

Shyam Sahni vs Arjun Prakash on 19 March, 2020

Equivalent citations: AIRONLINE 2020 SC 380

Author: R. Banumathi

Bench: R. Banumathi, Ashok Bhushan, A.S. Bopanna

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 2210 OF 2020
(Arising out of SLP(C) No.9322 of 2019)

SHYAM SAHNI

VERSUS

ARJUN PRAKASH AND OTHERS

...Ap

...Respon

JUDGMENT

R. BANUMATHI, J.

Leave granted.

2. This appeal has been filed assailing the impugned judgment and final order dated 01.08.2018 passed by the High Court of Delhi at New Delhi in FAO (OS) No.210 of 2017 in and by which the Division Bench of the High Court has set aside the order of the learned Single Judge and allowed the appeal filed by respondent No.1 (defendant No.4) herein by holding that the passport of respondent No.1 (defendant No.4) ought not to have been ordered to be detained and further directed return of the passport of

3. Brief facts which led to filing of this appeal are as follows:-

Reason:

The appellant filed a civil suit being CS (OS) No.1134 of 2008 before the High Court seeking declaration, permanent injunction and possession of the suit property being the first and second floor of the residential house constructed upon Plot No.68, Friends Colony (West), New Delhi. Alternatively, appellant has sought the partition of the suit property. Case of the appellant is that in 1954, Late Niamat Sahni acquired Plot No.68, Friends Colony (West), New Delhi, measuring 3000 sq. yards from Friends Colony Cooperative Housing Building Society Limited wherein, she

constructed a main building having a ground floor and first floor. Niamat Sahni herself and with her son Shyam Sahni (appellant) and his family were residing in the ground floor. Soon after the demise of Niamat Sahni, the appellant came to know that Sarabjit Prakash and respondent No.1 have executed documents purporting to be sale deeds and other documents in their favour or in favour of other persons qua first floor and second floor and terrace in the residential building constructed upon 68, Friends Colony (West) New Delhi belonging to mother of the appellant, the appellant has filed a civil suit seeking declaration, possession and permanent injunction and also for partition in CS (OS) No.1134 of 2008 which is pending at the stage of cross-examination of the defendants witnesses.

4. Respondent No.1 resisted the suit contending that first respondent's mother Usha Prakash took physical possession of the first floor and terrace and the second floor in 1974 and the same was let out. On 13.08.1984, Niamat Sahni made a registered will in Hindi dividing equal shares between her son- appellant Shyam Sahni and her daughter Usha Prakash (mother of respondent No.1). On 23.12.1992, Niamat Sahni also made another registered will in English which was identical to her previous will made in 1984. It is stated that on 06.12.1999, an Irrevocable Memorandum of Family Settlement was signed between the appellant and Usha Prakash (mother of respondent No.1) which was confirmed by Niamat Sahni thus, dividing 50% of the undivided share in the plot of land between her son and daughter. According to respondent No.1, as per settlement, ground floor of the suit property was given to the appellant with the entire parking, garages and servant quarters on the left side of the property; while the first floor and also subsequent floors (with entire parking and front entrance on the right side of the suit property) were given to Usha Prakash-mother of respondent No.1. According to respondent No.1, the family settlement dated 06.12.1999 is an irrevocable Family Settlement between the appellant and Usha Prakash and was also acted upon dividing the suit property by meets and bounds. Respondent No.1 has further stated that Niamat Sahni had executed a General Power of Attorney on 03.01.2002 and pursuant to the said Power of Attorney, Usha Prakash sold three flats on the second floor to separate parties and first floor to her husband Sarabjit Prakash by way of separate registered sale deeds. On 26.06.2005, Usha Prakash passed away due to cancer.

5. Respondent No.1 further stated that in October, 2007, M/s. Soul & Attires Creations Private Limited (a company formed by first respondent, his wife and his father Sarabjit Prakash) took a term loan for Rs.4.25 crores from Bank of India. Sarabjit Prakash also stood as the Guarantor for the said project funding loan from the Bank of India and an equitable mortgage has been created on the first floor of the property as the secondary collateral security to Bank of India as per RBI guidelines. In the written submission, first respondent has further alleged that the appellant had filed a civil suit being CS (OS) No.1134 of 2008 concealing the factum of irrevocable Memorandum of Family Settlement on 06.12.1999. In October, 2008, an additional Working Capital Limit (stated to be against Stocks and Book Debts) was granted to the aforesaid company by the Bank of India for Rs.5 crores. By end of 2009, the account of M/s. Soul & Attires Creations Private Limited was declared as Non-performing Assets by Bank of India and Bank of India took physical possession of the first floor on 31.10.2011. Since the loan has become Non-performing Assets, Bank of India had filed O.A. No.297 of 2011 before DRT, New Delhi and the same was decreed by DRT and RC No.172/2012 was

issued by the Bank of India and the recovery proceedings are still going on before the Recovery Officer.

