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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**Date of decision: 28th MARCH, 2025IN THE MATTER OF:+ **FAO(OS) 91/2023 & CM APPL. 44125/2023, CM APPL. 12753/2024****M/S CLARK CONSTRUCTIONS PVT LTD**

.....Appellant

Through: Mr. Amarjeet Singh Chandhiok, Sr.
Advocate, Mr. Keshav Sehgal, Mr.
Harkirat Singh, Mr. Shivam Gaur, Mr.
Kshitij Joshi, Mr. Aryan Kumar, Ms.
Nandita Sharma, Ms. Jasmeet Kaur
Ajimal, Mr. Taranjit Singh Sahwney,
Advocates

versus

NIKESH JAIN & ORS.

.....Respondents

Through: Mr. Manish Vashisht, Sr. Advocate
with Mr. Rikky Gupta, Ms. Ananya
Singh, Advocates for R-1 to 3.
Mr. S.D. Singh, Advocate for R-4.

CORAM:**HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD****HON'BLE MR. JUSTICE HARISH VAIDYANATHAN****SHANKAR****JUDGMENT (ORAL)**

1. Challenge in the present appeal is to an Order dated 04.07.2023, passed by the learned Single Judge rejecting the contempt Petition, being CCP(O)30/2022, filed by the Appellant herein under Article 215 of the Constitution of India read with Sections 11 and 12 of the Contempt of Courts Act, 1971 and Order XXXIX Rule 2A of the Code of Civil Procedure, 1908 for wilful disobedience of the Order dated 12.04.2022,

Signature Not Verified

Digitally Signed
By: RAHUL SINGH **FAO(OS) 91/2023**
Signing Date: 22.04.2025
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passed by Learned Single Judge of this Court in CS(OS) 205/2022.

2. Shorn of unnecessary details, the facts, leading to the present Appeal are as under:

- a. CS(OS) 205/2022 was filed by Mrs. Sharda Jain & Mr. Rajiv Jain (Respondent No.4 herein). There were five Defendants in the said suit. The Appellant herein was Defendant No.1 and the Contemnors No. 2 & 3 in CCP(O)30/2022 were Defendants No. 4 & 5 in the said suit. The said Suit was filed seeking declaration, permanent, & mandatory injunction in respect of property bearing No.1, Kasturba Gandhi Marg, New Delhi, admeasuring 2250 Sq. Yds. (*hereinafter referred to as 'the property in question'*). It is stated that the said property was owned by one Late Shri Indra Chand Jain, who is the husband of Late Mrs. Sharda Jain (Plaintiff No.1 in CS(OS) 205/2022) and Father of Mr. Rajiv Jain (Plaintiff No.2 in CS(OS) 205/2022).
- b. It is stated that Late Shri Indra Chand Jain passed away on 13.11.2021. In the Suit, it was the case of the Plaintiffs, that Late Shri Indra Chand Jain had bequeathed the property in question in favour of the Plaintiff No. 2 by way of the Will dated 09.11.2020. It is stated in the plaint that Defendants No.4 & 5 filed a Writ Petition, being WP(C) No.14269/2021, for a direction to the Respondents therein, which included the Plaintiffs and Appellant herein, not to interfere in any manner in the lawful rights of the Defendants No.4 & 5 over the property in question.
- c. It is pertinent to mention here that Respondent No.1 in the



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Contempt Petition and the present Appeal is the Power of Attorney of Defendants No. 4 & 5, who are staying in Canada.

- d. It is stated that Defendants No. 4 & 5 claimed that the property in question had been bequeathed to them by the Will dated 21.09.2018. It is stated that interim orders were passed in the said Writ Petition. However, the said Writ Petition was withdrawn after the Plaintiffs filed CS(OS) 205/2022.
- e. The Appellant herein also stakes claim over the property in question. It is the case of the Appellant herein that one Satinder Singh Chhabra, who is Defendant No.2 in CS(OS) 205/2022, was the director of the Appellant Company when Late Sh. Indra Chand Jain expressed his intention to buy some shares in the Appellant company in lieu of the property in question. It is stated that Late Sh. Indra Chand Jain had transferred the title of the property in question in favour of the Appellant herein in lieu of its shares. It is stated that the Appellant company had permitted Late Sh. Indra Chand Jain to stay in the property in question till his death.
- f. It is stated that CS(OS) 205/2022 came up for hearing on 12.04.2022. It is stated that along with the suit certain applications were also listed. One application being I.A. No.5663/2022 was for interim reliefs. The said application was disposed of by the learned Single Judge of this Court by appointing a Local Commissioner to find out as to whether who is in the possession of the property in question. The learned Single Judge directed the parties to maintain status quo with respect to the tile and possession of the property in question.



