

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

+ **CM(M) 1167/2009**

% Reserved on: 25th February, 2015
Decided on: 9th March, 2015

BUNDU

..... Petitioner

Through: Mr. Dinesh Kumar, Advocate.

versus

SHAH ALAM & ORS

..... Respondents

Through: Mr. M.U. Khan, Advocate for
Respondent No.2

CORAM:

HON'BLE MS. JUSTICE MUKTA GUPTA

1. The Petitioner/Plaintiff had filed a suit before the learned Trial Court seeking specific performance of an Agreement to Sell of immovable property executed by Respondent/Defendant No.1 in favour of the Petitioner.
2. It was the case of the Petitioner in the plaint that the Respondent No.1 had, in pursuance to the Agreement to Sell, put the Petitioner into possession of the property. Along with the suit, an application under Order 39 Rule 1 and 2 CPC was filed wherein the learned Trial Court passed an order dated 31st March, 1989 directing the parties to maintain status-quo in respect of property bearing Stall No.5, situated at Bengali Market, New Seema Puri, Shahdara, Delhi. The Petitioner claimed that he was dispossessed from the property and on an application of the Petitioner under Order 39 Rule 2A CPC the Respondent No.1 was held guilty and warrants of his arrest were issued. An order directing the Petitioner to be put back into possession of the property was also passed vide order dated 19th February, 2009 and warrants of possession of the suit property were issued on 2nd May, 2009.

The Respondent No.2 filed objections against the order dated 2nd May, 2009 issuing warrants of possession of the suit property on 13th May, 2009 stating that he had purchased the suit property on 18th April, 1989 and was in possession of the suit property since then. He also disclosed that in the suit, he filed an application under Order 1 Rule 10 CPC on 6th April, 2004 but the same was dismissed by the Court on 4th October, 2004. The Respondent No.2 being a bona fide purchaser, he could not be dispossessed from the suit property. The said objections of the Respondent No.2 were allowed vide the impugned order without making any observation regarding the merit of the claim or contention of the plaintiff that principle of lis pendens would apply and hence the present petition. Vide the impugned order the learned Trial Court withdrew the warrants of possession to decide the question of lis-pendens at an appropriate stage and the Respondent No.1 was granted time to appear before the Court.

3. During the pendency of the present proceedings, it was informed that Shah Alam Respondent no.1 has since passed away and the learned counsel for the petitioner stated that he did not want to implead the L.Rs. of Shah Alam which is recorded vide Order dated 23rd January, 2013.

4. Learned counsel for the Petitioner contends that the provisions of Section 52 of the Transfer of Property Act in relation to lis-pendens would apply against the Respondent No.2/Objector and the objections are liable to be dismissed in view of his own admission that he purchased the suit property after institution of the suit and after the status quo order dated 31st March, 1989 was passed by the learned Trial Court. Reliance is placed on Samee Khan vs. Bindu Khan, AIR 1998 SC 2765; Sanjay Verma vs. Manik Roy and others, 2006 (13) SCC 608; Sarvinder Singh vs. Dalip Singh and

others, 1996 (5) SCC 539; Bindu Khan vs. Samee Khan, AIR 1998 Rajasthan 115; Sujit Pal vs. Prabir Kumar Sun and others, AIR 1986 Calcutta 220 and Savitri Devi vs. Civil Judge (Senior Division), Gorakhpur and others, AIR 2003 Allahabad 321.

5. Learned counsel for the Respondent No.2/Objector on the other hand contends that the Objector was not a party to the suit and was not made a party to the suit despite his having filed an application for impleadment and therefore, he cannot be dispossessed from the suit property under Order 39 Rule 2A CPC and only the Respondent No.1 was liable to be proceeded against under Order 39 Rule 2A for whom warrants of arrest had already been issued.

6. Vide the impugned order learned Trial Court has not decided the plea of lis pendens and has noted that the same will be decided at appropriate stage. The impugned order only recalls the order issuing warrants of possession.

