

(2014) 07 DEL CK 0057

Delhi High Court

Case No: CM (M)No. 453/2014

Sujata Gupta

APPELLANT

Vs

Uma Gupta

RESPONDENT

Date of Decision: July 25, 2014**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Section 10, 151
- Constitution of India, 1950 - Article 227

Citation: (2015) 1 AD 730 : (2014) 212 DLT 297**Hon'ble Judges:** Valmiki J. Mehta, J**Bench:** Single Bench**Advocate:** Ruchi Kohli, Yash Mishra, Nirmal Goenka and Chandni Goyal, Advocate for the Appellant; Avadh Kaushik, Advocate for the Respondent**Final Decision:** Dismissed

Judgement

Valmiki J Mehta, J.

There are some litigants who are persistent in abuse of the process of law. This petition is filed by one petitioner who is a defendant in the suit for possession and who insists on flaunting orders which have been passed by different learned Single Judges of this Court directing early disposal of the suit for possession by filing frivolous applications causing delay in the disposal of the suit.

2. Firstly, I must state that one petition under Article 227 of the Constitution of India cannot be filed against various orders dated 3.12.2013, 20.7.2013 and 3.4.2014 because in one petition separate orders cannot be challenged arising out of dismissal of different applications. First application u/s 151 CPC to stay the suit was dismissed by the first order dated 20.7.2013. Again another application was filed u/s 10 CPC for similar relief which was dismissed by the second order dated 03.12.2013. The third order dated 3.4.2014 is the order by which the review application filed by the petitioner for reviewing the orders dated 3.12.2013 and 20.7.2013 has been

dismissed.

3. Before turning to the merits, I would state that with respect to interim orders which were passed in the suit, petitions were filed in this Court. In these petitions, directions have been issued by this Court for early disposal of the suit. One such order is the order passed about more than 4 years back on 27.10.2010 in CM(M) 1004/10 titled as Uma Gupta Vs. Sujata Gupta & Anr. and this order reads as under:

The status report is received from the trial court. The same is perused. Learned counsel for the petitioner, after some arguments wants to withdraw the petition and requests that direction be issued to the learned trial court for expeditious disposal of the matter.

The status report sent by the learned trial court shows that the case is now listed for the respondent/defendant's evidence and two dates are given for the said purpose. It is hoped that the trial court will expedite the hearing in the matter and will dispose it of at the earliest. The petition stands dismissed as withdrawn.

4. Another order is an order dated 12.5.2011 passed in CM(M) No. 1399/2010 filed by the present petitioner and which was disposed of in terms of the following order

The challenge by means of this petition is to the impugned order dated 7.10.2010 which closed the right of the petitioner of cross-examination of the witnesses of the respondent/plaintiff. Purely as humanitarian consideration, counsel for the respondent agrees that one last final opportunity, subject to costs, may be granted and if that opportunity is not utilized, the petitioner should have no further opportunity. Accordingly, subject to payment of costs of Rs.12,500/-, let the Trial Court fix a date for cross-examination of PW1 to Pw4 and it is made clear that if the cross-examination is not completed on that date or any further date which the Trial Court grants, or for any reason whatsoever any request for adjournment is made on behalf of the petitioner in the Trial Court, the right of cross-examination given by today's order will stand closed. I am informed that before the Trial Court case is already listed on 18.7.2011. Let this date be the first date on which cross-examination of PW1 to PW4 can be commenced. The petitioner will summon PW3 and PW4, who are official witnesses for the date fixed for their cross-examination. Petitioner agrees to cooperate so as to bring about expeditious disposal of the suit. With the aforesaid observations, the petition stands disposed of. Petitioner to file appropriate application before the Trial Court pursuant to the present order so that the witnesses can be summoned and the present order can be brought to the notice of the Trial Court. Dasti.

5. The third order is passed in CM(M) No. 457/2014 on 5.5.2014 and which reads as under:-

The petitioner is aggrieved by slow progress of the suit. He requests that the direction be issued to the Trial Court to dispose off the suit in the time-bound

manner.

Counsel for a vigilant respondent appears upon intimation and submits that no dilatory tactics have ever been adopted by the respondent and will not be resorted to. She submits that the respondent has been and would promptly assist the Court on each date. It is stated that only three or four more witnesses of the defendants are required to be examined. This will be completed in three months whereafter the Trial Court would endeavour to dispose off the suit by the end of this year. The petition is disposed off in the above terms.

6. A reference to the above orders shows that despite repeated directions of this Court, the suit is not progressing to culmination on account of dilatory tactics being appointed by the present petitioner/defendant in filing one application after another.

7. The illegal persistence of the petitioner/defendant is clear from the fact that repeatedly the same prayer is made for stay of the suit, although there exist earlier orders declining such a prayer and which orders have become final. No doubt, a litigant has a right to approach the court, but the right is to approach the court on valid grounds and not by means of frivolous petitions, and which are in fact part of strategy to delay the disposal of the suit and which is against the specific and repeated directions of this Court.

8. If this Court takes this petition as a challenge to the impugned order dated 20.7.2013, the same is not only barred by delay and laches but also for the reason that a similar application with the same relief was dismissed by the trial court on 3.12.2013. If we take the present petition as a challenge to the impugned order dated 3.12.2013, the challenge cannot be because the same prayer which was made was already declined in an earlier application which was dismissed on 20.7.2013. If we take this petition as a challenge to the order dated 3.4.2014, the challenge is not maintainable in view of the finality achieved to the earlier orders dated 20.7.2013 and 3.12.2013 which clearly hold that there is no law which directs stay of an earlier filed civil suit in a civil court merely because subsequently a case is filed under the Protection of Women from Domestic Violence Act, 2005.

9. The aforesaid facts show that petitioner/defendant is deliberately causing delay in progressing of the suit and not complying with the earlier orders directing early disposal of the suit, and therefore this petition being a gross abuse of the process of law is dismissed with costs of Rs.50,000/- and which costs shall be paid as a condition precedent by the defendant/petitioner to pursue her defence in contesting the case in the trial court.

10. At this stage, counsel for the petitioner states that he does not press the petition and petitioner will not in any manner cause any delay in disposal of the suit including by filing of applications, and therefore, the judgment already passed above is recalled and the petition is dismissed as withdrawn subject to the

undertaking taken of the petitioner through her counsel on record that no further delay will be caused in the trial of the suit by the petitioner/defendant.