

## Renu Gulabani vs Rakesh Kumar on 21 April, 2023

**Author: Manmeet Pritam Singh Arora**

**Bench: Manmeet Pritam Singh Arora**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ CONT.CAS(C) 509/2023  
RENU GULABANI

Through: Mr. Soumil Gonsalves,  
Kohli, Advocates

versus

RAKESH KUMAR ..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA  
ORDER

% 21.04.2023 CM APPL. 19769/2023 (for exemption) Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of. CONT.CAS(C) 509/2023

1. This petition has been filed by alleging willful violation of the undertaking given by the Respondent herein to the ADJ, South East District, Saket Courts, Delhi ('Civil Court') on 07.11.2022 in CS DJ No. 79 of 2022.

2. The learned counsel for the Petitioner states that in view of the undertaking given by the Respondent on 07.11.2022, the Civil Court passed the order dated 07.11.2022 permitting the Respondent to continue to occupy the premises till 31.03.2023. He states that however, the Respondent has failed to comply with the undertaking and order dated 07.11.2022 as he has not deposited the admitted rent of Rs. 37,000/- per month for the period from March, 2021 till 31.01.2023.

2.1. He states that in these facts, the Respondent is in contempt of the undertaking given to the Civil Court on 07.11.2022. He also relies on the judgment of the Supreme Court in Urban Infrastructure Real Estate Fund vs. Dharmendesh S. Jain, (2022) 6 SCC 662, to contend that non-payment of the admitted rent by the Respondent would amount to a civil contempt and therefore, this contempt petition has been preferred. 2.2. He states that the Respondent herein after making the statement on 07.11.2022 has failed to make payment of arrears of rent and now the Petitioner herein is being compelled to prosecute a civil suit for recovery of the admitted dues.

2.3. He states that no execution petition for enforcing the order dated 07.11.2022, for the recovery of the dues, nor any application under Order 12 Rule 6 of CPC has been filed seeking a decree for the arrears of rent. 2.4. He states that instead the Petitioner herein has preferred this contempt petition

as the Petitioner is aggrieved by the mockery made by the Respondent of the legal proceeding by not making payment of admitted dues.

3. This Court has considered the submissions of the learned counsel for the Petitioner.

4. The Petitioner herein has filed a civil suit for recovery of possession and arrears of rent from the Respondent. In the said civil suit the Petitioner also filed an application under Order 15-A read with Section 151 of CPC for payment of the arrears of rent and the admitted rent during the pendency of the proceedings. It was in the said application filed under Order 15-A CPC that the order dated 07.11.2022 came to be passed by the Civil Court. The relevant portion of the order dated 07.11.2022 reads as under:

"At this stage, Ld. Counsel for plaintiff presses for disposal of his application under Order 15-A read with Section 151 CPC seeking deposition of arrears of rent with direction to defendant to continue to deposit current rent of the suit property.

It is argued by Ld. Counsel for plaintiff that the suit property bearing No.J- 9, first floor, Lajpat Nagar-III, New Delhi-110024 had been let out to defendant @ rent of Rs.37,000/- per month and the defendant is not paying the rent since June, 2020.

No written reply to the aforesaid application has been filed on behalf of defendant. It is though orally admitted on behalf of defendant that rate of rent of the suit property is Rs.37,000/- per month. It is further contended that rent is due on behalf of defendant since March 2021 instead of June 2020.

Be that at it may, in terms of admission made on behalf of defendant, let admitted rent @ Rs.37,000/- per month since March 2021 till date be paid to the plaintiff on or before 31.01.2023. In the meantime, defendant is directed to continue to pay monthly rent of the suit property to plaintiff by 7th day of each calendar month.

Application under Order 15-A read with Section 151 CPC stands disposed off accordingly."

(Emphasis supplied)

5. The matter was thereafter listed on 31.01.2023, wherein it was brought to the attention of the Civil Court that the Respondent has defaulted in complying with the directions of payment of arrears of rent issued vide order dated 07.11.2022.

6. The Civil Court after hearing the parties, struck off the defence of the Respondent herein in accordance with the provisions of the Order 15-A of CPC, due to non-compliance of the order dated 07.11.2022. In addition, the Civil Court recorded in its order dated 31.01.2023 that the Respondent herein offered to vacate the premises in view of his inability to make payments. The order dated 31.01.2023 reads as under:

"It is submitted by both the Ld. Counsels that matter could not be settled between the parties before the Mediation Centre.

Ld. Counsel for plaintiff submits that in terms of previous orders, defendant was directed to pay arrears of admitted rent since March, 2021 @ Rs.37,000/- per month and to continue to pay monthly rent of the suit property which he failed to comply with. As such, Ld. Counsel for plaintiff has orally made application under Order XV-A CPC for striking off defence of defendant.

Ld. Counsel for defendant submits that defendant is willing to vacate the suit property by 31.03.2023 in terms of previous undertaking. However, arrears of rent could not be paid owing to financial crisis. Since, defendant has failed to pay the admitted arrears of rent as well as regular rent and failed to show cause any justifiable reason for non-striking off the defence in this case, the defence of defendant stands struck off in terms of Order XV-A CPC."

(Emphasis supplied)

7. Thereafter on the next date of hearing before the Civil Court i.e., on 15.03.2023, the Respondent appeared before the Court and deposited the keys of the vacated property in the Court. However, since the Petitioner herein had an apprehension with respect to the physical status of the property, a local commissioner was appointed at the request of the Petitioner at his (Petitioner's) own costs. A separate statement of the Respondent was also recorded on the said date. The relevant portion of the order dated 15.03.2023 reads as under:

"Since possession of suit property is handed over by the defendant today and key of the property in question is deposited in the Court, prayer clause

(a) of plaint stand satisfied. Now, the suit shall continue on merits with respect to other reliefs on date already fixed i.e. 18.04.2023.

