

(2014) 07 DEL CK 0065

Delhi High Court

Case No: FAO (OS) 74 of 2014

Natasha Kohli

APPELLANT

Vs

Kum Kum Talwar

RESPONDENT

Date of Decision: July 21, 2014

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 43 Rule 1, Order 43 Rule 43, Order 47 Rule 4, 104, 104(1)
- Delhi High Court Act, 1966 - Section 10, 10(1)

Citation: (2015) 213 DLT 211 : (2014) 145 DRJ 129

Hon'ble Judges: G. Rohini, C.J; Rajiv Sahai Endlaw, J

Bench: Division Bench

Advocate: Meenakshi Arora, Sr. Advocate, Rajshekhar Rao, Jayant K. Mehta, Anu Bagai and Bhuvan Mishra, Advocate for the Appellant; Sandeep Sethi, Sr. Advocate, Satvik Verma, Ankur Mahindroo and Apurv Ranjan, Advocate for the Respondent

Final Decision: Dismissed

Judgement

G. Rohini, C.J.

The present appeal has been preferred under Order 43 Rule 1 of Civil Procedure Code, 1908, read with Section 10 of the Delhi High Court Act, 1966 against the Orders dated 20.12.2013, 10.01.2014 and 24.01.2014 passed by the learned Single Judge in I.A. No. 20865/2013, I.A. No. 530/2014 and R.A. No. 18/2014 respectively in CS (OS) No. 1576/2013.

2. The appellant herein is the defendant in the Suit. For the sake of convenience, the appellant shall hereinafter be referred to as the defendant and the respondents as plaintiffs.

3. The brief facts of the case are that the defendant on 14.11.1994 married one Manmohan Kohli, (hereinafter referred to as Mr. Kohli) and a son named Rishab is born to them. Due to marital discord between Mr. Kohli and defendant, CS(OS) No.

1321/2006 was filed by the defendant in June, 2006 for permanent and mandatory injunction restraining Mr. Kohli from dispossessing her from the house bearing H. No. 15A, Amrita Shergil Marg, New Delhi (hereinafter referred to as the suit house).

4. Various interim orders came to be passed in the said suit with regard to the possession of the suit house and ultimately by order dated 21.04.2010, there was a direction that the defendant shall not interfere with the main building where Mr. Kohli and his son resided.

5. The defendant filed FAO(OS) No. 303-306/2010, challenging the said order dated 24.01.2010 and the Division Bench of this Court, in order to maintain some semblance of peace in the matrimonial home, directed vide order dated 24.09.2010 that except for the master bedroom and the mezzanine attached therein, defendant is entitled to use the remaining portion of the main house. Owing to the fact that the belongings of the defendant are stored in the Outhouse/Annexe/Guest room, the Division Bench also permitted the defendant to use the same. The said order was challenged before the Supreme Court and the SLP was disposed of vide order dated 02.03.2012, declining to interfere and requesting this Court to dispose of the suit as early as possible, preferably within a period of one year. The said suit is still pending.

6. While so, Mr. Kohli suffered brain haemorrhage on 29.07.2013 and was hospitalised in Sri Ganga Ram Hospital at New Delhi.

7. At this stage, a fresh suit being CS (OS) No. 1576/2013 (out of which the present appeal arises) came to be filed by the real sisters of Mr. Kohli alleging that Mr. Kohli gets highly perturbed and traumatized by the sight of the defendant and that her visits to the hospital are causing undue hardship and harm to physical and mental health of Mr. Kohli and also causing danger to his life. Thus, they sought a decree for perpetual injunction restraining the defendant from in any manner mentally harassing Mr. Kohli and/or physically causing any harm to Mr. Kohli by coming anywhere near Mr. Kohli either at the hospital or after he returns home. They also sought injunction restraining the defendant from in any way interacting or communicating with Mr. Kohli either directly or indirectly.

8. Having regard to the fact that the defendant had undertaken before this Court that she would not visit Mr. Kohli in the hospital provided their son is allowed to visit his father and the medical records are provided to the defendant in order to take a second opinion on the condition of Mr. Kohli, the learned Single Judge disposed of CS(OS) No. 1576/2013 on 22.08.2013 on the following terms:

i. Ld. Counsel for defendant on instructions, states that the defendant shall not visit, or interact with her husband, Mr. Manmohan Kohli, who is presently admitted in ICU of Sri Ganga Ram Hospital, till he is hospitalised, and even after he come back to his home, the defendant shall interact with Mr. Manmohan Kohli, if necessary, under medical supervision.

ii. The plaintiffs have no objection to the son of the defendant and Mr. Manmohan Kohli, Mr. Rishabh, visiting his father, to enquire about his well being either in the hospital, or at home. The son shall also be entitled to interact with the treating doctors of Mr. Manmohan Kohli to enquire about his condition.

iii. The defendant desires that the medical record of her husband Mr. Manmohan Kohli should be made available for examination by other doctors to obtain further opinion on his condition. It is pointed out that a similar prayer has already been made in proceedings before the Family Court. The parties are free to pursue their respective stands on this aspect in other proceedings.

