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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
% ***Date of Decision: 21st April, 2025***

+ CM(M) 701/2025 & CM APPL. 22650/2025

KAUSHAL RAJ

.....Petitioner

Through: Mr. N.K. Aggarwal with Ms.Sanjana
Antil and Mr. Anmol Chauhan,
Advocates.

versus

ASHOK KUMAR AND ORS

.....Respondents

Through: Mr. Sachin Narwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Petitioner Mr. Kaushal Raj had filed a suit against four defendants.
2. During pendency of the suit, one application was filed by plaintiff/petitioner under Order XXXIX Rule 2A CPC.
3. The grievance of the plaintiff/petitioner was that despite a clear-cut order passed by the learned Trial Court on 31.10.2022, whereby, the defendants had been directed to remove one CCTV Camera which had been installed by them pointing towards the entry gate of the plaintiff/petitioner, such direction was not complied with.
4. The abovesaid application was taken up by the learned Trial court on 07.11.2024 and at that time, defendant No.1 - Ashok Kumar and defendant No.2 – his wife Smt. Kailash were present in Court. While allowing the abovesaid application moved by the plaintiff under Order XXXIX Rule 2A CPC, the learned Trial Court remanded defendant No.1 and 2 to civil prison



for a period of ten days and, simultaneously, *warrants of arrest* were directed to be issued against the other two defendants i.e. Mr. Vinay and Mr. Yogesh with a clear directive that they be also remanded to civil prison for a period of ten days. There was also a further direction to remove such camera.

5. Quite evidently, defendant Nos.1 and 2 were taken into custody, then and there, and were sent to civil imprisonment.

6. Fact remains that thereafter an application was moved seeking release of defendant Nos.1 and 2 and also seeking cancellation of warrants of arrest *qua* defendant Nos.3 and 4 and on 11.11.2024, the learned Trial Court considered the same. It was apprised by learned counsel for the defendants that they had been ill-advised by their previous counsel and that they now express their regret and were willing to tender apology and that that they had realized their mistake and had even removed the camera in question. It was prayed that defendant Nos.1 and 2 be released and the warrants *qua* the other two defendants may be cancelled.

7. The learned Trial Court, taking a lenient view, directed release of defendant Nos.1 and 2 from civil prison and also cancelled *warrants of arrest qua* defendant Nos.3 and 4.

8. Such order dated 11.11.2024 is under challenge.

9. The prime and foremost grievance of the petitioner/plaintiff is to the effect that before passing any such order, the plaintiff should have, at least, been intimated in advance. It is contended that such application was taken up behind his back and, therefore, the order is not sustainable.

10. Fact remains that as far as defendant Nos.1 and 2 are concerned, they have already remained behind the bars for a period of four days and learned counsel for the plaintiff/petitioner submits that though such order should not



have been recalled without hearing him, he does not press for any substantive relief *qua* them at this stage, while supplementing that, at least, their apology affidavits be submitted before the learned Trial Court.

11. Undoubtedly, this Court finds some merit in the contention of learned counsel for the plaintiff /petitioner as, before passing any such order, at least, a formal notice should have been given to the other side but, as noticed already, keeping in mind the fact that defendant Nos.1 and 2 have already suffered incarceration for a period of four days, no useful purpose would be served by disturbing the impugned order *qua* them.

12. Fact though remains that the learned Trial Court should have, at least, insisted for *unconditional apology* from them as when the abovesaid order was passed on 11.11.2024, it was, merely, on the basis of the oral submission made by Mr. Sachin Narwal, their counsel.

13. As far as the aspect of *cancellation of warrants* is concerned, though the learned Trial Court could have cancelled the warrants but such step should have also been taken after hearing the plaintiff/petitioner. For all practical purposes, order dated 07.11.2024 had attained finality and should not have been interfered or reviewed or modified in the manner in which it has been done.

14. It also needs to be highlighted that the Court Master was requested to contact Mr. Sachin Narwal, learned counsel for the respondent and on a very short notice, he has joined the proceedings through *video-conferencing*. He submits that he has not received copy of the petition in question and has not received any instructions either from the respondent and, therefore, he is unable to make any contention before this Court.

15. This Court is conscious of the fact that as per Order XXXIX Rule 2A



CPC, any person can be detained in civil prison, *unless, in the meantime, the Court directs their release.*

16. Be that as it may, in view of the above, this Court does not wish to disturb the order passed *qua* defendant Nos.1 and 2. However, it will be subject to the rider that even they submit their apology affidavits, if not already submitted, before the learned Trial Court.

17. As far as defendant Nos.3 and 4 are concerned, let the learned Trial Court consider their request with respect to cancellation of their warrants after hearing the plaintiff/counsel for the plaintiff. However, in the interest of justice, the *warrants of arrest qua* defendant Nos.3 and 4 shall remain in abeyance till the abovesaid application is considered afresh by the learned Trial Court.

18. The next date in the suit filed by the plaintiff is stated to be 22.05.2025.

19. The learned Trial Court shall, accordingly, consider the abovesaid aspect on said date.

20. It is also clarified that the present order is without prejudice to the rights and contentions of the respondents and they would be at liberty to make submissions before the learned Trial Court and as clarified already, learned Trial Court would be at liberty to pass appropriate order, after hearing both the parties.

21. The petition stands disposed of in aforesaid terms.

22. Pending applications, if any, also stand disposed of in aforesaid terms.

(MANOJ JAIN)
JUDGE

APRIL 21, 2025
st/ss/shs