

(2010) 04 DEL CK 0107

In the Delhi High Court

Case No : IA No"s. 7114/06, 13047/06, 15499/09 and 15939/09 in CS (OS)
1321 of 2006

Natasha Kohli

APPELLANT

Vs

Man Mohan Kohli and Others

RESPONDENT

Date of Decision : 21-04-2010

Acts Referred:

Citation : (2010) 2 DMC 751

Hon'ble Judges : S.N. Dhingra, J

Bench : Single Bench

Advocate : Neeraj Kishan Kaul, Anu Bagai and Bhuvan Mishra, for the Appellant;
Geeta Luthra Abhimanyu Mahajan and Ashish Dholakia, for the Respondent

Judgement

Shiv Narayan Dhingra, J.—By this order, I shall dispose of the above applications made by the plaintiff and defendants respectively for interim injunction.

2. Succinctly stating the facts relevant for deciding these applications are that plaintiff filed the present suit for permanent and mandatory injunction against three defendants. Defendant No. 1 is the husband of plaintiff, defendant No. 2 is a company and defendant No. 3 is brother of her husband and director of defendant No. 2. In this suit, she prayed that a decree be passed injuncting defendant No. 1 and his servants etc from interfering with peaceful possession and enjoyment of the property bearing number 15-A, Amrita Shergil Marg, New Delhi. The other prayer made was that defendant No. 1 be restrained from creating any third party interest in the suit premises or dispossessing plaintiff from the suit premises. She also prayed that a decree of permanent injunction be passed against defendant No. 2 from changing the shareholding of defendant No. 2 and a decree be passed against defendants restraining them from issuing additional unused 800 shares out of 2000 authorized share capital of defendant No. 2 company and decree of mandatory injunction directing defendant No. 1 to transfer 300 shares of J.K. Private Limited from defendant No. 1 to the plaintiff.

3. plaintiff claimed right to possess the property on two counts. One that she was

a part owner of the suit property in view of compromise decree passed in Suit No. 824 of 1993 by this Court by taking on record the Memorandum of Family Settlement dated 16th October 1995 and decreeing the suit in terms of the family settlement. It is not disputed by her that the suit property stood in the name of defendant No. 2. The other right to possession is claimed because of the fact that she was wife of defendant No. 1 and the property was her matrimonial home.

4. This Court at the time of entertaining the suit on 19.6.2006 had passed an ex parte injunction restraining defendants from dispossessing the plaintiff from the suit premises 15-A, Amrita Shergil Marg, New Delhi and the parties were directed to maintain status quo in respect of title and occupancy of the property, till the next date of hearing.

5. During arguments, it transpired that the plaintiff had already filed an execution petition in respect of decree passed in Suit No. 824 of 1993. I consider that it would not be appropriate for this Court to comment upon or to give a finding even prima facie about the rights of the plaintiff under the decree as that may overlap the area of other Court where the execution is pending. However, suffice it to say that plaintiff being the wife of defendant No. 1 and the contention of defendant No. 1 that he was tenant in the property owned by defendant No. 2 would show that the plaintiff would prima facie have a right to live in the property, however, the expense of this right is to be seen in the light of entire facts and circumstances.

6. After this Court passed the ex parte interim order appearance was put on behalf of defendants and an effort to get the matter settled between the parties through chamber meeting was made right from July, 2006 till November 2006, when this Court recorded that no settlement was possible. The defendants who had withheld filing written statement in view of compromise efforts were directed to file written statement. Thereafter, an application was made by defendant No. 1 that in garb of order dated 19th June, 2006 defendant No. 1, i.e., husband was being prevented from the use of the property and the cupboards in the property have been locked by the plaintiff and the plaintiff had removed the locks from the bedroom of the defendant No. 1 and also locks from the servant quarters with the result that these rooms cannot be even locked. This Court vide order dated 24.5.2007 observed that the order dated 19th June, 2006 did not permit any party to change the position subsisting on that day. This Court directed that the defendant shall make available (to the plaintiff) wardrobe and cupboards in the guest room annex in the suit premises and plaintiff shall remove her belongings from the bedroom of defendant and shall store all her belongings in the guestroom annex, which shall be provided by the defendant within a period of one week. The defendant was given liberty to install new locks, restore locks removed by the plaintiff from the bedroom and other places during pendency of the case. The keys of cupboards and rooms of property were brought to the Court by the plaintiff. However, looking into the controversy, this