9. Thereafter, the plaintiffs filed a fresh application being I.A. No 20865/2013 seeking a direction that the defendant should use and occupy only the Annexe portion of the suit premises and that her guards, servants, agents etc. should not interfere with or come within 50 mts. of Mr. Kohli after he returns home. They also sought a direction to provide complete footage of CCTV cameras by the defendant inside and outside the suit premises. It is pleaded in the said application that Mr. Kohli has made remarkable progress and that the plaintiffs have been advised by the doctors at Sri Ganga Ram Hospital that Mr. Kohli can be taken back to his home, however, the plaintiffs apprehended obstruction by the defendant on his return to his home from the hospital.

10. Though a preliminary objection was raised by the defendant with regard to the maintainability of the said application, the learned Single Judge while granting time to the defendant to raise all such objections in the reply, passed an interim order on 20.12.2013 as under:

Till the next date, the defendant shall ensure that upon return of Mr. Kohli, he shall not be obstructed and interaction with him shall only take place under medical supervision and not otherwise. Mr. Manmohan Kohli shall obviously be entitled to keep with him such medical help and relatives as considered necessary by him.

11. The plaintiffs filed another application being I.A. No. 530/2014 seeking certain further directions and the learned Single Judge passed an order on 10.01.2014 allowing Mr. Kohli to come to his house on 13.01.2014 at 4:30 pm and permitting the plaintiffs and the relatives of Mr. Kohli to have access to the suit house by making visits from time to time to take care about Mr. Kohli. The learned Single Judge had also appointed a Local Commissioner to ensure strict compliance of the said order. There was also a direction by the learned Single Judge that the Local Commissioner shall see that the plaintiffs are also allowed to employ a cook, servants and guard till the next date of hearing.

12. The defendant thereupon filed R.A. No. 18/2014 for review/recall of the Order dated 10.01.2014, to the extent that it allows the plaintiffs to employ cook/servants and guards and allows them unhindered access to the suit house. It was alleged, inter alia, in the said Review Application that the plaintiffs under the guise of the

permission granted in the order under review are seeking to employ one Mr. Ravinder to take care of Mr. Kohli and since the defendant had earlier filed a complaint against the said Ravinder for theft of valuable stuff from the house, his presence in the house would cause harassment to the defendant. Thus, it was sought to be contended that the permission granted to the plaintiffs to employ cook, servants and guards allows them unhindered and uncanalised access to the suit schedule house causing hindrance in the defendant's peaceful occupation and enjoyment of the house.

13. All the interim applications along with Review Petition, namely, I.A. No. 20865/2013, I.A. No. 530/13 and RA. No. 18/2014 were disposed of by the learned Single Judge by a common order dated 24.01.2014 holding as under:

Considering the overall facts and circumstances of the case, I am of the view that since Ravinder was working with Mr. Kohli for more than last 21 years and also have been taking care of Mr. Kohli in hospital and earlier in the house, he may be retained as servant in order to help Mr. Kohli in view of his serious condition. However, in normal course Ravinder would enter the Master Bedroom from the front side of the house and in case of any emergency; he will inform the defendant in advance. Ravinder will not disturb the defendant or have any kind of interaction with the defendant on any issue and he would not have any tiff with other servant in the house. The main purpose of retaining him is to help Mr. Kohli in view of the medical condition as explained in report by the Local Commissioner.

14. Aggrieved by the said common order dated 24.01.2014, the defendant filed the present appeal. The orders dated 20.12.2013 and 10.01.2014 have also been assailed in the present appeal.

15. It is strenuously contended by Ms. Meenakshi Arora, the learned senior counsel appearing for the appellant that the learned Single Judge ought not to have passed the order under appeal without adjudicating the objection raised by the appellant as to the maintainability of the fresh applications filed by the plaintiffs after the disposal of the main suit. It is also contended that the permission granted to the plaintiffs by the orders under appeal to have access to the suit house on the ground of taking care of their ailing brother is unwarranted and unjustified and in fact the same has perpetuated a situation where the right of the appellant and her minor son to peacefully reside in the suit house would be under constant threat.