6. The grievance of respondent No.1 is that the loan facility was availed and equitable mortgage was created even in the first week of October, 2007 much prior to the ex-parte order dated 02.06.2008. Further grievance of the first respondent is that they were not heard before granting the ex-parte stay on 02.06.2008.

7. The learned Single Judge vide order dated 02.06.2008 granted interim injunction restraining the defendants from selling, alienating or creating any third party rights in the suit property. Taking note of the plaint averments that defendant No.1-Sarabjit Prakash and respondent No.1 are raising further construction on the suit property and they have been creating documents executed by Usha Prakash and other defendants, the learned Single Judge found that the balance of convenience lies in favour of the appellant-plaintiff thereby, granted the ex-parte order of stay on 02.06.2008.

8. Aggrieved by the disobedience of the injunction order by the defendants, the appellant filed an application being I.A. No.19801 of 2011 under Order XXXIX Rule 2A CPC read with Sections 10 and 12 of the Contempt of Courts Act for breach of injunction order dated 02.06.2008. It is alleged that in spite of above injunction order, respondent No.1 (defendant No.4) and defendant No.1 (Sarabjit Prakash) who is father of respondent No.1 availed financial facilities from Bank of India by mortgaging the first floor of the suit property to the tune of Rs.4.20 crore to Rs. 5.20 crore which was enhanced on two different occasions i.e. when the defendants created charge over suit property to Rs.9.24 crore and later on, to Rs.11 crore.

9. The contempt petition was heard by the learned Single Judge on various dates and number of orders came to be passed. Though number of orders have been passed, we will only refer to those of the orders which are relevant for consideration of this appeal. On 05.12.2011, when the matter came up for hearing, learned Single Judge confirmed the injunction order dated 02.06.2008 directing the parties to maintain status-quo with respect to the suit property. In the subsequent hearing, by order dated 21.05.2013, learned Single Judge held defendant No.1 guilty of contempt and directed defendant No.1 and defendant No.4-respondent No.1 to appear before the Court disclosing the list of assets. On 02.07.2013, both defendant No.1 and defendant No.4-respondent No.1 submitted that the charge so created on the suit property will be cleared by them within four months from their own funds and resources. Accordingly, the Court directed defendant No.1-Sarabjit Prakash and respondent No.1-defendant No.4 to file an undertaking in this regard. The said direction was complied with and both of them submitted their respective undertakings on 15.07.2013. However, on 16.12.2013, Court recorded that despite submitting their undertaking to that effect, both Sarabjit Prakash and respondent No.1 (defendant No.4) have failed to comply with the undertakings given by them.

10. Being aggrieved, appellant filed I.A. No.41 of 2013 under Order XXXIX Rule 2A read with Section 151 of CPC with Sections 10 and 12 of the Contempt of Courts Act against respondent No.1 (defendant No.4) and his father Sarabjit Prakash (defendant No.1) for not complying with the respective undertaking/statement. Respondent No.1 along with his father Sarabjit

Prakash-defendant No.1 filed a joint reply pleading their insolvency and difficulties in clearing the charge and furnished another undertaking to clear charge over suit property from the amount received from selling the suit property and another property at 33, Sundar Nagar, New Delhi. In the meanwhile, defendant No.1 died on 28.10.2015.

11. On the next date of hearing, the Court recorded that respondent No.1 (defendant No.4) had left Delhi and shifted to Singapore with his family and counsel for respondent No.1 was directed to file fresh address of respondent No.1 along with the relevant documents to establish the proof of his residence. The said direction was again reiterated on 28.07.2016. Respondent No.1 filed an affidavit wherein he claimed that he is still living in Delhi and did not mention his Singapore resident details. On the next date of hearing i.e. on 29.09.2016, the Court recorded that respondent No.1 has till date not liquidated the amount as stated by him, therefore, his personal presence was directed in the court on 04.11.2016. Despite such direction, respondent No.1-defendant No.4 was not present before the court and on the next date of hearing i.e. on 13.02.2017, the proceedings were set ex-parte qua respondent No.1.

