

Vishnu Khanna vs Avinash Kapoor & Ors on 6 January, 2023

Author: Prateek Jalan

Bench: Prateek Jalan

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* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CS (OS) 690/2022

VISHNU KHANNA

Through:

Mr. Arjun
Ms. Sambhavi
[8585992668].

versus

AVINASH KAPOOR & ORS.

..... Defe

Through: Mr. Vaibhav Dang, Advocate.

CORAM:

HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

% 06.01.2023 I.As. 18306/2022 (for ad-interim ex-parte injunction), 22352/2022 (contempt of court), I.A. 180/2023 (enable plaintiff's ingress and egress into the property)

1. Issue notice. Mr. Vaibhav Dang, learned counsel, accepts notice on behalf of the defendants/contemnors.
2. The contemnors are directed to file replies to these applications within two weeks.
3. The plaintiff alleges non-compliance by the defendants/contemnors of the order dated 11.11.2022, by which the Court inter alia directed as follows:

"26. During the hearing, learned counsel for plaintiff has drawn the attention of this Court to photographs showing that the main gate which has access to suit property has been locked by defendants. This contention is vehemently opposed by Mr. Vaibhav Dang, learned counsel appearing on behalf of defendants. He categorically submits that no lock has been put on behalf of defendants on the front gate as per the photographs filed on behalf of plaintiff. Learned counsel for defendants submits that there has been no obstruction on behalf of defendants to the ingress and egress of plaintiff herein to rear portion of the first floor. The aforesaid submission on behalf of defendants is taken on record and the defendants shall be bound by their undertaking."

4. It is contention of the plaintiff that he attempted to access the first floor rear flat of the building constructed at E-14/7, Vasant Vihar, New Delhi, 110057 [hereinafter "the said flat"] on 08.12.2022, but was not so permitted by the defendants-contemnors. It is stated that the defendants had put their lock on the main door of the said flat. The plaintiff sought police assistance but despite the intervention of the police, the defendants prevented access to the said flat.

5. Mr. Dang, who appears on advance notice, does not dispute the factual contention that a lock has been placed on the said flat by the defendants, although he states that the lock was placed prior to the order dated 11.11.2022. He also does not dispute that the defendants have, in fact, not permitted the plaintiff access to the said flat despite the order dated 11.11.2022. It is his contention that the order dated 11.11.2022, in fact, pertains to access through the main gate of the property E-14/7, Vasant Vihar, New Delhi, 110057, and not to access to the said flat. Mr. Dang further submits that no such relief was sought by the plaintiff at all.

6. I am prima facie of the view that the aforesaid contentions of Mr. Dang are incorrect. It may be noted that the reliefs sought in the suit include access of the plaintiff into the said flat. Prayer "a" in the suit reads as follows:

"a. Pass an order / decree of Permanent Injunction in favour of the Plaintiff and against the Defendants thereby restraining the Defendants No.1, No.2, No.3 and No.4 and their legal representatives, nominees, assignees, administrators, executives, agents, domestic help, employees, personnel from interfering or causing impediments in the ingress and egress of the Plaintiff into the property at First Floor (rear flat), ad-measuring 1,110 square feet/ 103.12 sq. m. in the building constructed on a plot of land at E-14/ 7 Vasant Vihar, Delhi 110057 admeasuring 400 square yards/ 334.45 square meters."

[Emphasis supplied]

7. On similar lines, the plaintiff's application under Order XXXIX Rule 1 and 2 of Code of Civil Procedure, 1908, also pertains to the plaintiff's claim for a right of ingress and egress into the said flat. The argument that no such relief has been claimed, is, therefore, untenable and, in fact, a misleading argument.

8. Mr. Dang's submission that the order dated 11.11.2022 does not pertain to access to the said flat, but is in respect of the lock placed by the defendants on the main gate of the property also prima facie appears to be incorrect. While the Court, in paragraph 26 of the said order, noted above, has recorded the submissions of the parties with regard to access to the main gate of the property itself, the operative portion of the order clearly covers access to the said flat, which is the subject matter of the suit. This is clear from the following paragraphs of the order:-

"22. On the other hand, learned counsel for plaintiff submits that first floor rear portion flat was in the possession and title of late Dr. Pushpa Khanna from the builder which the builder got pursuant to Collaboration Agreement dated

05.09.1988.

