus, in my view, the Trial Court as well as the First Appellate Court have fallen in error of law in not exercising their inherent powers provided under Section 151 CPC and restoring the possession to the Appellants.

44. Insofar as the second question is concerned, I find merit in the contention of Mr. Mehta that provisions of Sections 96 and 100 CPC do not specify who can file an appeal. As long as a party is 'aggrieved' by the decision of a subordinate court, a second appeal is maintainable. The Appellants are clearly aggrieved by the decision of the courts below as the possession was not restored to them, despite their ownership in the Suit property and possession at the stage of institution of the Suit by the Respondents. Hence, the Appellants are entitled to file the present appeal and the same is maintainable before this Court.



45. In light of the above discussion, the substantial questions of law are answered in favour of the Appellants and against the Respondents.

46. Accordingly, a decree is passed in the above terms and a direction is issued to the Respondents/Plaintiffs in the Suit bearing No. 607578/2016 to forthwith hand over vacant and peaceful physical possession of the suit property, bearing shop No. 5308, Shora Kothi, Paharganj, New Delhi to the Appellants herein/Defendant Nos. I(a) and I(c) in the Suit.

xxx xxx xxx”

7. Perusal of the aforesaid order clearly shows that there were categorical directions issued in the aforesaid judgment to forthwith handover the vacant and peaceful physical possession of the suit property to the petitioners.

8. This Court also takes note of the order dated 15th February, 2022 passed in the present proceedings, which reads as under:

“The hearing has been conducted through hybrid mode (physical and virtual hearing).

1. On 22.03.2021 in RSA 181/2019, this court had passed the following directions:

"46. Accordingly, a decree is passed in the above terms and a direction is issued to the Respondents/Plaintiffs in the Suit hearing No. 607578/2016 to forthwith hand over vacant and peaceful physical possession of the suit property, bearing shop No. 5308, Shora Kothi, Paharganj, New Delhi to the Appellants herein/Defendant Nos. I(a) and I(c) in the Suit..."

2. The learned counsel for the petitioners submits that the respondents have not handed-over possession of the suit property, therefore, there is non-compliance. Furthermore, no reply has been filed by the respondents.

3. In default of handing-over of possession of the suit property to the petitioners, the court is prima facie of the view that the respondents have committed contempt of court.

4. Issue notice to the respondents to show cause why contempt proceedings be not initiated against them under sections 2(b) and 12 of



the Contempt of Courts Act, 1971. Notice is accepted by the learned counsel named above for the respondents. Compliance affidavit/reply be filed in four weeks. Rejoinder thereto, if any, be filed before the next date.

5. Renotify on 04.05.2022.”

9. Thus, it is clear that despite pendency of the present contempt petition, the respondents did not comply with the directions as issued in the judgment dated 22nd March, 2021.

10. At this stage, it is relevant to take note of the order dated 08th April, 2022 passed by the learned Trial Court in the execution petition filed by the petitioners being *EX. No. 433/2022*, which reads as under:

“xxx xxx xxx

The facts in brief, leading to the present execution petition are that a suit for permanent injunction was filed by the plaintiff who are the JD herein and the said suit was dismissed vide order dated 24.09.2018. Pursuant thereto the defendants in that suit who are the DH herein filed an appeal claiming that they are entitled to the possession of the suit property and that the decree dated 24.09.2018 be modified and the appellant be put in possession of the suit property. The said appeal was dismissed vide order dated 06.05.2019. Aggrieved by the said order, the appellants filed the second appeal to the Hon'ble High Court of Delhi and vide order dated 22.03.2021 the Hon'ble High Court of Delhi directed the respondents/the plaintiffs in the original suit to forthwith hand over the vacant and peaceful possession of the suit property to the appellants. The relevant para of the order of the Hon'ble High Court of Delhi is reproduced herein:

"46. Accordingly, a decree is passed in the above terms and directions is issued to the respondents/plaintiffs in the suit bearing no. 607578/2016 to forthwith hand over vacant and peaceful physical possession of the suit property, bearing shop no. 5308, Shora Kothi, Paharganj, New Delhi to the appellants herein/defendant nos. 1 (a) and 1 (c) in the suit."

Notice of the present execution petition was issued to the JDs and pursuant thereto the counsel has appeared on behalf of JD no. 1 and 3. Memo of appearance filed.

