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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CS(OS) 1900/2015

MANIKA MADAN

Through

..... Plaintiff

Ms. Payal Jain, Advocate

versus

MAMTA NAGPAL & ANR

Through

..... Defendants

Mr. Vikram Singh, Advocate for D-1.
Lt. Col. Baruna Madan, D-2 in
person.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN

ORDER

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10.09.2018

CCP(O) 19/2018

Present contempt petition has been filed against defendant no. 1/ Mrs. Mamta Nagpal alleging wilful disobedience of the orders dated 6th December, 2016 and 18th April, 2017 passed by learned Predecessor of this Court whereby she was directed to deposit rent of 3rd Floor, Cottage Property No. 6, West Patel Nagar, New Delhi – 110 008 with the Registrar General of this Court on or before 07th day of each month of English Calendar. The relevant portion of the aforesaid orders are reproduced hereinbelow:-



A) The order dated 6th December, 2016 :-

“Learned counsel for defendant No.1 has submitted that he has the instruction from his client that the matter be sent to Delhi High Court Mediation & Conciliation Centre as his client wants to settle the dispute. Learned counsel for the plaintiff has submitted that defendants No.1 and 2 are enjoying the fruits of the property in the sense that they are receiving the rent of the suit property and if they are genuinely interested in the settlement, they be directed to deposit the rent, which they are receiving, in the Court. Defendant No.2 is present in person and has submitted that she is already depositing the rent in the joint account of M/s Madan Printers which was owned by her late father and is ready to deposit the same in the Court. Learned counsel for defendant No.1 has submitted that defendant No. 1 does not object to deposit the rent in the Court. Accordingly, both defendant Nos. 1 and 2 are directed to deposit the rent from the month of December, 2016 onwards with the Registrar General of this Court, on or before 07th day of each month of English calendar”

B) The order dated 18th April, 2017:-

“After hearing learned counsel appearing on behalf of the applicant/defendant No.1 as well as counsel for the plaintiff and defendant No.2, who appears in person, the following consent order is passed:-

- a) *The defendant No.1 undertakes to deposit the rent at the rate of Rs.20,000/- per month , already realized and to be realized by her, from the tenant in one of the subject properties situated at 3rd Floor, out of 1/2 undivided share of Cottage Property No.6, West Patel Nagar, New Delhi-110008 (in possession of defendant no.1) along with arrears from 06.12.2016, in the first instance and every succeeding month thereafter, before this Court within a period of four weeks from today. ”*



Learned counsel for the plaintiff/petitioner states that till date defendant no. 1/contemnor has deposited rent till April, 2017 only.

In the reply-affidavit it is stated that due to market forces, in particular demonetisation, and due to the conduct of the petitioner it was decided between the tenant and defendant no. 1 that the tenant shall clear backlog of arrears of rent by August 2018.

However, admittedly, till date the tenant has not cleared the outstanding dues.

It seems strange to this Court that the defendant no. 1 has not taken any step till date to terminate the tenancy of the tenant. After all a tenant cannot enjoy the suit premises without paying any rent.

Learned counsel for the defendant no. 1 states that it did not file an eviction petition till date due to status quo order dated 7th July, 2015 passed by this Court.

It defies comprehension as to how a status quo order passed in a suit between three sisters would enure to the benefit of a third party i.e. a tenant.

In fact, the manner in which the present application has been argued by defendant no.1 leaves this Court in doubt as to who is in occupation of the suit premises, i.e., defendant no. 1 or a third party/tenant.

At this stage, learned counsel for the defendant no. 1 assures and undertakes to this Court that a petition for eviction as well as for recovery of rent/mesne profit shall be filed against the tenant within two weeks. He further states that the plaintiff and defendant no. 2 shall be made co-petitioners in the said eviction proceedings.

The aforesaid assurances and undertakings given by learned counsel for defendant no. 1 are accepted by this Court and defendant no. 1 is held



bound by the same.

With the aforesaid directions, present contempt petition stands disposed of.

I.A. 14957/2017

Present application has been filed under Order 12 Rule 6 CPC by defendant no. 1.

Learned counsel for the defendant no. 1/applicant states that while under the registered Will dated 13th May, 2011 propounded by the plaintiff the defendant no. 1 is entitled to 1/3rd undivided shares in the suit properties, under the Will dated 27th February, 2012 relied upon by defendant no. 1, applicant is entitled to the entire estate of the deceased father.

Consequently, learned counsel for defendant no. 1 submits that in any event applicant is entitled to 1/3rd undivided shares in the properties owned by the deceased father. In support of his submission, he relies upon judgment of Supreme Court in ***M.L. Subbaraya Setty (Dead) by LRs. & Ors. Vs. M.L. Nagappa Setty (Dead) by LRs. & Ors., (2002) 4 SCC 743*** and judgement of this Court in ***Meera Gupta Vs. Dinesh Chand and Others, 94 (2001) DLT 10.***

It is settled law that Order 12 Rule 6 CPC is discretionary relief and it cannot be claimed as a matter of right by any party.

Since in the present case the conduct of the defendant no. 1/applicant has not been above board and she has been remiss in protecting the estate and property jointly owned by the parties, this Court is of the view that it should not exercise its discretion in the present case.

Accordingly, present application is dismissed.



I.A. 3531/2018

Defendant no. 2/applicant who appears in person, wishes to withdraw the present application.

Accordingly, the application is dismissed as withdrawn.

CS(OS) 1900/2015 & I.A. 14958/2017

Learned counsel for the defendant no. 1/ applicant prays that pending applications be taken up for hearing on the next date of hearing.

List on 26th October, 2018.

Defendant no.2 is directed to place on record the statement of account of Madan Printers within a period of two weeks. It is pertinent to mention that it is the case of the defendant no. 2 that rent in cash is also being deposited by the tenant in the account of Madan Printers.

Plaintiff as well as defendant nos. 1 and 2 and their husbands are directed to be personally present in Court on the next date of hearing.

MANMOHAN, J

SEPTEMBER 10, 2018

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