
(2012) 10 DEL CK 0078

In the Delhi High Court

Case No : I.A. No's. 18821 and 18822 of 2012 in CS (OS) 2539 of 2010

Chiranjiv Singh Dang and Another

APPELLANT

Vs

Sudesh Chopra

RESPONDENT

Date of Decision : 18-10-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 2, Order 12 Rule 6, Order 2 Rule 2, Order 39 Rule 10, Order 39 Rule 2
Criminal Procedure Code, 1973 (CrPC) — Section 340

Citation : (2012) 10 DEL CK 0078

Hon'ble Judges : Hima Kohli, J

Bench : Single Bench

Advocate : Anil K. Kher, with Mr. D.R. Bhatia and Mr. Rishi Manchanda, for the Appellant; A.C. Bhasin and Mr. Amit Bhasin, Advocates along with Mr. Mohinder Kumar Kukreja, for the Respondent

Final Decision : Dismissed

Judgement

Hima Kohli, J.—I.A. No. 18821/2012 has been filed by the defendant u/s 151 CPC for recalling/setting aside the order dated 24.9.2012 whereunder, the plaintiffs' suit was decreed under Order XII Rule 6 CPC to the extent that the defendant would hand over vacant peaceful possession of the suit premises to the plaintiffs on or before 3.11.2012 and further, she was required to pay arrears of rent/occupation charges @ Rs. 38,160/- within ten days, under Order XXXIX Rule 10 CPC and for deciding the suit on merits. Along with the aforesaid application, the defendant has filed IA No. 18822/2012 for stay of the operation of the order dated 24.9.2012. The ground taken for seeking recall of the order dated 24.9.2012 is that the previous counsel who was appearing for the defendant, i.e., Mr. Mohinder Kumar Kukreja had submitted on 24.9.2012 that in view of the preliminary objections that were taken in the written statement, he had argued that the applications filed by the plaintiff under Order XXXIX Rule 10 CPC, Order XII Rule 6 CPC and Order II Rule 2 CPC were not maintainable and that the documents executed in respect of the suit premises on 12.2.2009 and

the Hire and Maintenance Agreement on the basis of which the present suit has been instituted by the plaintiffs, were forged and fabricated and self-created ones. It is further averred in the application that on 24.09.2012 the counsel for the defendant had submitted to the Court that the defendant did not want to withhold the arrears of rent and was ready to pay the rent "that is legally recoverable from her". However, on account of a "misunderstanding and under some wrong impression of the court", it was recorded in the aforesaid order that the defendant's counsel did not have any objection to passing of the orders of vacating the suit premises under Order XII Rule 6 CPC and further, that the defendant had no objection to the court allowing the remaining two applications that were filed by the plaintiff under Order XXXIX Rule 10 CPC and Order II Rule 2 CPC.

2. In para 9 of the application it is stated that the defendant's counsel had no intention of making the submissions as were recorded in the order dated 24.9.2012 as he had not received such instructions from his client and that the order did not record any statement to the effect that the Learned Counsel for the defendant had received instructions from the defendant to vacate and deliver possession of the suit premises to the plaintiff within one month. Further, it has been stated that no such statement was made in the court to the said effect and nor was there any affidavit of the defendant filed in this respect and that the counsel had not received any instructions from his client to make such statements as have been recorded in the order dated 24.9.2012. It is further averred in para 10 of the application that upon coming to know of the order dated 24.9.2012, the defendant made enquiries from her previous counsel, who informed her that he had not made any such statement, as was recorded in the said order and that the said order came to be passed due to "some misunderstanding or communication gap".

3. Mr. Mohinder Kumar Kukreja, Advocate has also filed an affidavit in support of the present application wherein he has stated as below:

2. That the defendant never instructed me that she was or is willing and ready to vacate and deliver the possession of the suit premises to the plaintiff. The defendant was not present in the court on 24.09.2012. She also did not admit to the execution of the two documents dated 12.09.2010 on the basis of which the present suit has been filed.

3. That with due respect, I have not made any such statement before Hon"ble Ms. Justice Hima Kohli on 24.09.2012 that the defendant is ready and willing to vacate the premises and she may be granted one month's time. Further she never admitted to the rent/damages as claimed in the application under Order 39 Rule 2 CPC.