It is submitted by counsel for JD no.1 and 3 that JD no. 1 and 3 are outside Delhi and seeks some time to take the appropriate legal remedy. It is further submitted that he has not received the copy of present execution petition. Copy supplied.

The purpose of notice to the party is to make the party aware



about the initiation of legal proceedings against him. The counsel for JD has appeared today and has been made aware of the present execution petition. The purpose of notice is not to give time to the JD and delay the execution of the decree. Hence, in view of this court, the purpose of notice has been duly served. It is also to be noted as per sub-Rule 2 of Rule 22 the court has the power to waive of the necessity of issuance of a notice in case justice demands so. The said provision is reproduced herein:

Order 21 Rule 22 (2):- Nothing in the forgoing sub-Rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.

In the present matter, notice has been served upon the JD no. 1 and 3 and purpose of notice in the opinion of this court is complete. In para 46 of the order dated 22.03.2021 of the Hon'ble High Court of Delhi the JDs were directed to forthwith hand over the physical and vacant possession of the suit property. Till date, the possession has not been restored to the DH hence, the DH has been constrained to file the present execution petition.

In view of the above discussion, this court finds no reason as to why time should be given to the JDs and the DH be made to suffer any further.

Let warrants of possession be issued the suit property bearing no. 5308, Shora Kothi, Paharaganj, New Delhi.

The Concerned SHO is directed to provide the necessary police aid/lady police officials for the execution of the warrants of possession.

Bailiff is directed to break open the locks in case premises are found to be locked and to prepare the inventory of the goods found in the premises. PF be filed today itself.

DH is directed to appear before the Ld. ACJ for appointment of Bailiff today itself.

Put up for report before this court on 27.05.2022.

xxx xxx xxx”

11. Perusal of the aforesaid order dated 08th April, 2022 passed by the Executing Court clearly shows that warrants of possession were issued by the Execution Court to take possession of the property in question.

12. Thus, it is only on account of the warrants of possession being issued by the Execution Court that the possession of the property in question was



handed over to the petitioners.

13. This Court also takes note of the order dated 13th September, 2022 passed in the present proceedings, wherein it was held as follows:

“1. The present petition has been filed by the petitioner alleging non-compliance of the directions contained in the judgment dated 22.03.2021 passed in RSA 181/2019. The operative directions are as under:

"46. Accordingly, a decree is passed in the above terms and a direction is issued to the Respondents/Plaintiffs in the Suit hearing No.607578/2016 to forthwith hand over vacant and peaceful physical possession of the suit property, bearing shop No. 5308, Shora Kothi, Paharganj, New Delhi to the Appellants herein/Defendant Nos. 1 (a) and 1(c) in the Suit."

2. Admittedly, after the aforesaid order was passed, the petitioner filed an execution petition, pursuant to which, vacant and physical possession of the suit property has been received by the petitioner.

3. Learned counsel for the respondent undertakes not to interfere with the vacant and peaceful possession of the petitioner in respect of the suit property.

4. Notwithstanding the above, learned counsel for the petitioner seeks to press the present petition on the ground that there was wilful non-compliance of the directions of this Court on the part of the respondents. She seeks some time to make submissions in this regard.

5. List on 09.02.2023.

6. Let reply, if any, be filed by the respondents before the next date of hearing.”

14. Thus, it is noted that the petitioners received the vacant and peaceful physical possession of the property in question, only pursuant to their efforts by way of filing of execution petition. This Court also takes note of the fact that the petitioner no.1 is the mother and petitioner no.2 is the sister of the respondents.

15. Thus, it is seen that though the directions passed in the judgment dated 22nd March, 2021 have now been complied with, however, the said



directions were complied by way of taking over the possession of the property in question by virtue of issuing warrants of possession by the Execution Court.

16. Though the judgment dated 22nd March, 2021 stands complied with, however, the respondents have clearly defaulted in not complying with the categorical directions passed therein.

17. At this stage, learned counsel appearing for the respondents, extends unconditional apology and submits that the default was committed by the respondents, inadvertently. This Court accepts the unconditional apology of the respondents, however, considering the facts and circumstances of the present case, it is directed that cost of ₹10,000/- shall be payable by each of the respondents to petitioner no.2.

18. Let the needful be done within a period of four weeks from today.

19. With the aforesaid directions, the present petition is disposed of.

MINI PUSHKARNA, J

MAY 2, 2024/kr