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Relevant portion of the said Order reads as under:

"16. In light of the foregoing, it is directed as follows:

(a) Ms. Vaidehi Kothari, Advocate (Mobile: 7611939273) is appointed as the Local Commissioner.

(b) She is directed to visit the suit premises today itself or tomorrow, upon her convenience, to inspect the property and make a report as to the possession thereof. Possession to be indicated on a site plan, which shall be produced by either party. In order to ascertain the possession of the parties, the Local Commissioner shall call upon the parties to furnish the proof for access to the premises. The Local Commissioner shall also indicate in the report as to which party has provided the keys to the premises.

(c) Report of the Local Commissioner be filed within a period of two weeks from today.

(d) The Local Commissioner would be at liberty to videograph and/or photograph the premises if so required.

(e) Both the parties shall render full assistance to the Local Commissioner for carrying out the aforementioned directions.

(f) The parties and their counsels shall be entitled to remain present at the time of the execution of the commission. They shall render full assistance to the Local Commissioner for carrying out the aforementioned directions and not create any obstruction in the execution of the commission.

(g) In the event of non-cooperation by the parties, the Local Commissioner is empowered to take necessary measures, including forcible possession by breaking open of any lock(s) on the premises. The Local Commissioner shall be at liberty to seek assistance from the police. The



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concerned police station shall offer necessary assistance to the Local Commissioner.

(h) Counsel for the Defendant to communicate the order to the Local Commissioner.

(i) The fee of the Local Commissioner is fixed as Rs. 75,000/-, which shall be borne by the counsel for the Defendant, which should be subject to further orders in the suit."

- g. The Local Commissioner visited the property in question and filed a report dated 27.04.2022. The said report is reproduced in its entirety and the same reads as under:

"REPORT OF THE LOCAL COMMISSIONER IN TERMS OF THE ORDER DATED 12.04.2022

1. That I, Vaidehi Kothari, Advocate was appointed as Local Commissioner in the above captioned matter by this Hon'ble Court vide order dated 12.04.2022. A copy of the order dated 12.04.2022 is annexed herewith as Annexure A.

2. That in compliance of the orders of this Hon'ble court, the Advocate for the Defendant, Mr. Harkirat Singh (+91-9999514188) approached the Local Commissioner on 12.04.2022 and requested for the execution of the Commission on 13.04.2022.

3. That the Commission was accordingly proposed to be executed on 13.04.2022 and the Local Commissioner was directed to meet Mr. Harkirat Singh at the Barakhamba Road Police Station at 4:00 P.M. POLICE AID AND ASSISTANCE:

4. That Local Commissioner met the Advocate for the



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Defendant, Mr. Harkirat Singh at the Barakhamba Road Police Station at 4:00 P.M. A request letter seeking police assistance was submitted by the Local Commissioner along with the Order of this Hon'ble Court to the Station Officer.

5. Accordingly, in compliance of the order dated 12.04.2022, the Station Officer granted the requisite police assistance and deputed Mr. Vijay Pal, Sub - Inspector for the purpose of execution of Local Commission.
DISCHARGE OF LOCAL COMMISSION

6. That subsequently, the Local Commissioner along with the Advocates of the Defendant reached the Suit Property bearing no. 1, Kasturba Gandhi Marg, New Delhi - 110001, ad measuring 2250 Sq. Yds. owned by the Late Shri Indra Chand Jain (hereinafter referred to as "Suit Property") at 4:30 P.M. On my arrival, Mr Jaithram opened the door and Mr Nikesh Jain was also present.

7. That after perusing the Hon'ble court dated 12.04.2022, in presence of the parties I along with the others entered into the Suit Property at around 4.40 P.M. After entering the suit property, Local Commissioner started inspecting the various parts of the property to ascertain the factum of the possession of the Suit Property. That, while entering the Suit Property one, Mr. Anubhav started recording the entire process which was obstructing the Local Commissioner from executing the Commission and for the same reason all the parties were asked to submit their mobile phones with the Constable present there till the commission is executed.

8. That Mr. Nikesh Jain entered the suit property forcefully after this Hon'ble court pronounced the order dated 12.04.2022 at around 4 P.M. A Kalandra under Section 145 of the Code of Criminal Procedure, 1908 was registered against him for the same vide General Diary No. 0003A at the Barakhamba Road Police Station. But at the time of inspection Mr. Nikesh Jain was not found in



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possession of the Suit Property. The true copy of the same is produced herewith and marked as ANNEXURE- B.

9. That upon entering the Suit Property, the property was in a very distraught condition, the paint was peeling off every room and the walls. There was water leakage in every room. All the walls of the house had water seeping through them.