4. That however, due to some misunderstanding or communication gap the Hon"ble Court passed the order, observing that the defendant has no objection in disposing of the application under Order 39 Rule 10 CPC and Order 11 Rule 2

CPC and Order 12 Rule 6 CPC.

4. The present application was first listed on 10.10.2012 on which date, in view of the submissions made by Mr. A.C. Bhasin, the newly engaged counsel for the defendant and having regard to the fact that the same was supported by the personal affidavit of the previous counsel for the defendant, i.e., Mr. Mohinder Kumar Kukreja, it was deemed appropriate to issue notice to the said counsel as also to the counsel for the non-applicants/plaintiffs, returnable for today.

5. Pursuant to the aforesaid notice, Mr. Mohinder Kumar Kukreja, Advocate is present in Court. He states that he stands by the averments that have been made in the application and the contents of the affidavit filed by him and asserts that he had not made any of the submissions as were recorded in the order dated 24.9.2012. Mr. A.C. Bhasin, Learned Counsel for the defendant states that in view of the aforesaid stand taken by the defendant and her previous counsel, the order dated 24.9.2012 is liable to be recalled and the suit is required to be taken to trial.

6. At the aforesaid stage, the counsels for the defendant were cautioned to be careful in making their submissions and reconsider their stand and they were informed that the consequences that may flow from the present application could be serious. To enable the Learned Counsels to consult the defendant and reconsider their stand, it was deemed appropriate to pass over the matter and take it up in the post-lunch session. In the post-lunch session, both, Mr. Mohinder Kumar Kukreja, Advocate and Mr. A.C. Bhasin, Advocate asserted that they would stand by the averments made in the present application and the affidavits filed in support thereof.

7. Mr. Anil K. Kher, learned Senior Advocate appearing for the plaintiffs vehemently opposes the present application and states that it is nothing but a blatant attempt on the part of the defendant to renege from their statements and try and wriggle out of the concessions made by them as recorded in the order dated 24.9.2012. He states that the averments made in the application are completely contrary to what had actually transpired in court on 24.9.2012 and that he clearly remembers that on the aforesaid date, counsel for the defendant had stated that he had received telephonic instructions from his client to the effect that if given some reasonable time, she would be in a position to vacate the suit premises.

8. It is contended on behalf of the plaintiffs that even otherwise, the application filed by them under Order XII Rule 6 CPC is liable to be allowed on merits as the defendant has not denied the relationship of landlord-tenant between the parties and nor has she denied the fact that the rent of the suit premises is above Rs. 3,500/-. He asserts that it is an undisputed position that the defendant had been paying the rent in respect of the suit premises @ Rs. 18,000/- from 1.1.2009 to 31.12.2011 and additionally she was paying a sum of Rs. 18,000/- per month to the plaintiffs under the Hire and Maintenance Agreement executed separately. He

points out that the aforesaid amounts had been duly paid by the defendant for the period w.e.f. 1.1.2009 to September 2010, and when the plaintiffs had issued a notice dated 6.9.2010, terminating the lease of the suit premises and called upon the defendant to hand over vacant peaceful possession thereof, she stopped tendering the said amount.

9. Learned Senior Advocate for the plaintiffs further submits that in the present application also, the defendant does not deny having signed the two documents, but she only claims that they are fabricated documents. He contends that assuming without admitting the submission of the other side that the Hire-cum-Maintenance Agreement and the Lease Agreement were both unregistered documents and could not be acted upon, at the highest, the defendant's case can only be that she is occupying the suit premises as a tenant on a month to month basis and now that the lease deed has been terminated by the plaintiffs, i.e., her status is reduced to that of a tenant at sufferance. Lastly, it is stated that the lease deed itself having expired on 31.12.2011 by efflux of time, a legal obligation was cast upon the defendant to have handed over vacant peaceful possession of the suit premises to the plaintiffs and having failed to do so, the plaintiffs are entitled to grant of a judgment on admission, purely on the merits of the case.