23. Learned counsel for defendants does not dispute the fact that late Dr. Pushpa Khanna was residing on first floor flat in rear portion for last 32 years till her demise in the year 2021.

24. On query from learned counsel for defendants, learned counsel for defendants submits that there is no independent litigation that has been initiated on behalf of defendants wherein they had challenged the right, title and interest of late Dr. Pushpa Khanna except appeals that were filed on behalf of defendants challenging the various orders emanating from various proceedings. He, however submits that objection to title of late Dr. Pushpa Khanna was taken in the proceedings viz CS No. 169/2020 and in Testamentary case 21/2022 and also other prior easements wherein disputes were pending between late Dr. Pushpa Khanna and defendants herein.

25. This Court has considered the submissions made on behalf of both the parties. The fact remains that late Dr. Pushpa Khanna resided in suit property for a period of 32 years right from 1989 till 2021. Learned counsel for defendants has very candidly submitted that till her demise, the title of late Dr. Pushpa Khanna was never challenged by way of any litigation initiated on behalf of defendants. The defendants may take all objections that are available in law in their written statement, which shall be considered by this Court at the appropriate stage.

26. During the hearing, learned counsel for plaintiff has drawn the attention of this Court to photographs showing that the main gate which has access to suit property has been locked by defendants. This contention is vehemently opposed by Mr. Vaibhav Dang, learned counsel appearing on behalf of defendants. He categorically submits that no lock has been put on behalf of defendants on the front gate as per the photographs filed on behalf of plaintiff. Learned counsel for defendants submits that there has been no obstruction on behalf of defendants to the ingress and egress of plaintiff herein to rear portion of the first floor. The aforesaid submission on behalf of defendants is taken on record and the defendants shall be bound by their undertaking."

[Emphasis supplied]

9. I do not find any ambiguity in the order of this Court. While the plaintiff's application for injunction remains pending, the Court has clearly granted ad-interim relief permitting his ingress and egress to the said flat.

10. It may be mentioned that the aforesaid order dated 11.11.2022 was challenged by the defendants/contemnors in FAO(OS) 148/2022 which has been dismissed as withdrawn vide an order dated 21.12.2022. The relevant extracts of the order of the Division Bench are as follows:

"After some arguments, learned counsel appearing on behalf of the appellants seeks leave to withdraw this appeal with liberty to file an appropriate application, including an application within the meaning of provisions of Order VII Rule 11, CPC, before the learned Single Judge at the first instance.

Leave and liberty granted.

The appeal is dismissed as withdrawn and disposed of accordingly. However, in the facts and circumstances of the case, antecedent and attendant and in the interest of justice, we extend the time granted by the learned Single Judge, to the appellants to file the written statement, as well as, reply to the applications pending adjudication before the learned Single Judge.

Let the reply be filed within a period of five working days from today i.e., 21.12.2022.

Learned counsel appearing on behalf of the respondent, on advance notice, does not oppose the extension of time granted to the appellants, to complete the pleadings, in terms of the directions contained in the order dated 11.11.2022 passed by the learned Single Judge."

[Emphasis supplied]

11. The order dated 11.11.2022 thus remains in force. Liberty has been granted by the Division Bench to the defendants to move an application under Order VII Rule 11 of the CPC, which Mr. Dang states has already been filed.

12. In these circumstances, I am prima facie of the view that the plaintiff is entitled to the benefit of the order dated 11.11.2022, to the extent that it permits his ingress and egress to the said flat. The defendants are directed to permit the plaintiff to access the rear flat on the first floor of the suit property [E-14/7, Vasant Vihar, New Delhi-110057], in terms of the order dated 11.11.2022, subject to further orders to be passed in the pending applications. The defendants are directed to either to remove the lock placed by them on the door of the said flat, or to give the key of the said lock to the plaintiff to enable his ingress and egress to the said flat.

13. As sought in I.A. No. 180/2023, the plaintiff is also at liberty to seek assistance of the jurisdictional police station in this regard, and the SHO of the police station is directed to render such assistance to the plaintiff, as may be necessary for this purpose.

14. List before the Joint Registrar on the date already fixed, i.e. 22.02.2023.

15. List CS(OS) 690/2022, and all pending applications, before the Court on 27.03.2023.

16. A copy of this order be given Dasti under the signatures of the Court Master.

PRATEEK JALAN, J JANUARY 06, 2023 'Bhupi' /