Court appointed Ms. Iram Majid, Advocate as the Local Commissioner to visit the premises. It was directed that plaintiff or her authorized representative shall make available to the Local Commissioner the keys of bedrooms and wardrobes/almirahs, the locks over which have been put by the plaintiff. It was also directed that after verifying that the keys fit to the locks in respect of which they are stated to be relating, the Local Commissioner shall hand over the keys to the defendant against receipt. The Local Commissioner visited the premises on 25th May, 2007 and executed the commission. The report of the Local Commissioner is on record which shows that on mezzanine on the top of the bedroom, there were seven almirahs out of which the keys of only three were handed over and rest were denied to the Commissioner on the ground that the almirahs contained valuable items of the plaintiff and she needed time to remove them and she would hand over the keys after removing her stuff. Similarly when the Local Commissioner went to the dining room and room of master bedroom and staff room, the keys of the same were not handed over to her on the ground that these rooms had no locks. The Local Commissioner then went to the guestroom annexee, where plaintiff resided and there she found three cupboards with locks. The keys of these were not handed over to the Local Commissioner on the ground that her valuable items were lying there. Out of 53 keys, duplicates of 37 keys were handed over and rests were denied.

7. Thereafter another application was made to the Court by the defendant No. 1 stating that different portions of the property were being kept under lock by the plaintiff illegally and contumaciously and the plaintiff should be given directions to open the locks. The Court ordered the same Local Commissioner to visit the premises and to place the report before the Court with regard to the factual situation as to the rooms and cupboards which were allegedly being kept locked by the plaintiff. She was also directed to prepare the site plan and take photographs. The Local Commissioner executed this commission on 1st June, 2007 and gave following report:

3. That I went to the guest's room, which has been given to the plaintiff for the purposes of residence. I found the entire portion was completely locked. I also took the photographs of the same.

4. That thereafter I went to the Master Rishabh's (son) room, dining room, drawing room, master bedroom where I found two cupboards on the top of the bedroom mezzanine filled up with the plaintiff's stuff, however, the same were empty on earlier occasion. I was also told by the defendant that all the photographs have been removed by the plaintiff from all the photo frames kept in the house. I also took the photographs and the same is enclosed herewith. I also visited servant's room and took the photographs of the same and also prepared site plan.

5. That on my previous visit plaintiff told me that she is not having keys of the room in which she has shifted herself but today I found the entire portion was locked by the plaintiff. The plaintiff locked entire portion and kept her stuff in her

son's room.

6. That I was also told by the defendant that he had handed over 4 almirahs to the plaintiff as per the order of the Hon''ble Court. 7. That today I found everything was in the same position as earlier except the room of the plaintiff. The plaintiff moved out with the keys without handing over same to the defendant as ordered by the Hon''ble Court.

8. The matter was listed before the Court on 23rd July, 2009 when the counsel for the plaintiff told the Court the plaintiff would have no objection to make available the remaining 16 keys, if they were with her, to the Local Commissioner for verification of the stand taken by the plaintiff and plaintiff shall give opportunity to the Local Commissioner to physically verify the statement that the cupboards to contained her goods.

9. This Court again directed the Local Commissioner to visit the premises on 27th July, 2007 and directed that in case there was any portion of the premises keys of which were not available with the plaintiff, the Local Commissioner would be at liberty to get prepared two sets of keys and then hand over one set of keys to the plaintiff and other to the defendant. The Local Commissioner went to the suit premises third time to execute the commission and the report of Local Commissioner is a self-speaking report which reflects what transpired on the spot. Relevant portions of the Local Commissioner's report worth reproducing are:

9. That the plaintiff emptied one almirah before me herein one iron safe was kept and as per the statement of the plaintiff the said safe was containing her jewellery. The plaintiff removed her safe but I was shocked to see the said almirah was again stuffed by the plaintiff with some of her clothes before me and the key of the same was given to me. I was unable to understand the stand taken by the plaintiff that on one point she refused to handover the keys reason being that her stuffs are lying therein and after having some discussion with her Advocate she handover me key of one almirah wherefrom she has shifted her iron safe somewhere else and put some of her clothes.

10. That thereafter I went to study room. Earlier the plaintiff refused to hand over the keys of the drawers to me, this time she showed to me all three drawers and after shifting goods lying in one drawer to rest two drawers handed over the key of one drawer to me. Hence, out of 16 keys, which the plaintiff supposed to handover to me, she retained 14 keys and handover to me only two (2). The said two keys are with me and I will handover/ submit the same to the Hon''ble Court.

