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**(2011) 02 AHC CK 0167**  
**In the Allahabad High Court**  
**Case No : C.M. Application No. 66871 of 2009**

Manish Kumar

APPELLANT

Vs

State of U.P. and Others

RESPONDENT

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**Date of Decision :** 10-02-2011

**Acts Referred:**

Penal Code, 1860 (IPC) — Section 379, 447, 448, 452, 506

**Citation :** (2011) 02 AHC CK 0167

**Hon'ble Judges :** Uma Nath Singh, J; Satish Chandra, J

**Bench :** Division Bench

**Final Decision :** Dismissed

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## Judgement

Satish Chandra, J.—By this application, the Respondents No. 7 and 8 have made a prayer to recall the judgment and order dated 16.07.2009 passed by this Court.

2. Sri Prashant Chandra, learned Senior Counsel assisted by Sri Faisal Ahmad Khan, learned Counsel for the applicants-Respondents No. 7 and 8 submits that the argument of the Petitioner's counsel had concluded and the arguments on behalf of the Respondents' counsel had started on 07.07.2009 and were continuing for the purposes of which the writ petition was ordered to be listed on 14.07.2009, on which date, the lawyers abstained from work and the next date was fixed as on 15.07.2009 at 3.00pm, on which date, the counsel for the Respondents had to leave court suddenly on account of sudden illness of his wife and, as such, the matter was ordered to be listed on 16.07.2009 with an observation that the case shall not be adjourned. On 17.07.2009, the counsel for the Respondents No. 7 and 8 did not appear and sent illness slip mentioning his wife illness and prayed for adjournment but this Hon'ble Court has passed the interim order in the absence of any representation on behalf of the Respondents No. 7 & 8.

3. According to the learned Counsel, the order dated 16.07.2009 appears to have been hurriedly passed as facts and issues germane to the matters in controversy

do not appear to have been taken into consideration as there is no mention of the same. He also submits that the order dated 16.07.2009 is passed ex-parte without hearing the counsel for the Respondents and is apparently based on a report submitted by Inspector General of Police, against which objections were filed by the answering Respondents, which are yet to be decided.

4. On merit, learned Counsel submits that the writ petition is likely to be dismissed as the Respondents No. 7 and 8 are the true owners of the Flat in dispute. For the purpose, he relied on the ratio laid down in the case of Smt. Gurmeet Kaur Kwatra v. Vice, Chairman, Varanasi Development Authority, Varanasi and others 2010 (28)LCD 1.

5. Lastly, he submits that it is expedient and necessary in the interest of justice that the interim order dated 16.07.2009 may kindly be recalled and the answering Respondents be heard on merit of the matter.

6. On the other hand, Sri Ratnesh Chandra, learned Counsel for the Petitioner submits that on the request of Sri Faisal Ahmed Khan, learned Counsel for the Respondents No. 7 and 8, the case was adjourned on 15.07.2009 by fixing it on 16.07.2009 but at that time, he has not appeared.

7. He submits that in the instant case, the Petitioner in pursuance of the registered agreement to sell, has paid the entire sale consideration to the builder pertaining to Flat Nos. 602 and 603, Kasmanda Regent Apartments, Lucknow. Earlier on 30.09.2008, this Court has asked the Inspector General of Police, Lucknow Zone, Lucknow, to make an enquiry in the matter and submit his report stating interalia, under what circumstances, the Petitioner was dispossessed from the Flat No. 603 (603-A & 603-B). The said order was challenged before the Hon"ble Supreme Court by filing a SLP by the Respondents No. 7 & 8 but the same was dismissed on 25.11.2008.

8. In pursuance to the earlier order dated 30.09.2008, the Inspector General of Police, Lucknow Zone, Lucknow has submitted his report where it was stated that a Case Crime No. 555 of 2008 under Sections 447/448/379/506/452 has been registered against the Respondents No. 7 & 8 and as per the directions issued on 31.05.2005, by the District Consumer Disputes Redressal Forum, Lucknow, the seal of the Flat in question was opened and the same was handed over to Sanjay Dembla on 16.06.2005. The Senior Superintendent of Police in its report dated 03.11.2008, has mentioned that Flat No. 603 has been converted into Flat Nos. 603-A and 603-B.

9. On the basis of material, this Court by the impugned order dated 16.07.2009, directed the Inspector General of Police, Lucknow Zone, Lucknow to restore the peaceful possession of Flat No. 603 (603-A & 603-B) situated at Kasmanda Regent Apartments to the Petitioner.

10. Learned Counsel further submits that the Respondents No. 7 & 8, who are the staff of Home Guards and Superintending Engineer of the Irrigation

Department respectively, with collusion to the local police, dispossessed the Petitioner from his peaceful physical possession and occupied the Flat in question along with valuable articles including furniture and T.V. etc. He also submits that on 26.05.2008, the Respondents No. 7 & 8 being staff members in the Home-guard department, along with associates including 6-7 Home-guards came to the Flat of the Petitioner and break open the locks of the Flat. All the persons who were the Home-guards working under the influence and command of the opposite party No. 7, were arrested. He further submits that since the matter is pending before the Civil Judge (Senior Division), Lucknow, this application for recalling the order dated 16.07.2009 is deserves to be dismissed.

11. We have considered the rival submissions made by counsel for both the parties and gone through the material available on record.

12. Perusal of the record reveals that both the parties are claiming the ownership of the Flat in question. The matter has already travelled to the District Consumer Disputes Redressal Forum, Lucknow, Civil Court, this Court as well as the Hon"ble Supreme Court. The order-sheet reveals that on several occasions, adjournments have been sought on behalf of the opposite parties No. 7 & 8 and prior to the passing of the order dated 16.07.2009, several dates have also been fixed by the Bench and the case was always adjourned at the instance of the learned Counsel for the Respondents No. 7 & 8. Therefore, it appears that the Respondents No. 7 & 8 were avoiding the hearing of the case though, they are affected parties. It also appears that in pursuance of the order dated 16.07.2009, the peaceful possession was given to the Petitioner. It further reveals that the said order was passed on the basis of the earlier order dated 30.09.2008, against which the SLP was dismissed by the Hon"ble Supreme Court on 25.11.2008. From the record, it also reveals that the order dated 16.07.2009 was passed on the basis of the report submitted by Inspector General of Police, Lucknow Zone, Lucknow, where it was mentioned that the case Crime No. 555 of 2008 under Sections 447/448/379/506/452 has been registered against the Respondents No. 7 & 8 (present applicants). The possession of the Flat was already given on 08.11.2004 in pursuance to the order passed by the District Consumer Disputes Redressal Forum, Lucknow.

13. Before passing the order on 16.07.2009, the Bench heard in person the Sub-Inspector, Gopal Singh and also considered the report submitted by the Inspector General of Police, Lucknow Zone, Lucknow and other circumstances. As mentioned earlier that prior to the passing of the order dated 16.07.2009, several dates have been fixed by the Bench and the case was also adjourned at the instance of the learned Counsel for the opposite parties No. 7 & 8.

14. Therefore, it appears that the opposite parties No. 7 & 8 were avoiding the hearing of the case and they also avoided the hearing on 16.07.2009, when the interim order was passed. When it is so, then we find no merit in the present application for recalling the order dated 16.07.2009, which has already been complied with. The same is hereby rejected. However, on merit, the parties

would be at liberty to contest their cases said to be pending before the appropriate forum.

15. The application is rejected.

Uma Nath Singh and Satish Chandra, JJ.

16. Application is rejected vide our order of date passed on separate sheets.