12. On 02.03.2017, the court recorded that the charge on the suit property has still not been cleared till date and respondent No.1- defendant No.4 was asked to deposit his passport and furnish security. Accordingly, respondent No.1-defendant No.4 offered three properties situated in Amritsar owned by his mother-in-law (Rama Khanna) as a security and his passport was deposited in the custody of Court Master. Respondent No.1 thereafter filed an undertaking to the effect that passports of his family members be revoked and proceedings for extradition can be initiated on his not returning to India. The court vide order dated 22.03.2017 accepted the undertaking given by respondent No.1 and directed the Court Master to hand over the passport to respondent No.1 and court directed him to appear on 26.05.2017. Adopting the same attitude, respondent No.1 did not comply with the undertaking furnished by him this time. Noting non-compliance of the earlier order and noticing breach of repeated undertakings given by him, by order dated 26.05.2017, the Court restrained him from leaving the country and directed him to deposit his passport with the Assistant Registrar.

13. Aggrieved by the order dated 26.05.2017, respondent No.1 filed I.A. No.6907 of 2017 seeking recall of the order dated 26.05.2017. As the matter was listed, respondent No.1 once again did not mark his presence before the Court. It was informed to the Court by the counsel appearing on behalf of respondent No.1 that he had not left the country as directed by the Court vide order dated 26.05.2017 and that the passport of respondent No.1 would be deposited today itself. Vide order dated 30.05.2017, learned Single Judge in Para (5) of the order directed the Registry to send communication relating to his passport details to the concerned authorities in terms of Para (4) of the order dated 26.05.2017. Under the same order, respondent No.1 was restrained from leaving the country and the matter was adjourned. It was later revealed from the inspection of court file that a report from the Immigration Department was received reflecting that respondent No.1 was detained while returning to India on 05.07.2017.

14. The appellant once again filed an application being I.A. No. 7557 of 2017 under Order XXXIX Rule 2A CPC read with Section 151 of CPC with Sections 10 and 12 of the Contempt of Courts Act

seeking initiation of contempt proceedings and for appropriate directions against respondent No.1.

15. Respondent No.1 thereafter approached the Division Bench of the High Court by filing FAO (OS) No. 210 of 2017 challenging the Para (4) of the order dated 26.05.2017 and Para (5) of the order dated 30.05.2017 passed by the learned Single Judge. Vide impugned judgment, the Division Bench allowed FAO (OS) No.210 of 2017 by holding that the bank with which the charge was created on the property was not a party before the learned Single Judge and that there was no reason to take any coercive steps against respondent No.1-defendant No.4 for his failure to honour his commitment qua the bank. Likewise, there was no reasonable justification to impose any restriction like retention of passport and the Division Bench directed return of the passport to respondent No.1-defendant No.4. Aggrieved by the order of the Division Bench, the appellant came before us.

16. Learned Senior counsel for the appellant has contended that upon initiation of contempt proceedings by the appellant, respondent No.1 gave an unconditional undertaking to clear the charges created over a portion of the suit property within four months; however, such undertaking turned out to be mere words and no such charge was cleared by the first respondent within the period which he has undertaken. It was submitted that respondent No.1 was repeatedly giving evasive replies and undertakings; but failed to comply with the same. Drawing our attention to the affidavit dated 27.08.2016, learned Senior counsel for the appellant has submitted that in the said affidavit, respondent No.1 has stated that he is still residing in Delhi, when in fact he had already shifted along with his family to Singapore in May, 2016 itself. Learned Senior counsel further submitted that the present case is not a case of impounding of passport; rather the present case is where the learned Single Judge directed respondent No.1 to deposit the passport as per his undertaking in terms of his affidavit dated 10.03.2017 so as to ensure the presence of respondent No.1 since the Court was of the view that respondent No.1 would leave India for Singapore. It was contended that while dealing with the contempt petition, in order to ensure compliance of the orders of the Court and make sure that the parties adhere to the undertakings filed before the Court, the Court has the power to direct deposit of the passport and the Division Bench erred in setting aside the order of the learned Single Judge.

