

SUBHASH GUPTA Vs. KUNTESH AND ORS

10.12.2024

Present: Ld. Counsel for plaintiff through V.C with plaintiff in person.

Ld. Counsel for defendant No. 1.

None for D-2 and D-3.

1. Despite directions to D-1 to appear in person, D-1 has not appeared in Court. No explanation is forthcoming on her behalf as to why she has not appeared.
2. On the last date of hearing, an undertaking was given on behalf of D-1 that the physical structure of the suit property as is existed on 07.08.2024 shall be restored. The same appears to have not been complied in as much as the plaintiff has filed photographs dated 09.12.2024 wherein a full fledged eatery (which is apparently different from what existed earlier i.e. at the time of passing of order dated 07.08.2024) is running at the suit property after changing the physical appearance of the suit property.
3. At this stage, Counsel for D-1 submits that he has challenged the order dated 07.08.2024 before the Hon'ble High Court of Delhi vide FAO No. 374/24. He has also filed copy of order dated 05.12.2024 passed in the aforesaid FAO. Perusal of the same shows that there is no stay to the impugned order ie. the order dated 07.08.2024 or the proceedings before this Court.

4. Thus, it appears that D-1 has intentionally violated the order dated 07.08.2024 and despite opportunity being given to her vide order dated 29.10.2024 to rectify the changes made in the property, she has failed to do so. She has intentionally not appeared before the Court despite orders. As noted above, no explanation is offered on her behalf about the non-compliance of order dated 29.10.2024 or qua her appearance today.
5. I may note that an affidavit titled as 'affidavit of compliance' has been filed before this Court on 21.11.2024 on her behalf wherein she claims that she has not violated the order dated 07.08.2024. In the said affidavit, instead of complying with court orders, D-1 has given her interpretation of the injunction order dated 07.08.2024. I may note that the said submissions were made on last date and after hearing the same, a detailed order was passed on last date wherein undertaking of D-1's Counsel was recorded whereby her Counsel, on instructions, undertook to restore back the appearance of the property as it existed on 07.08.2024.
6. Simply put, D-1 has violated the interim injunction granted by this Court on 07.08.2024 and has failed to rectify it despite opportunity.
7. Plaintiff presses his application moved on last date U/O XXXIX Rule 2 A CPC and submits that since D-1 has failed to comply with the injunction order and is clearly in willful default of her undertaking given on last date, her properties should be attached and she should be detained in civil prison. A direction is also sought for sealing of the suit property by a court official.

8. As per record, it is not clear as to which properties does D-1 holds which can be attached for enforcing compliance of order dated 07.08.2024 read with 29.10.2024. The suit property, prima facie, has been found to be the property of plaintiff's wife (since deceased) on the strength of a registered sale deed in her favour and thus, cannot be attached U/O XXXIX Rule 2A CPC. D-1 has not appeared intentionally before this Court without any cogent cause.
9. In such circumstances, it appears that there is no other way open by which this Court can enforce compliance of the aforesaid orders and thus, let warrants of arrest be issued against D-1 to be executed through DCP concerned (to be made through lady police) for detention of D-1 in civil prison initially for a period of 30 days from the date of her arrest.
10. It is clarified that in case, D-1 complies with the interim orders dated 07.08.2024 read with 29.10.2024, she shall be entitled to be released forthwith, if already arrested.
11. List on 07.01.2025.

Aashish Gupta
DJ-01/NE/KKD/DELHI
10.12.2024