10. That upon inspection, the Suit Property did not have any belongings of either of the parties. The only belongings present in the property were that of the caretaker i.e., Mr. Jaithram. All the locks on the property were taken out and the remaining locks were accessed by the caretaker.

11. That when the Kitchen was inspected, by the Local Commissioner it had all the utensils, but the cupboards were locked and when opened there were no staples as well as groceries present in them. The Photographs of the same is produced herewith and marked as ANNEXURE- C (Colly.)

12. That the caretaker, Mr. Jaithram was drawing his salary from Mr. Rajiv Kumar Jain, Plaintiff No. 1 after the death of his father, Late Mr. Inder Chand Jain. And, that Mr. Jaithram has been taking care of the suit property after the death of Late Mr. Indra Chand Jain on behalf of Mr. Rajiv Kumar Jain.

13. That the execution of the Commission spanned over approximately one and half hours {1.5 Hours} as the entire property was inspected and all the portions of the property were individually examined.

14. That the written statements of all the parties was recorded by the Local Commissioner and the same has been produced herewith and marked as ANNEXURE- D.

15. That the site plan of the suit property is produced



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herewith and marked as ANNEXURE - E.

16. That after the commission was executed, the Local Commissioner got a call from one, Mr. Anuj Jain {+91-921219659) stating that the Local Commissioner has violated the Hon'ble Court's order by confiscating the mobile phones of everyone present on the Suit Property and that he has recorded all the telephonic conversation between them and would present the same in the court. He in doing so, obstructed the Commission executed by the Local Commissioner.

17. That the Commission was executed in presence of the following persons:

- 1. Mr. Harikat Singh, Advocate for the Defendant*
- 2. Mr. Mayank Gupta, Intern for the Defendant*
- 3. Mr. Rahul Kumar Singh, Advocate for the Plaintiff*
- 4. Mr. Dhiraj Kumar, Advocate for the Plaintiff*
- 5. Mr. Siddharth Singh, Advocate for the Plaintiff*
- 6. Mr. Prajwal M.R., Advocate for the Plaintiff*
- 7. Mr. Satinder Singh Chabbra, Defendant*
- 8. Mr. Rajiv Kumar Jain, Plaintiff*
- 9. Mr. Devanshu Jain, Son of the Plaintiff*
- 10. Mr. Nikesh Jain, Defendant No. 4*
- 11. Mrs. Nisha Jain, Defendant No. 5*
- 12. Mr. Anubhav Jain*
- 13. Mr. Jaithram, Caretaker of the Suit property*
- 14. Mr. Vijay Pal, Sub- Inspector of Police"*

- h. A perusal of the Report of the Local Commissioner shows that Mr. Nikesh Jain, who is the Power of Attorney of Defendants No. 4 & 5 in CS(OS) 205/2022, had forcibly entered the property in question after the order of the learned Single Judge of this Court. However, the report of the Local Commissioner indicates that property in question was primarily in possession of Mr. Jaithram, who is the caretaker of the property. The report



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of the Local Commissioner also indicates that Mr. Jaithram was drawing salary from the Plaintiffs.

- i. CCP(O)30/2022 was filed by the Appellant herein against Mr. Nikesh Jain, who is the Power of Attorney of Defendants No.4 & 5 in CS(OS) 205/2022, and Defendants No.4 & 5, stating that Mr. Nikesh Jain has violated the Orders of the Court by forcibly entering into the property in question. In the Contempt Petition, the Appellant herein has stated that Mr. Jaithram was drawing salary from the Appellant Company. Certain salary slips to this effect have also been filed by the Appellant/Company.
- j. It is pertinent to mention that it is the contention of the Respondents herein, i.e. Defendants No.4 & 5 in CS(OS) 205/2022, that they are paying salary to Mr. Jaithram.
- k. Vide Order dated 04.07.2023, the learned Single Judge disposed of the Contempt Petition by holding that all the parties are claiming their rights over the property in question and it is not clear as to who is in the possession of the property. Relevant portions of the said Order reads as under:

"34. From the entire discussion, it emerges that all the parties are claiming their right to property through Mr. Indra Chand Jain who was admittedly residing in the property and was having exclusive possession till the time of his death on 13.11.2021. The parties to the present litigation became active only after his demise and have been raising counter claims of having become the owner. Essentially, their possession is being claimed by virtue of being the owners. No physical possession of either the petitioners or respondent nos. 1 to 3 has been made out. In the light of the disputed documents, neither the petitioners nor respondent nos. 1 to 3 can claim any legal right till the same is determined after evidence.



