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

% *Date of Order: 28.05.2019*

+ **F.A.O.No.217/2019 & C.M. No.25040/2019**

AMARJEET SINGH BAMMI Appellant

Through: Mr. Prabhjit Jauhar, Ms. Rosemary
Raju, Ms. Upasana Goel &
Ms.Aishwarya, Advocates with
appellant in person.

Versus

SUKHMANI KAURRespondent

Through: Mr. Praveen Kumar & Mr. Sameer Rai,
Advocates with respondent in person.

CORAM:
HON'BLE MR. JUSTICE VINOD GOEL

VINOD GOEL, J. (ORAL)

1. The impugned order dated 16.05.2019 passed by the court of learned Additional District Juge-03, Shahdara District, Karkardooma Courts, Delhi ('ADJ') in Civil Suit No.351/2019 dismissing the application of the appellant/plaintiff under Order 39 Rule 1 & 2 CPC is the subject-matter of challenge in this appeal. The appellant/plaintiff filed a Civil Suit for permanent injunction against her daughter-in-law/respondent on the ground that he is the owner of the property No.D-16, Ashoka Niketan, Delhi admeasuring 275 sq. mtr.

2. Admittedly, the marriage of the son of the appellant, namely, Chanpreet Singh, with the respondent was solemnised on 31.01.2014 and out of the wedlock, a son, namely, Fatehvir Singh, was born on 10.02.2018. There have been matrimonial disputes between the couple. The appellant filed a complaint on 10.08.2018 with SHO PS Anand Vihar against the respondent for misbehaviour and hurling abuses at him. He lodged another complaint on 15.01.2019 with the police against the respondent.

3. The appellant alleged that in the third week of January, 2019, the respondent left the house along with her son and her belongings and started residing with her parents at B-47, Greater Kailash, Part-I, New Delhi. However on 08.02.2019, the respondent along with her son returned to her matrimonial house to attend a *paath*, a religious ceremony, to celebrate the first birthday of her son. At the end of the first day of the ceremony, she again left her matrimonial house with her valuables and jewellery in three large suitcases. Further, on the third day of the ceremony, she again returned with her parents and her minor son and took more of her belongings and valuables. He alleged that on 10.04.2019, when he and his wife were not present at the house, the respondent along with her two brothers and others entered the house forcibly, whereupon the guard called his son and when his son reached the house, he saw the respondent leaving with all her jewellery and articles in 30 carton boxes. The appellant and his son lodged a complaint on the same day with the Police Station, Anand Vihar. He also alleged that his son, who is the husband of the

respondent, has been residing separately on rent at House No.A-113, Third Floor, Surajmal Vihar, New Delhi-110092.

4. The appellant/plaintiff filed the Civil Suit on 20.04.2019. Notice was ordered to be issued to the respondent for 09.05.2019 and after hearing the arguments, the matter was adjourned to 16.05.2019 when the impugned order came to be passed by the learned ADJ.

5. By the impugned order, the learned ADJ dismissed the application under Order 39 Rule 1 & 2 CPC by observing that “..... *it is very clear that prayer of the plaint is same as prayer in the application under Order 39 Rule 1 & 2 r/w Section 151 CPC. There are same prayer in the main suit as well as application under Order 39 Rule 1 & 2 r/w Section 151 CPC. In these circumstances, the prayer in application under Order 39 Rule 1 & 2 r/w Section 151 CPC cannot be allowed at this stage. Hence, the application under Order 39 Rule 1 & 2 r/w Section 151 CPC is hereby dismissed.*”

6. By impugned order, learned ADJ listed the matter on 16.09.2019 for admission/denial of the documents as well as for framing of issues. Admittedly, no written statement or reply to injunction application has so far been filed by the respondent. The learned counsel for the appellant contends that the respondent who is the daughter-in-law of the appellant has no right, title or interest in the property of the father-in-law in view of the law laid down by the Supreme Court in ***S.R. Batra & Anr. vs. Taruna Batra; (2007) 3 SCC 169***. To buttress his arguments on this point, he further relies upon a

judgment of the Division Bench of the Allahabad High Court in *Chanchal Agrawal vs. Jagdish Prasad Gupta*; AIR 2015 ALL. 28 and a judgment of the Single Judge of this court in *Neetu Mittal vs. Kanta Mittal & Ors.*, AIR 2009 Del 72.

7. To meet out the reasoning given by the Ld.ADJ the learned counsel for the appellant refers to the judgment of the Hon'ble Supreme Court in *Deoraj vs. State of Maharashtra & Ors.*, (2004) 4 SCC 697 wherein it was observed that *'Situations emerge where the granting of an interim relief would tantamount to granting the final relief itself. And then there may be converse cases where withholding of an interim relief would tantamount to dismissal of main petition itself; for, by the time the main matter comes up for hearing there would be nothing left to be allowed as relief to the petitioner though all the findings may be in his favour. In such cases the availability of a very strong prima facie case of a standard much higher than just prima facie case, the considerations of balance of convenience and irreparable injury forcefully tilting the balance of case totally in favour of the applicant may persuade the court to grant an interim relief though it amounts to granting the final relief itself. Of course, such would be rare and exceptional cases. The court would grant such an interim relief only if satisfied that withholding of it would prick the conscience of the court and do violence to the sense of justice, resulting in injustice being perpetuated throughout the hearing, and at the end the court would not be able to vindicate the cause of justice. Obviously such would be rare cases accompanied by*

compelling circumstances, where the injury complained of is immediate and pressing and would cause extreme hardship. The conduct of the parties shall also have to be seen and the court may put the parties on such terms as may be prudent.'

