

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

Date of decision: 02nd MAY, 2022

IN THE MATTER OF:

+ **CONT.CAS(C) 371/2022**

SUDESH CHHIKARA

..... Petitioner

Through Mr. Jaipal Singh, Advocate

versus

DR. NAVEEN AGGARWAL AND ORS.

..... Respondents

Through

CORAM:

HON'BLE MR. JUSTICE SUBRAMONIUM PRASAD

SUBRAMONIUM PRASAD, J.

1. The instant contempt petition has been filed under Section 12 of the Contempt of Courts Act, 1971, read with Article 215 of the Constitution of India alleging non-compliance of the Order dated 23.10.2019, passed by this Court in Writ Petition (Civil) No. 11326/2019, wherein this Court had directed Respondent No.1 herein to decide the question of maintainability of Case No. 1/82/2017 filed by Respondent No.4 herein under provisions of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rules, 2009 (*hereinafter*, “the 2009 Rules”).

2. The facts, in brief, leading up to the filing of the petition are as follows:

- a) It is stated that Case No. 1/82/2017 was filed by Respondent No.4 under Delhi Maintenance and Welfare of Parents and

Senior Citizens Rules, 2009, seeking eviction of the Petitioner on the ground of non-maintenance and ill-treatment. A preliminary objection as to the maintainability of the case was raised by the Petitioner.

- b) Consequently, W.P.(C) 11326/2019 was filed by the Petitioner before this Court praying for directions to restrain the District Magistrate (South-West), Delhi (Respondent No.1 herein) from proceeding with the aforementioned case. *Vide* Order dated 23.10.2019, whose non-compliance has been alleged, this Court stated the following:

"In my view, the present petition can be disposed of at this stage itself by directing the respondent No.2 to decide on the question of maintainability of the appeal/case pending before it before proceeding further on the merits of the case"

- c) Thereafter, *vide* Order dated 24.10.2019, after taking into account the SDM (HQ) report, the Respondent No.1 observed that the matter was primarily a property dispute and that Respondent No.4 (Complainant therein) was not residing at the suit property, and therefore, the case was not maintainable under The Maintenance and Welfare of Parents and Senior Citizens Act, 2007 (*hereinafter*, "the 2007 Act"). Accordingly, the eviction application of Respondent No.4 was dismissed.
- d) Appeal No. 183/2019 was filed by Respondent No.4 under Rule 22(3)(4) of the 2009 Rules before the Divisional Commissioner/Appellate Authority against the Order dated 24.10.2019. *Vide* Order dated 05.11.2020, the Divisional

Commissioner/Appellate Authority noted the observation of this Court in Order dated 23.10.2019 and remanded the case back to the District Magistrate by stating the following:

"Without considering the appeal on merits, this appellate authority is of the view that the direction of the Hon'ble Delhi High Court should be complied as Hon'ble Delhi High Court has directed the District Magistrate to decide the preliminary objections of the respondent before deciding the eviction application of the appellant/complainant on merits. Therefore, the impugned order is set aside with the direction to the District Magistrate to comply with the direction of Hon'ble Delhi High Court passed via order dated 23.10.2019. The appeal stands disposed off without considering the same in the light of the directions of Hon'ble Delhi High Court."

- e) The District Magistrate, *vide* Order dated 14.09.2021, allowed the eviction application of Respondent No.4 and directed the Petitioner to vacate the property bearing H.No. C-33, Mansa Ram Park, New Delhi-110059. The conclusion in the said Order has been reproduced as follows:

"In view of the above observations, this Court directs the respondents to vacate the property bearing H. No. C-33, Mansa Ram Park, New Delhi, 110059 and to live separately.

The respondent is directed not to interfere in the peaceful living & possession of the complainant in the suit property.

The SDM (Dwarka) and SHO [Uttam Nagar] are

directed to execute the present order. This order should be executed after 30 days in terms of the Rule 22 Sub rule 3 Clause 3 of the Senior Citizen Rules 2009.

The present order would be appealable under Rule 22(3)(4) of the Delhi Maintenance and Welfare of Parents and Senior Citizens Rule, 2009, as amended on 19th December, 2016 before Divisional Commissioner, Delhi. The period of limitation for filing of appeal is 60 days."

It was further observed that the Order dated 14.09.2021 would be appealable under Rule 22(3)(4) of the 2009 Rules before the Divisional Commissioner, Delhi.

- f) An appeal preferred by the Petitioner against Order dated 14.09.2021 and the stay application filed in the said appeal was dismissed by the Divisional Commissioner/Appellate Authority *vide* Order dated 29.10.2021.
- g) Aggrieved by the lack of compliance with the Order dated 23.10.2019 passed by this Court in W.P.(C) 11326/2019 wherein this Court had directed Respondent No.1 to decide the aspect of maintainability of the eviction petition before proceeding with the same, the Petitioner has approached this Court by way of the instant contempt petition.

3. Mr. Jaipal Singh, learned Counsel appearing for the Petitioner, submits that the Order dated 23.10.2019 of this Court had categorically directed the District Magistrate, i.e. Respondent No.1, to decide the maintainability of the eviction petition of Respondent No.4 before proceeding with the same. He states that as a consequence of the Order dated

23.10.2019, the District Magistrate dismissed Case No.1/82/2017 *vide* Order dated 24.10.2019 on the ground that the subject matter of the case was not covered by the provisions of the 2007 Act.