17. Per contra, learned counsel appearing for the respondents has submitted that respondent No.1 and his father Late Sarabjit Prakash has made all the efforts to clear the bank dues; but due to unavoidable circumstances, they could not clear the charge. The learned counsel submitted that the equitable market value of the suit property No.68, Friends Colony (West), New Delhi was made even in October, 2017 much prior to the alleged ex-parte stay order dated 02.06.2008. It was submitted that the learned Single Judge was not right in passing various orders restricting the jurisdiction of the DRT for recovery of the Bank dues when the Bank of India is not made a party to the suit. It was further submitted that there is already an order of status-quo passed in the suit being CS (OS) No.1134 of 2008 and therefore, there was no need for the learned Single Judge to direct respondent No.1 to deposit his passport and issue direction for not leaving the country. It was submitted that in 2012, the bank sought the permission of the Court to sell the first floor to recover its dues but the bank did not pursue and resultantly, the said application was dismissed and while so, it was not justified for the learned Single Judge to take the burden of the bank and directing respondent No.1 to clear the dues. It was submitted that coercive directions given by the learned Single Judge

compelling respondent No.1 to clear the dues was not warranted and rightly set aside by the Division Bench and the impugned order does not warrant interference.

18. We have carefully considered the submissions of both the sides and perused the impugned judgment and other materials on record.

19. Sarabjit Prakash was directed to be personally present before the Court on 30.05.2013. On the next date of hearing i.e. 30.05.2013, Sarabjit Prakash was not present in the Court and the matter was listed for 02.07.2013. By the order dated 02.07.2013, Sarabjit Prakash (defendant No.1) and respondent No.1-defendant No.4 who were present in the Court stated that if four months' time is given to them, they will ensure that the dues of Bank of India are discharged and part of the suit property which is charged with the Bank of India namely, First floor of 68, Friends Colony (West), New Delhi, shall be freed of all charges/encumbrances. Sarabjit Prakash and respondent No.1 have also stated that they will file appropriate affidavit to that effect and on such statement, the contempt petition was kept in abeyance for four months. Accordingly, Sarabjit Prakash and respondent No.1 have filed affidavit of undertaking before the Court on 15.07.2013 undertaking that they will clear the dues of Bank of India when the property bearing No.68, First Floor, Friends Colony (West), New Delhi shall be freed of all charges/encumbrances within a period of four months and that they will make arrangement of the loan amount to be paid to the Bank of India from other moveable and immoveable properties in the name of Sarabjit Prakash.

20. When the matter was taken up by the Court, the Court noted that as per undertaking, the amount has not been paid to the Bank and Sarabjit Prakash and respondent No.1 have failed to clear the charge over the suit property as per undertaking. The appellant again filed I.A No.41 of 2013 under Order XXXIX Rule 2A against Sarabjit Prakash and respondent No.1 for not complying with the respective undertaking/statement made before the Court. On 24.01.2014, Sarabjit Prakash and respondent No.1 filed a joint reply stating that due to unavoidable circumstances, they are unable to clear the charge over the suit property and undertaking to clear the charge over the suit property from the amount received from 33, Sundar Nagar, New Delhi.

21. On application filed by the appellant in I.A. No.21764 of 2015, on 20.10.2015, the High Court directed that amount of Rs.3.50 crores will not be utilized by Sarabjit Prakash and respondent No.1 except to the extent of meeting the medical expenses of Sarabjit Prakash. One week after the above order, Sarabjit Prakash passed away on 28.10.2015 at Apollo Hospital, New Delhi due to multiple heart arrests.

22. On 28.07.2016, the Court directed respondent No.1 to furnish his current address and also the extent of bequest in his favour to the estate of deceased Sarabjit Prakash. It is alleged by the appellant that respondent No.1 filed a false affidavit claiming to be residing at B-334, New Friends Colony, Ground floor, Delhi without disclosing the Singapore address. On 02.03.2017, the Court recorded that the encumbrances on the suit property were not cleared till date and directed respondent No.1 to deposit his passport and furnish the security. On the next date of hearing i.e. 07.03.2017, respondent No.1 offered three properties owned by his mother-in-law (Rama Khanna from Amritsar) by depositing title deeds stating that he has no other security to offer. Observing that

respondent No.1 has failed to comply with his undertakings/statements, on 26.05.2017, the learned Single Judge directed respondent No.1 to deposit his passport and made an order restraining respondent No.1 from leaving India.

