

(2009) 09 DEL CK 0415

Delhi High Court

Case No: I.A. No's. 12605 of 2007, 920 of 2008 and 8225 of 2009 in CS (OS) 2177 of 2007

Master Ryan thru its mother Mrs.
Ridhima Juneja

APPELLANT

Vs

P.N. Juneja and Sons

RESPONDENT

Date of Decision: Sept. 18, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, Order 39 Rule 4
- Protection of Women From Domestic Violence Act, 2005 - Section 20, 22

Citation: (2009) 163 DLT 14 : (2009) 2 DMC 767 : (2010) 8 RCR(Civil) 361

Hon'ble Judges: S. Ravindra Bhat, J

Bench: Single Bench

Advocate: Geeta Luthra and Jatin Sehgal, for the Appellant; Samrat Nigam and Sima Gulati for Def-No. 2, for the Respondent

Judgement

S. Ravindra Bhat, J.

This order will dispose of I.A. No. 12605/2007 (of the plaintiffs under Order XXXIX Rule 1 and 2), I.A. No. 920/2008 (of the first, third and fourth defendants under Order XXXIX Rule 4) and I.A. No. 8225/2009 (of the third and fourth defendants under Order XXXIX Rule 4).

2. The first plaintiff is the minor son of the second plaintiff (hereafter, "Ridhima") and the second defendant (hereafter, "Deven"). The marriage between Ridhima and Deven was solemnized on 31.01.2004 and the first plaintiff was born in November, 2005. Ridhima alleges that she and her minor child were abused and assaulted in her matrimonial home by her In-laws and husband i.e. the defendants, and after one such incident on 14.07.2007 she was compelled to leave her matrimonial home. She filed a complaint under the Protection of Women from Domestic Violence Act, 2005 (the 2005 Act) before the Ld. Metropolitan Magistrate, Delhi on 16.08.2007,

alleging that she was thrown out of her matrimonial home, i.e. H-130, Ashok Vihar, Phase-1, New Delhi 110054 (hereafter, "the premises").

3. After considering the complaint, the Ld. Metropolitan Magistrate in order dated, 05.09.2007, while granting relief of maintenance and compensation, declined the right to residence to the plaintiffs, in view of the Supreme Court's decision in [S.R. Batra and Another Vs. Smt. Taruna Batra](#), observing that since the premises, which the complainant (Ridhima) claimed to be her matrimonial home, was held by her father-in-law and mother-in-law who had disowned her (Ridhima's) husband, she could not claim it as her matrimonial home; thus she had no valid right to reside in the said premises. The plaintiffs impugned through an appeal before the Additional Sessions Judge, Delhi; Devan too, carried the matter in appeal. Ridhima's appeal (Cr.A. 61/2007) was partly allowed. The direction to pay compensation was maintained; thus, the plaintiffs were held entitled to compensation of Rs. 50,000/-. The appellate court concurred with the trial court's findings about instances of domestic violence:

Keeping in view all these facts I fully agree with the opinion of the Id. Trial court that there are instances of domestic violence and therefore, the respondent is entitled for a compensation of Rs. 50,000/-from the appellant u/s 20 and 22 of the Act.

The matter was remitted, after which the Magistrate again denied the order enabling her to enter the premises. He however, directed payment of Rs. 42,000/-to the plaintiffs, each month, in addition to what was directed earlier, by the order dated 24-8-2008. That order was appealed against, and the appeal is pending.

4. The present suit for partition of joint family properties and permanent injunction restraining the defendants from creating any third party rights in the said premises, etc. was filed, by the plaintiffs. In the application I.A. No. 12605/2007, the plaintiffs sought interim orders to injunct the defendants from dispossessing them (plaintiffs) from Ridhima's matrimonial home, of which they claim to be in constructive possession since allegedly all their clothes, Ridhima's stridhan, dowry articles, personal belongings, car, etc. are still at the premises. On 05.11.2007 this Court made an interim order, whereby the defendants were directed not to disturb the peaceful possession of the plaintiffs in respect of the premises. The third and fourth defendants allege that their son, Devan, was disowned by them, and that he does not own the said property, nor has he anything to do with it. In the circumstances, the plaintiffs, having lived away from the premises, and by their own showing not being in actual physical possession, could not have secured the interim orders, that they did from the court, and their being able to get into the premises, on 1-7-2009 falsifies the entire case set up in the application for injunction filed in 2007. This conduct, say the defendants, is also contumacious.

