

ORDER SHEET.
IN THE ISLAMABAD HIGH COURT, ISLAMABAD.
JUDICIAL DEPARTMENT.

C.R.No.413 of 2016
Noman Ahmed and others
Versus
Mst. Sobia Farooq and others

S. No. of order / proceedings	Date of order/ Proceedings	Order with signature of Judge and that of parties or counsel where necessary.
	21.11.2016	Syed Zafar Abbas Sherazi, Advocate for the petitioners.

Through the instant civil revision petition, the petitioners, who are the legal heirs of (late) Muhammad Aftab Umer, impugn the order dated 27.10.2016, passed by the Court of the learned Civil Judge, Islamabad, whereby the petitioners' application seeking review of the order dated 19.10.2016, was dismissed.

2. This case pertains to a dispute over property between the legal heirs of (late) Muhammad Aftab Umer. His daughter (respondent No.1) is in a dispute with her siblings (respondents No.1 to 5) and her mother (respondent No.6) over properties left by (late) Muhammad Aftab Umer. One such property is House No.807, Street No.64, Sector G-9/4, Islamabad, the lower portion whereof ("the suit property") was occupied by respondent No.1, when she instituted a civil suit for partition etc., against her siblings and mother before the Court of learned Civil Judge, Islamabad. She was also able to obtain an interim injunction restraining the petitioners Nos.1 to 6 from dispossessing her from the suit property. After the grant of the injunctive relief, respondent No.1 complained that she had been dispossessed from the suit property. This caused her to file a petition for contempt of court. The learned Civil Court, after ascertaining that respondent No.1 was not in possession of the suit property, directed the bailiff

(vide order dated 19.10.2016) to put respondent No.1 back in possession of the suit property from which she had been dispossessed. The petitioners challenged the said order in a review petition, which was dismissed by the learned Civil Court, vide order dated 27.10.2016. The said order dated 27.10.2016 has been impugned in the instant civil revision petition.

3. Learned counsel for the petitioners submitted that the injunctive relief granted by the learned Civil Court could operate only for a period of six months; that since the injunctive relief in favour of respondent No.1 had lapsed, there was no hurdle before the petitioners in dispossessing respondent No.1 from the suit property; that the suit for partition etc., is still pending, and respondent No.1's share in the suit property is less than the portion which she has been directed to be put in possession of; that the suit property has already been rented out to a tenant; that until the tenancy expires, respondent No.1 cannot be put in possession of the suit property; that respondent No.1 was refusing to receive her share of the rental from the ground portion of the suit property; and that respondent No.1 had left the suit property on her own volition. Learned counsel for the petitioners prayed for the orders dated 19.10.2016 and 27.10.2016 to be set aside.

4. I have heard the contentions of the learned counsel for the petitioners and have perused the record.

5. The record shows that respondent No.1, (Sobia Farooq), is late Muhammad Aftab Umer's daughter. Respondent No.1 is petitioner No.1 to 5's sister. On 25.07.2012, respondent No.1 instituted a suit for partition, permanent injunction and recovery of her *shar'ai* share in the properties listed in paragraphs 3 to 6 of the suit. One of these properties is House

No.807, Street No.64, Sector G-9/4, Islamabad. Respondent No.1 and petitioner No.1 to 5's late father previously owned this property. Respondent No.1 was in occupation of the lower portion of the said property when she instituted the suit. Petitioners No.1 to 6 contested the suit by filing a written statement. Along with the said suit, respondent No.1 filed an application for interim relief seeking a restraint against the petitioners from interfering with respondent No.1's peaceful possession of the suit property. Vide ad-interim order dated 25.07.2012, injunctive relief was granted to respondent No.1, and the petitioners were restrained from dispossessing respondent No.1 from the lower portion of the suit property. Vide order dated 27.02.2013, the learned Civil Court confirmed the interim relief in favour of respondent No.1. On 26.03.2013, respondent No.1 filed a petition before the learned Civil Court against petitioners No.1, 2, 4 and 5 for initiating proceedings for Contempt of Court. In this petition, it was *inter alia* pleaded that on 02.03.2013 and 03.03.2013, petitioners No.1, 2, 4 and 5 had forced respondent No.1 and her family to leave the suit property in violation of the orders dated 25.07.2012 and 27.02.2013, and that the incident was reported to the police. The learned Civil Court, vide order dated 19.02.2014, directed the bailiff to submit a report regarding the possession of the suit property. Report dated 24.11.2014, showed that respondent No.1 was not in possession of the suit property. Vide order dated 26.07.2016, the learned Civil Court directed the bailiff to immediately take over possession of the suit property from the petitioners and hand the same over to respondent No.1. It seems that the said orders were not complied with.

