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

+ EX.P. 108/2011, EX.APPL.(OS)223/2011, EX.APPL.(OS)825/2012

MOHD SHAMIM

..... Decree Holder

Through: Mr. Shoeb Shakeel, Mr. Vishal
Sehijpal & Mr. Utkarsh Sirohi,
Advocates.

versus

SHAHNAWAZ KHAN & ANR.

..... Judgement Debtors

Through: Mr. S.D. Ansari & Mr. I. Ahmed,
Advocates for JD-2.

CORAM:

HON'BLE MS. JUSTICE NEENA BANSAL KRISHNA

ORDER

16.11.2022

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1. The matter is listed today for Order on Sentence to be pronounced against the Decree Holder, Mohd. Shamim who has been held guilty of Contempt of Court *vide* Order dated 01st June, 2012 passed by this Court.
2. The factual matrix in brief, is that an Execution Petition had been filed by the Decree Holder, Mohd. Shamim in regard to the Judgement and Decree dated 02nd September, 2008 directing the possession of the Premises bearing No. 1733, Ground Floor as shown red in the site plan Ex.PW1/1 to be handed over by the Judgement Debtor to the Decree Holder. Notice was given to the Judgement Debtor on 21st September, 2011 and thereafter for 29th March, 2012. On 29th March, 2012, an appearance was put by the Judgement Debtor along with his counsel who took a stand that the matter had already been compromised and in terms of the compromise, the Judgement Debtor had agreed to pay Rs. 5,00,000/- to the Decree Holder



with a view to retain the possession of the shop in question. The Judgement Debtor produced the photocopy of the Receipt dated 08th March, 2012 which was taken on record.

3. It was further informed that that a sum of Rs. 1,00,000/- has already been paid to the Decree Holder pursuant to the compromise. However, the Decree Holder took a stand in his statements recorded in the court that he had not entered into any compromise nor had he signed the receipt. While on one date he resiled from having signed the Receipt dated 08th March, 2012 and reiterated that no compromise was entered into between him and the Judgement Debtor, but subsequently, he admitted this fact in the mosque. His statement was also recorded on 16th April, 2012, wherein again, he admitted the fact of compromise and of signing the original Receipt dated 08th March, 2012 in regard to the receipt of Rs. 1,00,000/- by him.

4. In view of the contradictory statements made by the Decree Holder, *vide* Order dated 21st May, 2012, a Show-Cause Notice was issued. It was held *vide* Order dated 01st June, 2012 that the Decree Holder had repeated his untruthful and false stand in the court on 21st May, 2022 after speaking the truth in the mosque. It was observed that it was a glaring example of the conduct of the likes of Decree Holder who perhaps had no fear of law and, therefore, such unscrupulous litigants have to be dealt with an iron hand. The Decree Holder was held guilty of contempt under Article 215 of the Constitution of India.

5. Since 2012, the matter is pending on the aspect of Order on Sentence.

6. Learned counsel on behalf of the Decree Holder has submitted that the settlement which was allegedly arrived between the parties, had been



resiled. The Judgement Debtor being a close relative of the Decree Holder has taken advantage of his poor mental health. The Decree Holder had suffered a brain stroke on 30th December, 2012 and he was hospitalized for a considerable time till 18th January, 2013. He has suffered permanent injury on account of brain stroke. While the Decree Holder was in a weak state of mind and on the intervention of common relations, the Decree Holder entered into some kind of arrangement without consent of his wife and children and in good faith appended the signatures on the documents given to him by the relations of the Judgement Debtor. However, on reading of the document, the discrepancy was evident. When he realized the mistake, the purported agreement was destroyed/torn in the presence of the relatives of the Judgement Debtor. It is submitted that the photocopy of the receipt cannot be relied upon.

7. It is further asserted that the Decree Holder bonafidely believed that once the original Agreement had been destroyed/torn, the same had come to an end and the alleged Agreement had ceased to have any effect in law.

8. It is further submitted that the medical records of the Decree Holder are on record to show that he is an old and ailing man of 80 years of age and is confined to bed. Leniency is requested to be exercised while sentencing the Decree Holder.

9. The prayer has, therefore, been made that the unconditional apology of the Decree Holder may be accepted and the lenient view may be taken and the Decree Holder may be pardoned.

