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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CS(OS) 659/2019, I.A. 3846/2021 & I.A. 3596/2021

DR. ANUPAM NIDHI & ANR. Plaintiffs

Through: Ms. Payal Bahl, Adv.

versus

SH. YOGESH DEEP & ANR. Defendants

Through: Mr. Aashish Kothari & Mr.
Devang Gautam, Advs. For D2

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

ORDER

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09.03.2021

(Video-Conferencing)

I.A. 3596/2021

1. Exemptions allowed subject to all just exceptions.
2. The application is disposed of.

CRL. M. A. 3846/2021(under Section 340, Cr.P.C., 1973)

1. Ms. Payal Bahl, learned counsel for the plaintiff, submits, as the only ground for justifying the prayer to set the criminal law in motion against Defendant No. 1, an allegedly “false” assertion contained in para 1 of the written statement, filed by Defendant No. 1 in response to the plaint. The said paragraph reads thus;

“1. That the plaintiffs and defendant no.2 are not entitled for any share, title and interest in the property bearing no. B-5/59, Paschim Vihar, New Delhi-110063. It is

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submitted that during the life time of the mother of the plaintiffs and defendants, there was a family settlement in the year 2008, between all the family members that the defendant no. 1 shall be the absolute owner of the property in question and the plaintiffs, defendant no.2 and the mother shall not claim in future any share of the property in question because the father of plaintiffs and defendants during his life time had sold a plot at Nihal Vihar and a Flat at BG-6 Block, Paschim Vihar, New Delhi and has spent on marriages and given the plaintiffs and defendant no.2 have already taken the huge amount out of the sale proceeds of the said properties. Moreover, the defendant no.1 is only living with his mother and took all the care of her till her life time. It is further submitted the plaintiffs and defendant no.2 are living in separate houses after their marriages and are not able to take care of the mother of plaintiffs and defendants. It is submitted that, therefore, the plaintiffs are not entitled to any share, title and interest in the property in question.”

2. Ms. Bahl submits that, as there was no family settlement, as asserted in Para 1 of the written statement, proceedings under Section 340 of the Cr.P.C., are required to be initiated against Defendant No.1.

3. This Court has had occasion in the past to comment critically on the invocation of Section 340, Cr.P.C., in a routine manner in civil litigations, at times with oblique intent. If every assertion, in pleadings in civil cases, with which the opposite side joins issue, is to be treated as a justification to set the criminal law in motion, the Court would be inundated with applications under Section 340, Cr.P.C., by both sides. The Court has also attempted to sensitize Ms. Bahl regarding the seriousness of setting the criminal law in motion, against any party in a civil litigation, without due justification.



4. Ms. Bahl, nevertheless, presses this application.
5. In view thereof, issue notice, returnable on 10th May, 2021.
6. Let a response to this application, if any, be filed within a period of four weeks from today, with advance copy to learned Counsel for the applicant, who may file rejoinder thereto, if any, within two weeks thereof.
7. Re-notify on 10th May, 2021.
8. The applicant is put on notice that, in case the Court finds that Section 340 of Cr. P.C., has been invoked without due justification in this case, the Court may visit the applicant with serious adverse consequences.

C.HARI SHANKAR, J

MARCH 9, 2021

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