10. It is settled law that matters of judicial record are unquestionable and the statements of fact as to what had transpired at a hearing, as recorded in the judgment of the court, are conclusive of the facts so stated and none can contradict such statements by affidavit or by other evidence. Further, if a party thinks that the happenings in court have been wrongly recorded in a judgment/order, then it is the duty of such a party to call the attention of the very same judge who had passed the order while the matter is still fresh in the mind of the said judge, that there was an error. [Refer: State of Maharashtra Vs. Ramdas Shrinivas Nayak and Another, , Bhavnagar University Vs. Palitana Sugar Mill Pvt. Ltd. and Others,]. The following observations made by the Supreme Court in the case of Ramdas Shrinivas Nayak (supra) are relevant:-

Para 4: When we drew the attention of the learned Attorney-General to the concession made before the High Court, Shri A.K. Sen, who appeared for the State of Maharashtra before the High Court and led the arguments for the respondents there and who appeared for Shri Antulay before us intervened and protested that he never made any such concession and invited us to peruse the written submissions made by him in the High Court. We are afraid that we cannot launch into an inquiry as to what transpired in the High Court. It is simply not done. Public Policy bars us. Judicial decorum restrains us. Matters of judicial record are unquestionable. They are not open to doubt. Judges cannot be dragged into the arena. "Judgments cannot be treated as mere counters in the game of litigation".[AIR 1926 136 (Privy Council)]. We are bound to accept the statement of the Judges recorded in their judgment, as to what transpired in court. We cannot allow the statement of the judges to be contradicted by

statements at the Bar or by affidavit and other evidence. If the judges say in their judgment that something was done, said or admitted before them, that has to be the last word on the subject. The principle is well settled that statements of fact as to what transpired at the hearing, recorded in the judgment of the court, are conclusive of the facts so stated and no one can contradict such statements by affidavit or other evidence. If a party thinks that the happenings in court have been wrongly recorded in a judgment, it is incumbent upon the party, while the matter is still fresh in the minds of the judges, to call attention of the very judges who have made the record to the fact that the statement made with regard to his conduct was a statement that had been made in error.[Madhu Sudan Chowdhri Vs. Chandrabati Chowdhra, AIR 1971 PC 30. That is the only way to have the record corrected. If no such step is taken, the matter must necessarily end there. Of course a party may resile and an appellate court may permit him in rare and appropriate cases to resile from a concession of the ground that the concession was made on a wrong appreciation of the law and had led to gross injustice; but, he may not call in question the very fact of making the concession as recorded in the judgment.

11. Though the application is ambiguous as to the source from whom information was received by the defendant, as to what had transpired in Court on 24.9.2012, it is stated by learned counsel for the defendant that the order dated 24.9.2012 was downloaded from the website of the High Court on 29.9.2012. Even if the said submission is accepted, there is no going away from the fact that no efforts were made by the previous counsel for the defendant to promptly approach this Court and point out his version of what had transpired on 24.09.2012. However, records reveal that the present applications came to be filed by the defendant through the newly engaged counsel on 3.10.2012. The said applications were thereafter returned by the Registry under some objections and it came to be re-filed by the counsel for the defendant on 6.10.2012. Again, the same was returned under objections by the Registry and re-filed only on 9.10.2012. In other words, it has taken over one week for these applications to be placed before the court. The aforesaid steps on the part of the defendant or her previous counsel can hardly be termed as prompt, rather, they reveal a lack of diligence on their part. Moreover, the court has a recollection of what had transpired on 24.9.2012 and the proceedings recorded on the said date do not suffer from any misunderstanding or wrong impression of the Court as stated in the application. Reliance placed by the defendant on the affidavit filed by her previous counsel for resiling from the concessions that were recorded in the said order, can therefore be of no avail to her.

12. In view of the above, this Court is of the opinion that no ground has been made out by the defendant for seeking recall of the order dated 24.9.2012 and consequently, the applications are dismissed as being devoid of merits. As for Mr. Mohinder Kumar Kukreja, Advocate, having regard to the fact that he has filed a false affidavit in support of IA No. 18821/2012, it is deemed appropriate to issue directions to the Registrar General of this Court to forward a complaint against

him to the concerned Metropolitan Magistrate, for purposes of holding an enquiry u/s 340 Cr. P.C. The said complaint shall take note of the proceedings that were recorded on 24.9.2012 and those that have been recorded hereinabove, read with the present applications filed by the defendant.