10. **Submissions heard.**

11. In the present case, this Court has come to the conclusion *vide* detailed Order dated 01st June, 2012 that the Decree Holder has made



blatantly false statements before this Court and has denied the settlement arrived at between the parties with impunity. For having made false statements in the Court, the Decree Holder has been held guilty of contempt of Court. The question now confronts the Court is what would be the appropriate quantum of sentence in the present case which may be awarded against the Decree Holder in exercise of the powers under Article 215 of the Constitution of India.

12. In Pallav Sheth vs. Custodian & Ors. (2001) 7 SCC 549, the question arose in respect of the jurisdictional limits of the High Court exercising its contempt powers under Article 215 of the Constitution of India and whether the same are circumscribed by the Contempt of Courts Act, 1971.

13. A reference was made to L.P. Misra (Dr) vs. State of U.P. (1998) 7 SCC 379, wherein the Hon'ble Apex Court observed that it is true that the High Court can invoke powers and jurisdiction vests in it under Article 215 of the Constitution of India, but such jurisdiction has to be exercised in accordance with the procedure prescribed by law.

14. It was further observed that the procedure provided by the Contempt of Courts Act, 1971 had to be followed even in the exercise of jurisdiction under Article 215 of the Constitution of India.

15. In Pallav Sheth (supra), wherein the Hon'ble Supreme Court observed that there can be no doubt that both this Court and the High Courts are Courts of Record and the Constitution gives them powers to punish for contempt. This power cannot be abrogated or stultified. If any provision of law does so there can be little doubt that such law would not be regarded as having been validly enacted. However, the Hon'ble Apex Court has always frowned upon the grant or existence of absolute or unbridled power. The



powers under Articles 129 and 215 of the Constitution of India should be exercised in consonance with the provisions of validly enacted law. In case of apparent or likelihood conflict, the provisions should be construed harmoniously. It was further observed that the Contempt of Courts Act, 1971 provides for what is to be recorded as contempt and provides the detailed procedure to be followed and also the quantum of sentence. It was concluded that the provisions providing for procedure, limitation or quantum of sentence do not stultify the power under Article 215 of the Constitution of India, and the same must guide the Court while exercising its jurisdiction under Article 215 of the Constitution of India.

16. In the present case, the Execution Petition had been filed by the Decree Holder against the Judgement Debtor in the year 2011 seeking possession of the suit premises. The record shows that immediately on appearance in 2012 the Judgement Debtor had taken a plea that the matter had already been settled between the parties and produced the photocopy of the Receipt dated 08th March, 2012 in proof thereof. The entire proceedings then got diverted towards considering the contempt by the Decree holder who denied any agreement or executing the said Receipt in pursuance of an agreement. The Decree Holder was held guilty way back in 2012 and since then the proceedings are pending for Order on Sentence. The Decree Holder had got a Decree dated 02nd September, 2009 which subsequently was modified on 31st March, 2009 and 29th May, 2009, of possession in his favour, for which the Execution Petition was filed on 25th May, 2010 and since then, he has not been able to reap the benefits of his Decree. Though the Decree Holder may be responsible for his own sufferance, but it cannot be overlooked for more than 10 years, he has been facing the contempt



proceedings. The Decree Holder has suffered much for his folly and his false statements.

17. Moreover, Section 12 of the Contempt of Courts Act, 1971 provides that a person may be given a sentence of simple imprisonment for a term which may extend to six months, or with fine which may extend to two thousand rupees, or with both.

18. The question before the Court was not about there being a valid Agreement between the parties, but about the false statements made by the Decree Holder, for which there is no explanation. However, it is on record that the Decree Holder is an eighty-year old man suffering from old-age related ailments and is practically bed-ridden. An unconditional apology is being tendered by the Decree Holder, and has been explained that the original receipt was torn/destroyed and the Decree Holder was under the impression that the Agreement has been nullified.

19. In the factual ground of the present case, considering the poor health of the Decree Holder who is old age, his repentance and his sufferance for more than 10 years, he is sentenced to pay a fine of Rs. 2,000/- to be deposited with the Registry of this Court.

20. The contempt is accordingly disposed of.

EX.P. 108/2011

List for consideration of Execution Petition on 16th May, 2023.

NEENA BANSAL KRISHNA, J

NOVEMBER 16, 2022

S.Sharma