4. Mr. Singh submits that an appeal was filed against the Order dated 24.10.2019 before the Divisional Commissioner (Respondent No.2), and despite objections to the maintainability of the appeal, Respondent No.2 remanded the case back for hearing to Respondent No.1. *vide* Order dated 05.11.2020. He states that Respondent No.1, in clear contempt of the Order of this Court which directed for the maintainability issue to be decided, allowed the eviction application of Respondent No.4 *vide* Order dated 14.09.2021, and Respondent No.2 on 29.10.2021 dismissed the stay application filed in the appeal against the said Order.

5. The learned Counsel for the Petitioner, therefore, argues that the aforementioned Orders were passed without taking into consideration the observations of this Court in the order dated 23.10.2019 wherein the District Magistrate was directed to decide the maintainability of the case of Respondent No.4 before proceeding on merits of the case. He states that there was also no notice given to the Petitioner and that the entirety of the proceedings reveal collusion on the part of the Respondents to ensure that Respondent No.4 received a favourable Order.

6. Heard the learned Counsel for the Petitioner and perused the material on record.

7. The short question which arises for consideration before this Court is whether the Orders dated 14.09.2021 and 29.10.2021 passed by the District Magistrate and Divisional Commissioner, respectively, are contrary to or non-compliant of the Order dated 23.10.2019 passed by this Court in

W.P.(C) 11326/2019.

8. Section 2(b) of the Contempt of Courts Act, 2017 defines “civil contempt” as “wilful disobedience to any judgement, decree, direction, order, writ or other process of a court or wilful breach of an undertaking given to a court”. The purpose of contempt jurisdiction has been delineated time and again in various judgements of the Supreme Court, such as In Re: Vinay Chandra Mishra, (1995) 2 SCC 584 and Reliance Petrochemicals Ltd. v. Proprietors of Indian Express Newspapers Bombay Private Ltd., (1998) 4 SCC 592.

9. Contempt jurisdiction is invoked to ensure that public respect and confidence in the judicial process remains impaired. This jurisdiction is *sui generis* and allows the Court to exercise such power to punish a person who is guilty of contempt for the sole purpose of preventing non-adherence of the rule of law. In order to exercise such jurisdiction, the Courts must act judicially, and must not be hypersensitive. Once the essentials for initiation of contempt proceedings are satisfied, the Court must proceed with the contempt so as to uphold the majesty of law.

10. Reverting to the facts of the instant case, this Court, *vide* Order dated 23.10.2019, had directed Respondent No.1 to decide on the question of maintainability of the appeal/case pending before it before proceeding further on the merits of the case. Accordingly, in its Order dated 24.10.2019, the Respondent No.1 observed that the matter before it was primarily a property dispute and did not have anything to do with the ill-treatment of a senior citizen, and therefore, proceeded to dismiss Case No. 1/82/2017 filed by Respondent No.4. In an appeal filed by Respondent No.4 against the Order dated 24.10.2019 before Respondent No.2, the Order dated

24.10.2019 was set aside *vide* Order 05.11.2020 and the matter was remanded back to Respondent No.1 with directions to comply with the direction of this Court in its Order dated 23.10.2019.

11. Thereafter, *vide* a detailed Order dated 14.09.2021, Respondent No.1 allowed the eviction application of Respondent No.4 and directed the Petitioner to vacate the property in question. The said Order is comprehensive and takes into account the SDM Report dated 08.04.2021, which was filed in compliance of Rule 22(3)(iii) of the 2009 Rules.

12. The Order dated 14.09.2021 also notes that as the eviction application had been filed by a senior citizen for the eviction of their daughter-in-law from their own acquired property, Rule 22(3)(1) of the 2009 Rules empowered Respondent No.1 to entertain the same. Furthermore, in its Observations/Findings, Respondent No.1 has stated that excluding the daughter-in-law from the scope of Rule 22 of the 2009 Rules would dilute the objective of the statute and also render toothless Section 22 of the 2007 Act which allows the State Government to provide a comprehensive plan for providing protection to the life and property of a senior citizen.

13. The stay application filed by the Petitioner in their appeal before the Divisional Commissioner under Rule 22(3)(4) of the 2009 Rules was dismissed *vide* Order dated 29.10.2021 on the ground that the impugned Order therein had noted that the Petitioner had failed to prove ownership of the property in question and as the property was not the dwelling place of the Petitioner, no irreparable harm would be caused if the stay was dismissed.

14. This Court, after perusing the Orders dated 14.09.2021 and 29.10.2021 passed by Respondent No.1 and Respondent No.2, respectively, is of the opinion that the Order of this Court dated 23.10.2019 has not been

violated and that the District Magistrate has aptly considered the question of maintainability of the case of Respondent No.4 before proceeding on the merits of the case. It is further observed by this Court that the instant contempt petition is in the garb of an appeal filed against the Orders dated 14.09.2021 and 29.10.2021, and the Petitioner should take recourse to the appropriate remedies available to her in accordance with law, instead of invoking the contempt jurisdiction of this Court. The Court exercising contempt jurisdiction is meant to uphold the majesty of law and cannot sit in appeal of the Orders passed by the lower Courts and Tribunals.

15. In view of the above, this Court observes that there has been no wilful disobedience on the part of the Respondents of the Order dated 23.10.2019 passed by this Court in W.P.(C) 11326/2019 and, therefore, no contempt is made out against them.

16. Accordingly, the instant contempt petition is dismissed, along with pending application(s), if any.

SUBRAMONIUM PRASAD, J.

MAY 02, 2022

Rahul