7. In Samee Khan (supra) the Supreme Court while dealing with the power of Court under Order 39 Rule 2A CPC in case of breach of injunction held that under Order 39 Rule 2A CPC even if the injunction order was subsequently set aside, the disobedience does not get erased. It may be a different matter that the rigour of such disobedience may be toned down if the order is subsequently set aside. The purpose for attaching the property in case of disobedience of the order of injunction is to compel the opposite party to obey the order of injunction whereas detaining the disobedient party in civil prison is the mode of punishment for his being guilty of such disobedience. It was further held that the words “and may also” in Rule 2A cannot be interpreted in the context as denoting to a step which is

permissible only as additional to attachment of property of the opposite side. If those words are interpreted like that it may lead to an anomalous situation. If the person who defies the injunction order has no property at all the court becomes totally powerless to deal with such a disobedient party and he would be immune from all consequences even for any open defiances of a Court order. Thus the pragmatic interpretation would be, it is open to the Court to attach the property of the disobedient party and at the same time the Court can order him to be detained in civil prison also if the Court deems it necessary. Both steps can be resorted to or one of them alone needs to be chosen. It is left for the Court to decide on consideration of the fact situation in each case.

8. Whether a person not impleaded in the suit and not named in the injunction order can be proceeded against under Order 39 Rule 2A CPC for violation of the order depends upon facts and circumstances of each case. The issue came up for consideration in *Prafulla Kumar Vs. Jaya Krushna Mohapatra & Ors.* AIR 1994 Orissa 173 wherein it was held that an injunction is an equitable relief and it is trite law that equity acts in personam. Therefore, an injunction is a personal matter. The ordinary rule, therefore, is that the person disobeying the order of injunction is to be proceeded for contempt as the person named in the writ. Persons who are not parties where order of injunction is passed are normally not to be proceeded against for disobeying the injunction. However, the exception to this general rule is that where it is alleged and proved that the person who violated the order of injunction was passed, the proceeding can be validly initiated against such person. In such a case the person violating the order can be proceeded against, and also who have acted in abetting violation of

order of injunction. It is, however, to be borne in mind that where a person who is not a party to the suit is proceeded against in order to punish him it is essential that he should be made a party to the proceeding for violation and it should be brought home by sufficient and unimpeachable evidence that he had been guilty of abetting violation of injunction. A party proceeded against for violation of injunction can prove his innocence in the following manner, i.e. by proving that (a) the order was not within knowledge, or (b) the order was ambiguous and was reasonably capable of more than one interpretation or (c) that in fact he did not intend to disobey the order, but conducted himself in accordance with his interpretation of the order.

9. A perusal of the provision of Order 39 Rule 2A CPC and the judgment in Samee Khan's case (supra) would thus provide that the purpose of attachment under Order 39 Rule 2A CPC is that the order of the Court is complied with and the disobedient party is punished. In the present case the disobedient party was Shah Alam, the Defendant in the suit. After the status quo orders were passed by the learned Trial Court on 31st March, 1989 the ownership in the property was passed on to the Respondent No.2 herein. The Respondent No.2 was not a party to the suit. He had in fact moved an application for being made a party under Order 1 Rule 10 CPC which was disallowed. There being no order against the Respondent No.2 herein he could not have been said to have disobeyed the order of this Court and further he cannot be visited with the consequence of attachment of property without being heard. It is for this reason that the learned Trial Court vide the impugned order withdrew the warrants of possession and listed the matter for hearing the parties on the issue of lis-pendens. As held in Samee Khan (supra) the Court has to pass the orders in the facts of each case and given

the facts of this case as Respondent No.2 was not a party to the suit he was required to be heard and thus the impugned order withdrawing the order of attachment cannot be held to be illegal.

10. The plea of lis-pendens etc. being urged by learned counsel for the Petitioner cannot be looked into by this Court as the learned Trial Court has not considered the same in the impugned order and has kept the same pending for consideration.

11. Consequently the petition is dismissed.

(MUKTA GUPTA)
JUDGE

MARCH 09, 2015

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