23. According to respondent No.1, he has shown his bonafide by producing additional security before the Court by depositing original title deeds of three properties belonging to his mother-in-law (Rama Khanna from Amritsar) to the tune of Rs.4.45 crores. Learned counsel for respondent No.1 has submitted that equitable mortgage of the suit property (i.e. 68, Friends Colony (West), First Floor, New Delhi) was made even in the first week of October, 2007 which was much prior to the ex-parte stay order dated 02.06.2008. Learned counsel further submitted that in October, 2008, additional Working Capital was granted to the company-M/s. Soul & Attires Creations Private Limited for Rs.5 crores (against Stock and Book Debts) as per banking regulations. According to respondent No.1, this enhanced limit is never a loan against the property; but only against Stocks and Book Debts. Learned counsel appearing for respondent No.1 has submitted that respondent No.1 is a bonafide legal owner of the suit property by means of registered will made in his favour by his father-Sarabjit Prakash dated 29.09.2006 who had the legal title in his name by way of registered sale deed executed by his wife Usha Prakash in exercise of the power vested in her through the registered Power of Attorney dated 03.01.2002 given to her by her mother Niamat Sahni and thus, respondent No.1 claims title over the suit property No.68, Friends Colony (West), First Floor, New Delhi. The question regarding the correctness of the sale deed executed by Usha Prakash – mother of respondent No.1 in favour of Sarabjit Prakash and the dispute raised regarding the title of the property could be determined only in the suit after parties adduced oral and documentary evidence.

24. The short point falling for consideration is whether respondent No.1 is to be proceeded for contempt and whether the learned Single Judge was right in directing the deposit of first respondent's passport. Of course, on 15.07.2013, Sarabjit Prakash and respondent No.1 filed an undertaking that they shall clear dues of Bank of India and the suit property shall be cleared of all charges/encumbrances within a period of four months and that they shall make arrangement of the loan amount to be paid to the Bank of India from other moveable and immoveable properties. Subsequently also, Sarabjit Prakash and respondent No.1 filed an undertaking before the Court. Having filed the undertaking, it was required of the first respondent to keep up to his undertaking filed before the Court. On behalf of respondent No.1, learned counsel submitted that respondent No.1 was making genuine efforts to pay the amount to the Bank and clear the charge on the property; but due to unavoidable circumstances, they could not clear the charge over the suit property. As pointed out earlier, Sarabjit Prakash was suffering from illness and passed away within one week after the order was passed on 20.10.2015.

25. Since repeated undertakings were filed and the same were not complied with, learned Single Judge directed respondent No.1 to surrender his passport. The said order was passed to ensure the presence of the first respondent and compliance of the order of the Court. It cannot be said that the learned Single Judge exceeded the jurisdiction or committed an error in ordering surrender of the passport. In order to ensure the presence of the parties in the contempt proceedings, the Court is empowered to pass appropriate orders including the surrender of passport. While dealing with child

custody matter, in David Jude vs. Hannah Grace Jude and Another (2003) 10 SCC 767, the Supreme Court directed Union of India to cancel the passport of contemnor No.1 and to take necessary steps to secure the presence of contemnor No.1 with the child in India and to ensure her appearance before the Court on the date of hearing.

26. It is pointed out that the Division Bench proceeded as if the learned Single Judge has ordered impounding of the passport of respondent No.1; whereas, the learned Single Judge has only directed respondent No.1 to deposit his passport in the Court. As discussed earlier, the purpose of directing respondent No.1 to surrender his passport was only to ensure the presence of respondent No.1 who was filing repeated undertakings before the Court but was not complying with the same. In our view, the Division Bench was not right in setting aside the order of the learned Single Judge in directing respondent No.1 to deposit his passport before the Court and the judgment of the Division Bench cannot be sustained. In order to ensure the presence of respondent No.1 and to ensure further progress of the trial, the order of the learned Single Judge directing respondent No.1 to deposit his passport before the Court stands confirmed.

27. On behalf of the appellant, it is stated that in view of the order of the Division Bench, the contempt petition has been disposed of by the learned Single Judge on 04.12.2018 and prayed for restoration of the contempt petition. Since the suit is of the year 2008 and much of the court's time has been spent on the interim orders and on the contempt petition, we are not inclined to issue direction for restoration of the contempt petition. Since, the suit is of the year 2008 and the trial has already commenced and the matter is said to have been pending for cross-examination of the defendants witnesses, it is suffice to direct early expeditious disposal of the suit at the same time, ensuring that respondent No.1 will be available at the stage when the suit is disposed and in case he suffers an adverse decree.

28. The impugned order of the Division Bench dated 01.08.2018 passed by the High Court of Delhi at New Delhi in FAO (OS) No.210 of 2017 is set aside and this appeal is allowed. In order to ensure the presence of respondent No.1 and to ensure further progress of the trial, the order of the learned Single Judge directing respondent No.1 to deposit his passport before the Court stands confirmed. The learned Single Judge is requested to take up the civil suit being CS (OS) No.1134 of 2008 and continue with the trial and dispose the same expeditiously preferably within a period of nine months. No costs.

.....J. [R. BANUMATHI]J. [A.S. BOPANNA] New Delhi;

March 19, 2020.