8. *Per contra*, Mr. Praveen Kumar, learned counsel who appears on behalf of the respondent controverts the allegations of the appellant that the respondent has left the house in question in the third week of January, 2019 or that she has taken away her articles in January, 2019 or on 08.02.2019 and 10.04.2019. He submits that the respondent has gone to her parents' house only to meet them and her brothers and there was no intention to desert her matrimonial house. He also submits that in a suit for permanent injunction if the same relief is granted by way of temporary injunction, it will amount to granting of final relief which is not permissible in law. He relies upon the judgment of the Supreme Court in ***State of U.P. & Ors. vs. Ram Sukhi Devi; (2005) 9 SCC 733*** wherein it was held '*To say the least, approach of the learned Single Judge and the Division Bench is judicially unsustainable and indefensible. The final relief sought for in the writ petition has been granted as an interim measure. There was no reason indicated by learned Single Judge as to why the government order dated 26-10-1998 was to be ignored. Whether the writ petitioner was entitled to any relief in the writ petition has to be adjudicated at the time of final disposal of the writ petition. This Court has on numerous occasions observed that the final relief sought for should not be granted at an interim stage. The position is worsened if the*

interim direction has been passed with stipulation that the applicable government order has to be ignored. Time and again this Court has deprecated the practice of granting interim orders which practically give the principal relief sought in the petition for no better reason than that of a prima facie case having been made out, without being concerned about the balance of convenience, the public interest and a host of other considerations. No basis has been indicated as to why learned Single Judge thought the course as directed was necessary to be adopted. Even it was not indicated that a prima facie case was made out though as noted above, that itself is not sufficient. We, therefore, set aside the order passed by learned Single Judge as affirmed by the Division Bench and without expressing any opinion on the merits of the case we have interfered primarily on the ground that the final relief has been granted at an interim stage without justifiable reasons. Since the controversy lies within a very narrow compass, we request the High Court to dispose of the matter as early as practicable, preferably within six months from the date of receipt of this judgment.'

9. I have heard the learned counsel for the parties.

10. Admittedly, the summons of the suit and notice of the application under Order 39 Rule 1 & 2 CPC were served upon the respondent at the residence of her parents at B-47, Greater Kailash, Part-I, New Delhi – 110048. Under Order VIII Rule 1 of the CPC, the defendant/respondent is required to file her written statement within

30 days from the date of service of summons and that stage was not over by the time the impugned order was passed. The learned ADJ has not even asked the respondent to file a reply to the application under Order 39 Rule 1 & 2 CPC and not only dismissed the application of the appellant/plaintiff under Order 39 Rule 1 & 2 CPC but also adjourned the case for admission/denial of documents and framing of issues whereas the pleadings are yet to be completed. The ratio of the judgment in *Deoraj (supra)* is that while deciding the application under Order 39 Rule 1 & 2 CPC, the court is required to see (i) whether the appellant/plaintiff has a strong *prima facie* case in his favour, (ii) whether the balance of convenience of the case is in his favour, (iii) whether the appellant/plaintiff shall suffer any irreparable loss and injury if the injunction is not granted in his favour, and (iv) whether withholding an injunction would prick the conscience of the court and do violence to the sense of justice to the extent that the court would not be able to vindicate the cause of justice.

11. In view of the judgment of the Supreme Court, in *Deoraj (supra)* in a suit for permanent injunction, rejection of the interim relief cannot be a knee jerk response as there might be cases where withholding of an interim relief could tantamount to dismissal of the suit itself; for the relief sought for in the suit, even if decided in the plaintiff's favour, could become infructuous by that time. Therefore, the court is required to apply its mind in terms of the requirements mentioned hereinbefore for disposal of the application under Order 39 Rule 1 & 2 CPC in a suit for permanent injunction.

12. At this stage, it is agreed by the learned counsel for the parties that the matter should be remanded back to the trial court for deciding the application under Order 39 Rule 1 & 2 read with Section 151 CPC on merits after giving opportunity to the respondent to file her written statement and reply to application under Order 39 Rule 1 & 2 read with Section 151 CPC.

13. The respondent is present in court. The learned counsel for the respondent, on instructions, states that till the disposal of the application of the appellant/plaintiff under Order 39 Rule 1 & 2 read with Section 151 CPC by the learned ADJ, the respondent shall not enter or try to enter the suit property except in due course of law. In the circumstances, the respondent is directed to place on record of the trial court her written statement and reply to the application under Order 39 Rule 1 & 2 read with Section 151 CPC on or before 02.07.2019 with an advance copy to the learned counsel for the appellant/plaintiff. The appellant/plaintiff shall file the rejoinder, if any, on or before 10.07.2019. The trial court shall hear the arguments on the application for grant of temporary injunction and decide the same on merits in accordance with law within 30 days on or before 09.08.2019. The respondent shall remain bound by her statement made today in the court. Nothing said or observed in this order shall tantamount to any opinion on the merits of the case.

14. The appeal along with application, being CM No.25040/2019, is disposed of accordingly.

15. A copy of this order be given *dasti* under signatures of the Court Master.

(VINOD GOEL)
JUDGE

MAY 28, 2019
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HIGH COURT OF DELHI



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