At this stage, Ld. Counsel for plaintiff has pressed above- mentioned application for appointment of Ld. Local Commissioner to hand over the key of the suit property to plaintiff, to visit suit property and prepare detailed report regarding condition of the property and furniture and fitments as provided in Annexure '1' of Hire Agreement dated 15.06.2019. Ld. Counsel for defendant submits that he has no objection if present application is allowed, provided that expenses of Ld. Local Commissioner are to be borne by the plaintiff only."

(Emphasis Supplied)

8. In pursuance of the order dated 15.03.2023, the local commissioner visited the tenanted premises, reported a satisfactory physical condition of the premises and handed over the vacant possession of the premises to the Petitioner herein. The local commissioner's report dated 18.04.2023 is also on record.

9. In the aforesaid manner, the order dated 07.11.2022, which was passed by the Civil Court under Order 15-A of CPC was duly given effect to in accordance with the provisions of the Order 15-A CPC.

10. The two material things that transpired thereafter (i.e., 07.11.2022) was that the Respondent, who was unable to continue to pay the rent, without any undue delay or opposition in the legal process and on his own volition vacated the premises on 15.03.2023. Further, the consequence of the non-compliance of a direction issued on 07.11.2022 under Order 15-A of CPC was also given effect to by the Civil Court by striking of the Respondent's defence.

11. In fact, the Civil Court itself on 15.03.2023 after recording the handover of possession set down the matter for recording of evidence for prayer clause (b) in the plaint.

12. In these facts and circumstances, this Court is of the view that the Respondent has not acted in willful disobedience of the order dated 07.11.2022.

13. This Court is also unable to appreciate the contention of the Petitioner that the order dated 07.11.2022 is an undertaking, as it is evident from a perusal of the said order that only an admission with respect to the rate of rent was made by the Respondent, however no undertaking was given by Respondent to pay the arrears nor accepted by the Civil Court. The order of the Civil Court is a direction to the Respondent to pay the arrears and the Respondent on the following date on 31.01.2023 appeared and stated that he does not have the financial means to pay the amount. The Petitioner has been unable to explain or justify non-filing of the execution petition for recovery of the arrears of the rent in pursuance to the order dated 07.11.2022; unless the Petitioner herein as well apprehends that the Respondent has no financial means to make the payment of arrears.

14. In the opinion of this Court the reliance placed by the Petitioner on the judgment of Urban Infrastructure (supra), is not attracted in the facts of the present case where the proceedings emanate from Order 15-A of CPC. In the judgment of Urban Infrastructure (supra), the Petitioner therein had sought extension of time from the Court to deposit the money and in the orders granting extension of time, the Court had cautioned the said Respondent with the consequences of non-compliance, more specifically, in the order dated 28.10.2021 therein.

15. It is also noticed that in the said case, the subject matter was an 'execution proceeding' and the contemnors therein, while appearing in the execution petition had been successively seeking extensions of time and the Court was therefore, of the opinion that the conduct of the contemnors therein amounted to obstruction of the execution proceedings. The paragraph 13 of the said judgment reads as under:

"13. Having taken the benefit of the extensions for a period of approximately two years and more, thereafter, it is not open for the respondents to contend that since they have not deposited the amount as per the order dated 8-8-2019, necessary consequences under Section 36 of the 1996 Act shall follow and the executions proceedings have to be proceeded further. As observed hereinabove, the execution proceedings have been delayed in view of the interim order dated 8-8-2019 and the

subsequent extension granted by the High Court, which were at the behest of the respondents. The respondents herein have had the benefit of extensions of time being granted for depositing the amount as per order dated 8-8-2019 and consequently have successfully obstructed the execution proceedings for over two years. Having done so, the respondents cannot now be permitted to contend that there was no mandatory direction to comply with the order dated 8-8-2019 passed by the High Court. Such a conduct on the part of the respondents is nothing but an abuse of process of law and the Court, which is deprecated. At this stage, it is required to be noted that even the order passed by the High Court passed in chamber summons directing the respondents to disclose their assets was even not complied with for a period of approximately two years. This demonstrates the intention and the conduct on the part of the respondents to disregard and disrespect the orders passed by the High Court."

(Emphasis Supplied)

16. However, in contrast, as observed by this Court hereinabove, the Respondent herein has neither obstructed the proceedings before the Civil Court nor made any attempt to perpetuate his occupation of the tenanted premises. The Respondent herein being aware of his inability to make the payment, duly vacated the tenanted premises on his own accord and handed over the keys to the Respondent herein. Therefore, in the opinion of the Court has not acted in willful disobedience of the order dated 07.11.2022; and as observed above there was no undertaking of the Respondent in the order dated 07.11.2022 with respect to payment of arrears.

17. The Respondent has pleaded financial inability to pay the arrears and the said plea will be examined and tested by the Civil Court in the execution proceedings, as and when filed by the Petitioner.

18. Accordingly, this Court finds no grounds for proceeding in this matter and the present petition is dismissed.

19. The Petitioner is however at liberty to avail his remedy of execution and for filing an application for judgment on admission for the arrears of rent, in accordance with law.

MANMEET PRITAM SINGH ARORA, J APRIL 21, 2023/rk/aa