16. As could be seen from the facts narrated above as well as the material available on record, the appellant and Mr. Kohli have been fighting a long drawn litigation for the past several years and various orders have been passed from time to time with regard to their right to possession and enjoyment of the suit schedule house. So far as the suit out of which this appeal arises is concerned, Mr. Kohli is not a party and the cause of action for the suit was the alleged interference by the defendant with the day to day life of Mr. Kohli in view of his failing health. The suit was admittedly

disposed of recording the terms agreed mutually between the parties. However, the plaintiffs/respondents herein had subsequently filed two fresh applications u/s 151 of CPC upon which the orders dated 20.12.2013 and 10.01.2014 came to be passed by the learned Single Judge. The order dated 24.01.2014 came to be passed on a review application filed by the defendant to review/recall the earlier orders. The said three orders that were passed subsequent to the disposal of the main suit are under challenge in the present appeal.

17. It is to be noticed that the orders dated 20.12.2013 and 10.01.2014 were passed on interlocutory applications filed by the plaintiff u/s 151 of CPC, whereas the order dated 24.01.2014 was passed declining to review/recall the earlier orders on an application filed by the defendant under Order 47 Rule 1 of CPC.

18. Under Order 43 Rule 1 of CPC, an appeal lies only against an order under Order 47 Rule 4 of CPC granting review. So far as the orders passed on the applications u/s 151 of CPC are concerned, indisputably they are not appealable orders under Order 43 Rule 1 of CPC. Thus, it is clear that none of the orders assailed before us are appealable under Order 43 Rule 1 of CPC.

19. Therefore, the first question that requires consideration is whether the present appeal filed purportedly under Order 43 Rule 1 of CPC read with Section 10 of the Delhi High Court Act is maintainable.

20. The question as to the maintainability of an appeal against the order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction which is not appealable u/s 104(1) read with Order 43 Rule 1 of CPC was considered by a Full Bench of this Court in Jaswinder Singh Vs. Mrigendra Pritam Vikramsingh Steiner and Others. After analysing the purport of Clause 10 of the Letters Patent as applicable to Delhi High Court as well as the remedy of appeal provided u/s 10(1) of the Delhi High Court Act, 1966 and relying upon the ratio laid down by the Supreme Court in Shah Babulal Khimji Vs. Jayaben D. Kania and Another, with regard to the meaning of "judgment" in Clause 15 of the Letters Patent of the Bombay High Court, the Full Bench concluded:

In case of an order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order u/s 104 read with Order 43 of the said Code which meets the test of a "judgment" that decides matters of moment or affects vital and valuable rights of parties and which works serious injustice to the parties concerned as per the parameters laid down in Shah Babulal Khimji case (supra) by the Supreme Court, an appeal to the Division Bench would exclusively lie u/s 10 of the Delhi High Court Act and not under Clause 10 of the Letters Patent.

21. While arriving at the said conclusion, the Full Bench had taken note of the fact that the view expressed in University of Delhi and Another Vs. Hafiz Mohd. Said and Others, by a Five Judge Bench of this Court that an appeal u/s 10(1) of the Delhi High

Court Act, 1966 against the order of the Single Judge in exercise of ordinary original civil jurisdiction to a Division Bench lies only in those cases where an order is a "judgment" as defined in the CPC was held to be not good law in *Jugal Kishore Paliwal v. S. Sat Jit Singh and Another*, (1984) 1 SCC 358. While observing that the issue of maintainability of an appeal under Clause 10 of the Letters Patent as applicable to the Delhi High Court as against Section 10 of the Delhi High Court Act is vitally connected with the nature of powers conferred under the Letters Patent to the Delhi High Court, the Full Bench in *Jaswinder Singh* (supra) set out the distinction between the Letters Patent of the Chartered High Courts and the Non-Chartered High Courts and opined:

We are of the view that principles enunciated in *Shah Babulal Khimji* case (supra) as to what would constitute an appealable judgment/order must equally apply to Section 10 of the said Act so that if an order, which is not an appealable order under the said Code, but otherwise satisfies the tests as laid down in *Shah Babulal Khimji* case (supra), in other words effects vital and valuable rights or, is an order which, decides matters of moment; the remedy of appeal to the Division Bench would equally be available.

22. In the light of the ratio laid down by the Full Bench in *Jaswinder Singh* (supra), it is clear that the appeal would lie against the order under appeal only u/s 10(1) of the Delhi High Court Act provided the said order meets the test of the "judgment".