11. That I also found three more locks in the guest room's doors. Keys of the same were also denied by the plaintiff to handover to me on the pretext that she does not have another set of the same today but will get made and will give to the defendant in few days as the key-maker was also not been able to make the same reason being the locks were imported.

12. That the friend of the plaintiff namely Ms. Vineeta Gupta continuously passed very bad and filthy comments on the defendant and his counsel and was also making mockery of my commission by saying that she had never seen such drama earlier. She also said, "WHAT A BIG DRAMA IS GOING ON HERE, "WE MUST CALL OUR FRIENDS FOR A PARTY. THEY WILL ALSO BE SURPRISED BY THIS ALL FUNNY DRAMA. THEY SHOULD ALSO ENJOY "THIS DRAMA."

13. This is very unfortunate for me, that such kind of comments have been passed in the presence of the counsel for the plaintiff and they were not been able to stop his client. Even the plaintiff also managed not to follow the order passed by this Hon''ble Court's on one or the other grounds.

14. That during the time, when I gave my "On-spot Report" to the plaintiff for her signature, she started making corrections by her own and when I stopped her, she created a very big scene and pick a quarrel with me. The plaintiff not only scolded me but also very harshly said to the counsel for the defendant to stay away from her and later on said to "GET OUT" of her house. I was shocked to see her conduct. Her behavior really upset me. The plaintiff was not only defying the order of the Hon''ble Court, making hindrance in the commission but also making mockery of the Hon''ble Court's order.

16. That it is pertinent to mention here that I was sent by this Hon''ble Court thrice but despite clear order again and again the plaintiff is anyhow managing not to hand over the keys to the defendant or to me. Apart from this, the plaintiff's behavior towards me being local commissioner was not at all appreciated as the same amounts to insult. The Hon''ble Court should take note hereof.

10. The contention of the counsel for the plaintiff is that the plaintiff has a right over whole of the suit property and the initial ex parte ad interim injunction order issued by this Court was in respect of entire property and the plaintiff cannot be compelled to confine herself to the guestroom annexee. It is submitted that the purpose of appointment of the Local Commissioner was just to have the keys of almirahs and see the factual situation and the plea taken by the defendant No. 1 that the plaintiff was living in the guestroom annexee was a baseless plea and the status quo order issued by this Court was never intended that the plaintiff should confine herself in the guestroom annexee.

11. The status quo order dated 19.6.2006 was granted by this Court ex parte without hearing defendants and without knowing the status of defendants. It was an ex parte ad interim status quo order and it did not create any right in favour of plaintiff. The Court has to decide the application under Order 39 Rule 1 and 2 on merits after taking into account the pleadings of the parties and the documents placed on record by the parties.

12. While plaintiff in the plaint has claimed that defendant No. 1 was planning various steps to sell the share of defendant No. 2 to outside parties and to create a situation that the plaintiff leaves the suit premises, she in the plaint nowhere

stated what portion of property was in her occupation. In para 33, she stated that defendant No. 1 has locked the portions of the suit property in order to deny access to plaintiff and her son to those portions without specifying as to what were those portions. It is also pleaded in the plaint that the plaintiff and her son were having fear for their lives and the defendant No. 1 had threatened them to leave the suit premises.

13. In the written statement, defendant has denied any right or ownership of the plaintiff. Defendant No. 1 also denied that he had any intention to throw out the plaintiff or the minor son or that defendant No. 1 committed any illegalities or threatened them to leave the suit premises. It was not disputed by defendant No. 1 that plaintiff was his wife, however, he asserted that this marriage between plaintiff and defendant was null and void and he has already filed a divorce petition for declaration of the marriage as such. It was denied that defendant was trying to sell off the suit property or hand over vacant peaceful possession of the suit property to anyone else. It was submitted that defendant had not locked any portion of the suit premises nor was denying plaintiff or minor son access to any portion of the property. It was stated that defendant No. 1 while residing in the suit property has been bothered about his safety and security for the reasons given in the written statement and the plaintiff had been sleeping in the outhouse of the suit premises and not in the main building. She, after filing of the present suit, even removed locks of master bedroom of defendant No. 1 and taken away the keys of the outhouse and one of the servant quarters with the result that defendant No. 1's bedroom now cannot be locked and he had fears for his safety and security.