6. Vide order dated 19.10.2016, the learned Civil Court again directed the bailiff to place respondent

No.1 in possession of the suit property in accordance with the law. Thereafter, the petitioners filed an application for a review of the order dated 19.10.2016. The defence put forward by the petitioners was that respondent No.1 had, on her own accord, left the suit property, which had been rented out until 31.12.2016, and that the order dated 19.10.2016 could not be implemented until the expiry of the lease period. Furthermore, it was averred by the petitioners that the order dated 19.10.2016 was passed without hearing the petitioners. Vide order dated 27.10.2016, the learned Civil Court dismissed the petitioners' application seeking review of the order dated 19.10.2016. The learned Civil Court observed that earlier, vide orders dated 30.05.2015 and 26.07.2016, the bailiff had been directed to put respondent No.1 in possession of the ground floor of the suit property, but to no avail. Furthermore, it was held that as respondent No.1 had been dispossessed during the currency of injunctive relief in favour of respondent No.1, she was entitled to be put in possession of the portion of the suit property from which she was dispossessed. The petitioners in the instant petition have impugned the said order dated 27.10.2016.

7. It has not been denied that the ad-interim injunctive order dated 25.07.2012, was in respondent No.1's favour. It is also an admitted position that the said injunctive relief was confirmed on 27.02.2013, after an *inter-parte* hearing. During the currency of the injunctive orders passed by the learned Civil Court, respondent No.1 was dispossessed from the suit property. This fact was confirmed by the bailiff's report, as mentioned above. In such state of affairs, I am of the view that the learned Civil Court did not commit any jurisdictional error by directing that respondent No.1 be handed over possession of the

portion of the suit property from which she had been dispossessed. It is also a matter of record that such a direction was given by the learned Civil Court on three occasions. These directions are yet to be complied with. The injunctive orders passed by the learned Civil Court in favour of respondent No.1, have, till date, not been set aside.

8. Learned counsel for the petitioners did not dispute that respondent No.1 was in possession of the suit property on the date of institution of the suit. He, however, contended that, respondent No.1 was dispossessed after the lapse of six months of the issuance of the injunctive order. Now, the injunctive order was confirmed on 27.02.2013, whereas the contempt petition was filed by respondent No.1 on 26.03.2013, alleging dispossession at the hands of petitioners No.1, 2, 4 and 5 on 02.03.2013 and 03.03.2013. Since, the alleged dispossession was within a period of six months of the confirmation of the injunctive order, the petitioners cannot escape liability by contending the injunctive order had lapsed in terms of Order XXXIX, Rule 2(B) C.P.C. As it was confirmed by the bailiff in his report that respondent No.1 was not in possession of the suit property, it was the duty of the learned Civil Court to restore the *status quo ante* by putting respondent No.1 back in possession of the suit property. Indisputably the act of dispossession amounts to over-reaching the process of law and it is the duty of the learned Civil Court to protect the rights of the parties as they existed on the date of filing of the suit and the grant of an injunction. In taking this view, I have taken into account the law laid down by the Superior Court in the following cases:-

- (i) In the case of Bakhtawar Vs. Amin (1980 SCMR 89), it has been held as follows:

“6. ... It is well settled that when by contravening an injunction order the party

against whom the order is passed has done something for its own advantage to disadvantage of the other party, it is open to the Court under its inherent jurisdiction to bring back the party to a position where it originally stood, as if the order had not been contravened. The exercise of this inherent power is based on the principle that no party can be allowed to take advantage of his own wrong in spite of the order to the contrary passed by the court. See Ayyammal and another v. Thangavelu Padayachi (AIR 1950 Mad. 317); Maharaj Bahadur Singh v. A. H. Forbes (AIR 1922 Pat. 382), Tile State of Bihar v. Usha Devi and another (AIR 1956 Pat. 455) and Magna and another v. Rustam and another (AIR 1963 Raj. 3). In B. F. Yarghese v. Joseph Thomas (AIR 1957 Trav.-Co. 286) where the Court had already passed a temporary injunction against the defendants but the subsequent action of the plaintiffs in interfering with the subject-matter tended to discredit the temporary injunction, it was held that the Court was justified in granting a temporary injunction at the instance of the defendants ordering the plaintiffs to restore the status quo.”

- (ii) In the case of Saleem-ud-Din Vs. Municipal Committee (2000 SCMR 460), the appellants had violated a *status quo* order that had been issued by the Hon'ble High Court of Sindh. For violating the status quo order, the Hon'ble High Court ordered that the appellants be detained in prison for a term of six months, or until they demolish the construction raised during this subsistence of the *status quo* order. In order to give an opportunity to the appellants to establish their *bonafides*, the Hon'ble Supreme Court accepted the appellants' offer to demolish the construction raised in violation of the *status quo* order, and to pay compensation to the party who had obtained the *status quo* order. Consequently, the appellants' apology was accepted and the order of the Hon'ble High Court to detain the appellants in a civil prison was held in abeyance till such time that the

appellants demolished the construction raised during the subsistence of the *status quo* order.

