



\$~28

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

+ CRL.M.C. 6127/2018

SUNIL KUMAR DAHIYA

.....Petitioner

Through: Mr. Ajay Khanna and Mr. M. Pillai,
Adv.(VC)

versus

NCT OF DELHI & ANR

.....Respondents

Through: Mr. Satish Kumar, APP for the State
with Inspector Pankaj Kumar, PS
EOW/Sec-IV
Mr. Akhil Sibbal, Sr. Adv. with Mr.
Gaurav M. Liberhein and Mr. Arun
Rawat, Ms. Komal Gupta, Ms. Akriti
Gupta, Ms. Janmani Sindhu,
Advocates for R-2

CORAM:

HON'BLE MR. JUSTICE DINESH KUMAR SHARMA

ORDER

11.09.2024

%

1. The present petition has been filed challenging the order dated 25.07.2018 vide which the petition filed by the respondent No.1 seeking to set aside partially the order dated 29.01.2016 passed by learned CMM in case FIR No. 108/2014 PS EOW under Sections 409/420/423/120B IPC.
2. Briefly stated the history of the case is that the petitioner was arrested in FIR No. 108/2014 PS EOW under Sections 409/420/423/120B IPC and upon being produced before the learned MM, petitioner was remanded to police custody till 05.11.2014 vide order dated 31.10.2014. On 05.11.2014,



learned CMM South further remanded the petitioner to the police custody till 12.11.2014. While passing this order, learned CMM inter alia directed the IO to take steps to seize the cheated money or the property purchased from it.

3. Subsequently, the petitioner moved an application seeking appropriate direction qua property No.H-1A021, Western Heights, DLF City Phase-5, Gurgaon Haryana and Plot No. 349 HUDA Sector 28, Urban Estate, Sushant Lok, Gurgaon Haryana. The case of the petitioner was that both of these were purchased by him vide registered sale deed dated 01.08.2014 against consideration from M/s V. Local promoters Pvt. Ltd and M/s Technosphere Developers Pvt. Ltd. The notice was issued to the erstwhile owners of the property.

4. Learned CMM after hearing the present petitioner and the erstwhile owners passed the following orders:

37. Considering the facts and circumstances and in view of the forgoing reasons the attachment order/ embargo on the transfer of the aforesaid properties are ordered to be withdrawn/ revoked subject to the following:

(i) That this order would come into operation only after a period of 90 days during which period any aggrieved person may approach any superior court assailing the present order or file a civil suit before the competent Civil Court and obtain any restraint orders etc. Till the period of 90 days expires, from the date of this order, the applicant would have no right to sell, dispose of, alienate or create any third party interest in the aforesaid properties.

(ii) That during this period of 90 days if any aggrieved person approaches the Civil Court and any interim or final orders are passed by the Civil Court with respect



to attachment of the aforesaid properties or an injunction/ restraint order is granted in respect of the aforesaid property such attachment order passed or injunction/ restraint order granted by such Civil Court shall prevail over the order passed by this Court.

(iii) That after the expiry of the said period of 90 days, the IO after satisfying that no such attachment/ injunction order has been passed by the Civil Court, shall issue appropriate communication to the registering authorities informing them of the lifting of/ revocation of the embargo/ attachment order issued by the IO qua the aforesaid properties.

(iv) The applicant would furnish a security bond of an amount equivalent to the current market value of the properties in question with two sureties in the like amount to the satisfaction of this Court before the expiry of the said period of 90 days. The IO shall file a report specifying the current market value of the aforesaid property within 60 days.

(v) The copies of documents, whereby the applicant transfers the properties to any third party shall be filed in the Court immediately after the transfer.

Application disposed of in these terms.

Copy of this order be provided to the IO for compliance.

5. Aggrieved of this, the respondent No.2 filed a revision petition bearing CR No. 8266/2016 titled "*Dilraj Bakshi v. State*". The learned ASJ while disposing of this petition has inter alia set aside the conditions imposed vide impugned order dated 29.01.2016. However, on the request of the petitioner the operation of the impugned order was restrained for about 07 days allowing the petitioner to challenge the same. Aggrieved of this the petitioner has filed the present petition challenging the impugned order.

6. Learned counsel for the petitioner has submitted that the order passed



by the learned CMM at the first hand on 29.01.2016 is bad in law as it amounts to review of the order dated 05.11.2014 which is not permissible under law. Learned counsel for the petitioner has further submitted that in fact it was not a sale transaction. Learned counsel submits that the M/s Vigneswara Group Company had taken some loan from the petitioner and against this, the present properties were duly mortgaged. Learned counsel submits that the Courts' below have fallen into grave error by only looking at the sale deed and not the entire documents, which clearly indicates it was a mortgaged transaction. Learned counsel has further submitted that the learned Sessions Court has also fallen into an illegality by not giving any opinion on the issue raised by him regarding the illegality in the order of the learned CMM in respect of review or revision of the order. Learned counsel for the petitioner has also submitted that while passing this order, the rights of the petitioner have been prejudiced.

7. Sh. Akhil Sibbal, learned Senior counsel for the respondent No.2 has submitted that the present petition is liable to be dismissed outrightly as in the present petition only the order of the learned ASJ dated 25.07.2018 has been challenged and there is no challenge of order dated 29.01.2016. Learned senior counsel submits that in fact the properties were ordered to be released vide order dated 29.01.2016 with certain conditions and these conditions were modified by the learned Revisional Court vide order dated 25.07.2018. Learned Senior counsel further submits that before the learned CMM the respondent No.2 had taken a plea that immovable properties could not have been seized under Section 102 Cr. PC which was rejected by the learned CMM. Learned senior counsel submits that however, the Supreme Court in *Neveda Properties Pvt. Ltd. through its Director v. State of*



Maharstra and Anr. (2019) 20 SCC 119 inter alia held that the power of the police officer under Section 102 Cr. PC to seize any property which may be found under circumstances that create suspicion of the commission of any offence would not include the power to attach, seal, seize the immovable properties. Learned senior counsel submits that therefore the seizure of the immovable properties was illegal per se. Learned senior counsel has also submitted that on the mortgage also, learned CMM and learned revisional Court have not found any document on the record.

8. Law is settled that the inherent power vested in this Court under section 482 Cr.P.C. is neither revisional nor appealable in character and the power has to be exercised rarely and in exceptional cases. Inherent powers under Section 482 Cr.P.C is of wide plenitude with no statutory limitation but it has to be exercised in accordance with the guideline engrafted in such power viz.: (i) to secure the ends of justice, or (ii) to prevent abuse of the process of any court.

9. The facts in this case are very simple in nature. Certain properties which include the present properties were seized by the investigating officer during the course of the investigation. The respondent No.2 who is the registered owner of the property approaches the court for release of the said properties. The accused's/petitioners' case that in fact it was not a sale but it was mortgaged. Initially, the learned CMM released it with certain conditions, which were set aside by the learned Sessions Court. The question of the title is to be decided by the Civil Court. It has also been brought on the record that even otherwise IO did not have power to seize the immovable properties in view of ***Nevada Properties Pvt. Ltd.*** (surpa). It is a matter of the record that no civil proceedings have been initiated by the petitioner



regarding the subject matter of the petition. I do not find any substance in the same, the petition is dismissed.

A handwritten signature in black ink, appearing to read "Dinesh", written over the printed name.

DINESH KUMAR SHARMA, J

SEPTEMBER 11, 2024/vld/kr