5. The defendants have moved I.A. No. 920/2008 under Order XXXIX Rule 4 for vacating the said interim order and have also filed their reply to the plaintiffs' Order

XXXIX Rule 1 and 2 application. The defendants have also moved IA 8225/2009, under Order XXXIX Rule 2A, stating that on 01.07.2009 the plaintiffs along with Ridhima's mother, entered into the premises forcibly with the assistance of two police constables on the strength of order dated 5.11.2007 of this Court, and have been since then residing there. The plaintiffs in their reply do not deny this fact. The plaintiffs, however, allege that the Deven's allegedly being disowned by the third and fourth defendants is a mere facade and the true intention of all the defendants is to shield themselves under the Taruna Batra (supra) judgment thus thwarting the plaintiffs' right to residence in the matrimonial home.

6. The plaintiffs argue that this Court should confirm the interim order, and reject the defendants' applications, since the Metropolitan Magistrate passed order, dated 05.09.2007 under a fraudulent representation by Deven that he was ready and willing to live with Ridhima. It is stated that in these circumstances even a protection order was not called for as she was always disposed to live with her husband. It is alleged that when second defendant was disowned by the third and fourth defendants on 22.06.2007, assistance of the same counsel was sought who represented Deven when the complaint before the Ld. MM was pending. They have annexed a copy of an e-mail correspondence, dated 22.06.2007, allegedly written by counsel, on behalf of M/s Gulati & Associates. Further it is stated that the alleged act of disowning was done on 22.06.2007, whereas the plaintiffs were compelled to leave only on 14.07.2007, thus establishing that this was pre-meditated on the part of the defendants. They further allege that Deven resides in the premises and is still a member of and employed with the HUF. Also, on the date of the alleged disowning, Deven had filed a complaint before Crime against Women Cell (hereafter, the "CAWC"), on 22.06.2007 (i.e. the date when the alleged disowning was done) where he stated his residential address to be the said premises. A copy of the said complaint is annexed. On 16.07.2007 Deven had again filed a complaint before the Delhi Legal Services Authority (hereafter, the "DLSA"), quoting the address of the premises as his residential address; copy of complaint is annexed. It is stated that allegedly on 31.08.2007, Deven had also made a query under the Right to Information Act, 2005 and even there he had quoted the address of the premises. A copy of the receipt is annexed. Deven has also received copy of summons dated, 02.01.2008, 13.08.2007 and 03.09.2007 sent to Ridhima from the Delhi Legal Services Authority, pursuant to his application for legal aid/ advice, at the premises. Copies are annexed. Deven also allegedly received summons dated 15.10.2007 from the DLSA, a copy of which is annexed.

7. It is argued by the defendants, that Ridhima was never compelled to leave the house and that she voluntarily left it and also took the minor child i.e. the first plaintiff. The first, third and fourth defendants' joint written statement states that the said premises is a joint property of the third and the fourth defendants and is so held in their names. In response to plaintiffs' averments as to the act of disowning Deven being sham, the defendants deny the same stating that the allegations are

misconceived and contrary to the facts. The second defendant has not yet filed his written statement in the matter. Deven, in his reply to the plaintiffs' application under Order XXXIX Rules 1 & 2, apart from leveling allegations of non-performance of matrimonial duties against Ridhima, states that she had left the house in question along with the second defendant on 13.07.2007 when his parents told her that they had disowned him. He also stated that as being a disowned son, he no longer lives with his parents in the said premises and is currently residing with a friend in Gujrawalan Town, further stating that he is employed by his uncle on a yearly salary of Rs. 2 Lakhs. He states nothing in particular to controvert the allegations of the plaintiffs as to the act of disowning being no more than a façade.