- (iii) In the case of Muhammad Anwar Vs. Municipal Corporation, Faisalabad (1993 CLC 1851), it was *inter-alia* held by the Hon'ble High Court of Sindh that if a civil court finds that the petitioner was dispossessed/ejected during the subsistence of a *status quo* order, it will certainly direct the restoration of possession to him.
- (iv) In the case of Hameeda Akhtar Vs. Nazir Muhammad (1995 CLC 2020), it was held by the Hon'ble Peshawar High Court that if a party, against whom temporary injunction is issued, disobeys it, after gaining knowledge of the same, such a party can be committed to a civil prison and his property can be attached and sold under Clause (c) of Section 94 read with Order XXXIX Rule 2(3) C.P.C. Furthermore, it was held that even if the *status quo* injunctive order is discharged later, but if a party violates it during the period when it remained operative, the violator can be proceeded against. The Hon'ble High Court ordered that the entire construction raised in violation of the *status quo* order had to be removed and possession was to be restored as it existed on the day when the *status quo* order was issued.
- (v) In the case of Akbar Ali Vs. Muhammad Sabir (1989 MLD 92), it was *inter-alia* held by the Hon'ble Lahore High Court that if an act was done by a party in violation of a temporary injunction, the Court could direct the restoration of *status quo ante*. The Hon'ble High Court directed the petitioners to forthwith deliver possession to the respondent, and to remove the construction raised during the subsistence of the injunctive order. Furthermore, the

petitioners were directed to be detained in a civil prison for a period of one week.

- (vi) In the case of Hazara (Hill Tract) Improvement Trust Vs. Qaisera Ellahi (2005 SCMR 678), it was held that no vested right accrues in favour of a party to claim protection of law, who violates a *status quo* order by raising construction during the subsistence of the same.
- (vii) In the case of Mayo Khan Vs. Bashir Ahmad (2007 MLD 588), it was held that a party which had raised construction in violation of a status quo order, had disentitled itself from discretionary relief from a Court.

9. Reference may also be made to case-law from the Indian jurisdiction:-

- (i) In the case of Sujit Pal Vs. Prabir Kumar Sum (AIR 1986 Cal. 220), it was held that when the plaintiff in a suit for permanent injunction and declaration of tenancy was forcibly dispossessed in violation of an interim injunction, the civil Court could invoke its inherent power to grant temporary mandatory injunction by directing the police to restore possession.
- (ii) In the case of Kailash Chand Gupta Vs. Rukam Singh Yadav (AIR 1998 MP 310), it has been held that when the defendant violates an order of interim injunction granted by the trial Court securing the possession of the plaintiff and forcibly dispossesses the plaintiff, the Court can pass an order of mandatory injunction under Section 151 of C.P.C. for restoration of possession to the plaintiff.
- (iii) In the case of Satish Chandra Vs. Saila Bala (AIR 1978 Cal. 499), it was observed that when a party comes into possession of property violating an order of injunction, it is the duty of

the Court to restore possession, by recourse to its inherent powers under Section 151 C.P.C. The High Court of Rajasthan also, in the case of Magna Vs. Rustam (AIR 1963 Raj. 3) held that Section 151 C.P.C. can be invoked when one of the parties obtained possession, violating an order of injunction. The same view finds acceptance in the cases of Hari Nandan Agrawal Vs. S.N. Pandita (AIR 1975 All. 48), State of Bihar Vs. Usha Devi (AIR 1956 Pat. 455), and Kochira Krishanan Vs. Joseph Desouza (AIR 1986 Ker 63).

10. Consensus of judicial opinion, without divergence, is that Section 151 C.P.C. should also be invoked to effectuate an order validly made by a Court of competent jurisdiction. When unlawful means are adopted by a party, it is plainly the responsibility of the Court to invoke Section 151 C.P.C. to secure the ends of justice, or to prevent abuse of process of Court. That is what the learned Civil Court did by passing the Order dated 19.10.2016, and that is what it was required to do. Hence, the Orders dated 19.10.2016 and 27.10.2016 do not call for interference.

11. To allow the petitioners to retain possession of the suit property on the ground that during the subsistence of the injunctive order, they had rented out the suit property to someone else would amount to putting a premium on lawlessness. When the appellants violated the injunctive order by dispossessing respondent No. 1 they ought to have been aware of the consequences which would follow. The petitioners cannot take shelter behind their own wrong which has been further accentuated by the creation of a tenancy. The jurisdiction to make restitution is inherent in every Court and will be exercised whenever the justice of the case demands.

12. In this view of the aforementioned, the petitioners deserve no indulgence in the discretionary/revisional jurisdiction of this Court. Resultantly, this petition is *dismissed in limine*. Office is directed to transmit a copy of this order to the learned Civil Court.

**(MIANGUL HASSAN AURANGZEB)
JUDGE**

APPROVED FOR REPORTING

Qamar Khan*

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