14. In replication plaintiff reasserted that defendant No. 1 has consistently been making efforts to throw the plaintiff and her son out of the suit property. It was asserted that involvement of defendant No. 1 in an attack on plaintiff resulting into death of one of her employees was almost certain fact and due to risk to her life, plaintiff had been provided a security officer round the clock by the State. She also alleged that she had received threatening letters referring to involvement of defendant in a conspiracy to murder her and she had got an FIR registered in this respect. She submitted that defendant No. 1 had locked some portions of the suit premises so as to deny access to her and her son. The locks brought by plaintiff were removed and plaintiff got registered a police complaint in this respect. She denied that she was living and sleeping in the outhouse and not in the main building. She reasserted that her personal assets continued to remain in the main building. She stated that the outhouse was more in the nature of guest annexee and she is used to go to the guest annexee when defendant No. 1 and his friends used to take drinks and go out of hand. She stated that even defendant No. 1 sometimes used to stay in the guesthouse and was also maintaining a wardrobe therein. In the main building, one bedroom was being occupied jointly by defendant No. 1 and the plaintiff. This bedroom was a complicated structure a duplex type and plaintiff's belonging's were on the top floor and access to it could be through the master bedroom.

15. Subsequent to the orders of this Court made on the applications and directions given to the plaintiff to remove her belongings from the bedroom of defendant No. 1 and directions given to defendant No. 1 to provide almirahs to plaintiff at the guest house to keep her belongings, hand over all keys and the reports of Local Commissioner and other complaints before the parties would show that the plaintiff and defendant No. 1 were not able to see eye to eye. She had fear for her life from defendant No. 1. She was not sharing bedroom with defendant No. 1 and was sleeping in the guest house. She was not sharing anything with defendant out of fear for her life. She even had obtained a gun license and personal security officer only because she perceived a threat to her life. The material placed on record would show that the plaintiff and defendant No. 1 had not been on talking terms at all and had rather been maintaining a strained relationship. It is an undisputed fact that the plaintiff is also a business women running her own business and having number of employees and a factory. She has sufficient money power. Neither the defendant is weak in money power and both of them seemed to be fighting a battle of ego. This is clear from the reports of the Local Commissioner and the manner in which plaintiff used abusive language towards the Local Commissioner reflects a contemptuous attitude to the Court itself. The plea taken by the plaintiff that she was not staying in the guest room only and was using the entire suit premises is belied from her own complaint made to SHO Police Station Tuglak Road on 13th October 2006 wherein she had stated that she had been sleeping since 2004 in the cottage at the back garden where staff quarters are, which has been described in the complaint as "guest annexee". It has also been stated by her in the complaint that this house was under renovation for four years i.e. from 1999 onwards and plaintiff and defendant had shifted in 2004. Her complaint to the police was that she was denied access even to the outhouse cottage. The cottage opened for few moments and she slipped in it and got the cottage opened and she reminded defendant No. 1 of interim injunction issued by the Court. From this complaint, it is clear that plaintiff was not in occupation of the entire house but she was in occupation of only guest house where she was living and sleeping since 2004. The plea taken by the plaintiff's counsel that plaintiff was in use of the entire suit premises is belied from the plaintiff's own documents.

16. The facts revealed from pleadings and documents show that plaintiff has fear to her life from defendant No. 1 and defendant No. 1 has also fear to his life from the plaintiff. It was the plaintiff who locked the wardrobes. She also alleged that it was defendant who conspired for her murder. The case of the defendant is that plaintiff was out to make his life miserable, In view of these, I consider that till the rights of the parties are determined after adjudication, it would be just and appropriate that the plaintiff shall keep living in the guest annexee and shall not interfere into the main building where defendant and son of the parties is living except that she can go to her son's bedroom and stay with him as per the wishes of her son and son can also go to guest room annexee and stay with the mother as and when he likes. Apart from that, plaintiff shall not interfere into the

possession of the defendant No. 1 of the main building. It is also ordered that defendant No. 1, 2 and 3 shall not sell or part with possession of the suit property i.e. 15-A, Amrita Shegil Marg, New Delhi till disposal of the present suit or till the rights of the parties are ascertained in the execution filed by the plaintiff or unless the parties arrive at a settlement .

17. In order to see that the plaintiff enjoys stay in the guest house without interference, the defendants are directed not to create any obstruction in the passage leading to guest annexee or to create any obstruction which results into hindrance in use of the guest annexee. Similarly, the plaintiff shall not create any hindrance in the use of main building by the defendant No. 1. The entire personal belonging of the plaintiff were removed under directions of the Court in presence of the Local Commissioner from the wardrobes inside the building. If there are other belonging still there, she may remove them with the permission of the Court.

18. With above directions, the above applications stand disposed of.

CS(OS) 1321/2006

19. List this matter before regular Bench on 7th May, 2010.