8. The court has considered the submissions of the parties, and the materials on the record. The Court has to first analyze the effect of its interim order dated, 05.11.2007 whereby the defendants were directed not to disturb the peaceful possession of the plaintiffs in respect of the premises. The plaintiffs have, in the very first paragraph of the plaint stated that were in constructive possession of the premises alleging that all their clothes, stridhan, dowry articles, personal belongings, car, etc. are still there. Concededly the plaintiffs were not residing in the premises on the date of filing of the suit. Therefore the interim order dated 05.11.2007 could have only implied that their constructive possession (i.e. of the plaintiffs') shall not be disturbed and they could not be dispossessed to that extent. The order nowhere granted the plaintiffs a right to reenter the premises, by way of a mandatory injunction. Therefore, when on 01.07.2009 the plaintiffs along with Ridhima's mother re-entered the premises on the strength of the same ex-parte interim order, which was made nearly one and a half years back, such re-entry could not be by any means, termed lawful. Even if it is assumed that the plaintiffs' re-entering the premises was authorized by the interim order, -which is not the case, Ridhima's mother's right to reside at the premises cannot be justified by any stretch of imagination.

9. There is another consideration; the court is mindful of the fact that the plaintiffs' appeal against the Learned Metropolitan Magistrate's order is pending before the Learned Additional Sessions Judge. The Metropolitan Magistrate directed monthly maintenance of Rs. 47,000/- to be paid to the plaintiffs, in the order made in the second round of litigation, after remand. For these reasons, the court is of the opinion that the plaintiffs' occupation of the premises cannot be termed lawful; no attempt to justify the entry, by using the previous interim order - which did not enable the plaintiffs to get into the premises, was made.

10. The court next considers whether the plaintiffs, in the overall circumstances of the case, would be equitably entitled to continue in the premises, in view of the materials on record, particularly the undisturbed findings regarding domestic violence against Ridhima. The documents placed on record of the suit, i.e. copies of summons sent to Ridhima by the DLSA, copies of Deven's complaint to the DLSA

and the CAWC, where his residential address is stated to be that of the premises, prima facie might arguably arouse suspicion as to the authenticity of the plea of the third and fourth defendants disowning the second defendant. The newspaper publication whereby Deven was disowned by his parents was made on 22.06.2007. It is unclear as to why this was disclosed to the second plaintiff on 13.07.2007 (as alleged by Deven) and why were Deven and Ridhima permitted to reside in the said premises for the time that they did, after publication of the notice. The court desists from discussing this aspect further, since Ridhima's appeal is pending before the Additional Sessions Judge, and any observation here would prejudice its outcome. These observations have to be considered in the context of the submissions made, and not as in any manner, reflective of the relative merits of the parties to the said appeal.

11. Injunction is a discretionary and equitable relief. A party who seeks equity, should also do equity. Ridhima's conduct, in the circumstances of the case, in gaining an entry in July, 2009 cannot therefore, be condoned or overlooked. In the overall conspectus of circumstances, the court holds that the plaintiffs, as well as Ridhima's mother, had no legal right to re-enter the premises on the basis of the interim order. Therefore their present stay at the premises cannot be permitted. Thus, the Court directs the plaintiffs to vacate the premises within three months; Ridhima shall ensure that her mother vacates the premises within a week. The Court is also of the opinion that the Learned Additional Sessions Judge, before whom the plaintiffs' appeal is pending, should expedite the proceedings and decide the matters pending before him, preferably within three months from today. In the meantime, it is open for the parties to explore options for reconciling their differences through mediation or by any other means. The defendant shall ensure that all payments directed by the learned magistrate are paid, within four weeks; during subsistence of the said order, he shall ensure payment of the amounts to the plaintiff, on or before the 7th each calendar month. The defendant shall file an affidavit, undertaking to abide by these terms, within two weeks.

12. In view of the above discussion I.A. No. 12605 of 2007 of the plaintiffs is dismissed in the above terms and I.A. Nos. 920 of 2008 and 8225 of 2009 of the defendants are allowed, but in terms of the above discussion. The Court is of opinion that no further directions are called for in I.A. No. 8225/2009. No costs.