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35. The only factum which emerges is that the Plaintiffs, Ms. Shardha Jain and Mr. Rajiv Jain were the wife and son of Mr. Indra Chand Jain on whose demise these two being the legal heirs, inherited the property rights. All other factors viz. of existence of Will or a right being created in favour of the petitioners by virtue of purchase of suit property are confined to the ownership and do not establish physical possession of either the petitioners or respondent nos. 1 to 3."

1. It is this Order which is under challenge in the present Appeal.
3. Learned Counsel appearing for the Appellant has drawn the attention of this Court to letter dated 01.10.2021 to show that the Appellant is the owner of the property in question. He states that once this Court vide Order dated 12.04.2022 in CS(OS) 205/2022 has directed the parties to maintain status quo, the act of Mr. Nikesh Jain, who is the Power of Attorney of Mr. Hem Chand Jain and Mr. Ramesh Chand Jain, in forcibly entering the property in question is a violation of the Orders of this Court and, therefore, the learned Single Judge ought to have punished the Respondents herein for contempt of Court.
4. Per contra, learned Counsel appearing for Mr. Rajiv Jain, who is the Plaintiff No.2 in CS(OS) 205/2022, draws the attention of this Court to the Order dated 14.12.2021, passed by the learned Single Judge in W.P.(C)14269/2021, to state that the letter dated 01.10.2021 was produced only during the hearing of CS(OS) 205/2022 and it was not produced in the Writ Petition. He further states that other than the letter dated 01.10.2021, no title deed has been produced to show that the Appellants are the owners of the property in question.
5. Learned Counsel appearing for Mr. Nikesh Jain, Mr. Hem Chand Jain and Mr. Ramesh Chand Jain, states that Mr. Hem Chand Jain and Mr.



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Ramesh Chand Jain were always in possession of the property in question through Mr. Jaithram, who is the caretaker of the property in question, and, therefore, Mr. Nikesh Jain, who is the Power of Attorney of Mr. Hem Chand Jain and Mr. Ramesh Chand Jain has not violated the Orders of the Court.

6. Heard the learned Counsels for the parties and perused the material on record.

7. There are three claimants of the property in question:

- i. Mr. Rajiv Jain, who claims title over the property in question by way of the Will dated 09.11.2020.
- ii. The Appellant herein, who claims title over the property in question by way of the letter dated 01.10.2021.
- iii. Mr. Hem Chand Jain and Mr. Ramesh Chand Jain, who claim title over the property in question by way of the Will dated 21.09.2018.

8. Since all the three parties were claiming stakes over the property in question, learned Single Judge of this Court *Vide* Order dated 12.04.2022 appointed a Local Commissioner to ascertain as to whether who was in possession of the property in question and directed the parties to maintain *status quo*.

9. None of the parties were in physical possession of the property in question at the time of passing of the Order dated 12.04.2022. In the Report of the Local Commissioner it is only the presence of Mr. Jaithram, the caretaker, which is established and admitted by the parties who are claiming their possession in the property in question through him. It is claimed by all the parties that they are paying salary to Mr. Jaithram to look-after the property in question. All the parties have their own material to substantiate that they are paying Mr. Jaithram to look-after the property.



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10. In view of the fact that none of the parties were in actual possession of the property in question on the day of passing of the order dated 12.04.2022 and also the fact that all the parties are claiming their possession in the suit property through Mr. Jaithram, who is the caretaker of the property, which in itself is in dispute, this Court cannot find fault with the Order of the learned Single Judge that it cannot be pin-pointed with certainty as to who was in possession of the property in question. Mr. Jaithram must be enjoying the property in question while getting money from all the parties. In view of the above, this Court does not find any infirmity in the Order dated 04.07.2023, passed by the learned Single Judge. However, this Court is of the view that the confusion regarding possession of the property in question should not continue. The property has to be protected pending the Suit and cannot be left to Mr. Jaithram.

11. This Court gave suggestion to the learned Counsels for the parties that a security agency can be appointed to look-after the property in question. Since there was no objection to the suggestion made by the Court, the parties were directed to give name of a security agency which can be tasked with the protection of the property in question.

12. Learned Counsel for the Plaintiff suggested the name of SIS Group Enterprises. Since there was no consensus between the parties on the name of one security agency, this Court is inclined to appoint SIS Group Enterprises, as the security agency to look after the property in question. The cost of the service provided by the security agency will be shared by all the parties in equal proportions.

13. It is always open for the parties to approach the learned Single Judge for appropriate modification regarding the name of the security agency or for variation of this order regarding the security agency.



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14. With these directions and observations, the appeal is dismissed, along with the pending applications, if any.

SUBRAMONIUM PRASAD, J.

HARISH VAIDYANATHAN SHANKAR, J.

MARCH 28, 2025

Rahul