23. What is the meaning of the word "judgment" has been considered in detail and explained as under by the Apex Court in *Shah Babulal Khimji*'s case (supra).

..... Most of the interlocutory orders which contain the quality of finality are clearly specified in clauses (a) to (w) of Order 43, Rule 1 and have already been held by us to be judgments within the meaning of the Letters Patent and therefore, appealable. There may also be interlocutory orders which are not covered by Order 43, Rule 1 but which also possess the characteristics and trappings of finality in that, the orders may adversely affect a valuable right of the party or decide an important aspect of the trial in an ancillary proceeding. Before such an order can be a judgment the adverse effect on the party concerned must be direct and immediate rather than indirect or remote.

24. After reviewing various decisions which laid down the tests of a "judgment", the Apex Court in *Shah Babulal Khimji*'s case had taken particular note of the following tests laid down by Sir Arnold White, C.J. in *Tuljaram Row*'s case:

The test seems to me to be not what is the form of the adjudication but what is its effect in the suit or proceeding in which it is made. If its effect, whatever its form may be, and whatever may be the nature of the application on which it is made, is to put an end to the suit or proceeding so far as the Court before which the suit or proceeding is pending is concerned, or if its effect, if it is not complied with, is to put an end to the suit or proceeding, I think the adjudication is a judgment within the

meaning of the clause. An adjudication on an application which is nothing more than a step towards obtaining a final adjudication in the suit is not, in my opinion, a judgment within the meaning of the Letters Patent.

I think, too, an order on an independent proceeding which is ancillary to the suit (not instituted as a step towards judgment, but with a view to rendering the judgment effective if obtained) e.g., an order on an application for an interim injunction, or for the appointment of a receiver is a "judgment" within the meaning of the clause.

25. It was further held that apart from the above tests laid down in Tuljaram Row's case (supra), the following considerations must prevail with the court in deciding whether an order passed by the Trial Judge amounts to a "judgment" within the meaning of the Letters Patent.

(1) That the Trial Judge being a senior court with vast experience of various branches of law occupying a very high status should be trusted to pass discretionary or interlocutory orders with due regard to the well settled principles of civil justice. Thus, any discretion exercised or routine orders passed by the Trial Judge in the course of the suit which may cause some inconvenience or, to some extent, prejudice to one party or the other cannot be treated as a judgment otherwise the appellate court (Division Bench) will be flooded with appeals from all kinds of orders passed by the Trial Judge. The courts must give sufficient allowance to the Trial Judge and raise a presumption that any discretionary order which he passes must be presumed to be correct unless it is *ex facie* legally erroneous or causes grave and substantial injustice.

(2) That the interlocutory order in order to be a judgment must contain the traits and trappings of finality either when the order decides the questions in controversy in an ancillary proceeding or in the suit itself or in a part of the proceedings.

(3).....

26. It is evident from the legal position noticed above that an appeal u/s 10(1) of Delhi High Court Act, 1966 against an order passed by the learned Single Judge in exercise of ordinary original civil jurisdiction in case of a non-appealable order under Civil Procedure Code, 1908 would lie only when the said order meets the test of a "judgment". In other words, the order shall decide a controversy affecting valuable rights of parties and result in serious injustice to the appellant. It may also be added that such order shall affect the merits of the action between the parties by determining some right or liability and possess the characteristics and trappings of finality adversely affecting a valuable right of the party or deciding an important aspect of the trial in an ancillary proceeding.

27. On a consideration of the order under appeal in the light of the background of the litigation between the parties, it appears to us that the said order neither

determined any issue in controversy between the parties affecting any valuable right of the appellant nor it can be said to have worked serious injustice to her. The order under appeal according to us is only a discretionary order so as to ensure effective implementation of the judgment passed in the main suit with the consent of both the parties. As noticed above, the whole grievance of the appellant appears to be with regard to the permission granted to the plaintiffs to employ one of the servants by name Ravinder, in spite of the protest by the appellant. Even assuming that the discretion so exercised by the learned Single Judge while passing the order under appeal may cause some inconvenience to the appellant as sought to be contended before us, we are unable to hold that it has resulted in grave and substantial injustice to the appellant much less adversely affected any of her valuable rights. Therefore, in our considered opinion, the order under appeal does not qualify to be termed as a "judgment". Therefore, no appeal can be maintained u/s 10(1) of the Delhi High Court Act, 1966.

28. For the aforesaid reasons, the appeal fails and accordingly the same is dismissed. In the facts and circumstances of the case, there shall be no order as to costs.