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

+ **W.P.(C) 13134/2019 & CM APPL. 4903/2023**

KOMAL SINGH

..... Petitioner
Through: Mr. Akhilesh Kumar Singh, Advocate
with petitioner in person.

versus

AJAY KUMAR & ORS.

..... Respondent
Through: Mr. Hetu Arora Sethi, ASC with Ms.
Kavita Naiiwal, Advocate for
GNCTD.
Mr. Ranjeet Singh Chauhan,
Advocate for R-2.

CORAM:
HON'BLE DR. JUSTICE SUDHIR KUMAR JAIN

ORDER
16.01.2024

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1. The petitioner filed the present writ petition under Article 226 of the Constitution for issuance of the directions particularly to the respondent no. 2 to vacate the suit property i.e. RZ-575/313, Gali no. 6-A, West Sagarpur, Delhi.
2. The respondent no. 2 got married with the respondent no. 1 who is stated to be the son of the petitioner. It is stated that matrimonial differences arose between the respondent no. 2 and the respondent no. 1 which resulted into the initiation of various legal proceedings against each other.
3. The petitioner filed an application before the District Magistrate



(South West) for eviction of the respondent no. 2 and the respondent no. 1 from the suit property i.e. RZ-575/313, Gali no. 6-A, West Sagarpur, Delhi. The District Magistrate cum Appellate Tribunal for Maintenance and Welfare of Parents and Senior Citizens in petition bearing no.1/35/2018 titled as **Komal Singh V Ajay Singh and Anr.**, vide order dated 14.09.2018, had directed the respondents no.1 and 2 to vacate the property as detailed hereinabove within a period of 02 weeks from the date of receipt of the said order.

4. The respondent no. 2 being aggrieved, filed the appeal bearing no. 52 (Rev.)/HC_WP(C)12328/2019/Sec-16 titled as **Mrs. Aarti V Sh. Komal Singh** before the Appellate Court of Divisional Commissioner. The Appellate Court vide order dated 07.06.2019, remanded the petition back to the District Magistrate (South West) for reconsideration after obtaining the report of the SDM. The concerned District Magistrate had dismissed the petition after remand vide order dated 31.07.2019 while observing as under:-

It is remanded back matter from Div. Comm.

The complainant was directed to present his grievance. It is evident from the arguments heard in court that the matter is related to matrimonial dispute between respondent No. 1 & 2 and there seems to be no issue of harassment of senior citizen.

Also, the behavior of senior citizen (complainant) in the court room suggested that he is dominating & abusing the R No. 2 and must be worse in private sitting.

It is a case where complainant 85 R. No. 1 has leaved together to vacate R- No. 2 from house with the help of senior citizen Act.

In such situation, as there is no such harassment of senior citizen and report of SDM CITY also do not suggest any objective information regarding harassment, so the petition is dismissed being devoid of merit.



5. The counsel for the petitioner stated that the District Magistrate has not decided the petition on merit rather the impugned order dated 31.07.2019 is based on conjectures and surmises and no reason has been assigned for dismissal of the petition filed by the petitioner for eviction of the respondent no. 2 and the respondent no. 1 from the suit property i.e. RZ-575/313, Gali no. 6-A, West Sagarpur, Delhi.

6. The counsel for respondent no. 2 justified the order dated 31.07.2019.

7. The perusal of order dated 31.07.2019 reflects that the said order was passed by the concerned District Magistrate without application of mind and totally on the assumption and presumption that the petitioner is appearing to be dominating and abusing the respondent no. 2 and his behaviour must be worse in private sitting. The said observation made by the concerned District Magistrate was totally unwarranted, uncalled for and misconceived and reflects the complete lack of judicial mind on the part of the concerned District Magistrate.

8. Accordingly, the order dated 31.07.2019 passed by the concerned District Magistrate is set aside and the concerned District Magistrate is directed to decide the petition filed by the petitioner for eviction of the respondent no. 2 and the respondent no. 1 from the suit property i.e. RZ-575/313, Gali no. 6-A, West Sagarpur, Delhi afresh in accordance with law and after considering the rival contentions of the parties, preferably within a span of 03 months from the date of receipt of this order.

9. The present petition, along with pending applications, if any, stands disposed of.

10. Copy of this order be sent to the concerned District Magistrate for information and compliance.



11. The copy of this order also be given *dasti* to the petitioner as well as to the respondent no.2.

DR. SUDHIR KUMAR JAIN, J

JANUARY 16, 2024

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