

\$~55(Appellate)

* IN THE HIGH COURT OF DELHI AT NEW DELHI

+ CM(M) 944/2022 & CM APPL. 40060/2022, CM APPL. 40061/2022, CM APPL. 40062/2022

MOHD SHAKEEL & ORS. Petitioners
Through: Mr.S.Ansari and Mr.I.Ahmed,
Adv.

versus

MOHD ISLAM Respondent
Through: Mr.Mehul Gupta, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T(O R A L)

% 12.09.2022

1. This petition under Article 227 of the Constitution of India, assails order dated 25th March 2022 passed by the learned Additional District Judge (the learned ADJ) in RCA DJ 13/22 (*Mohd. Shakeel v. Mohd. Islam*).

2. The proceedings emanate from Suit No. 603237/16 (*Mohd. Islam v. Mohd. Shakeel*) instituted by the respondent against the petitioners. It is not necessary to enter into the specifics of the dispute. Suffice it to state that the suit was decreed by the learned Civil Judge on 11th January 2022. The operative portion of the judgment of the learned Civil Judge reads as under:

“37. In view of the foregoing discussion and the findings on the aforesaid issues, the suit filed by the plaintiffs is decreed

in part in favour of the plaintiff and against the defendants and defendants, their agents, attorneys etc. are hereby restrained from dispossessing the plaintiff from the suit property i.e., shop No. 3686, Phool Mandi, Darya Ganj, Delhi, also known as Dargah Hazrat Sayed Shah Sabari Ali Chisti, Darya Ganj, Delhi as shown is red colour in site plan Ex.PW1/9A and interfering in plaintiffs business being run by him from the suit premises.

Defendants are further restrained from obstructing the plaintiff to carry on the business of sale of vegetables etc. from the suit premises bearing shop No. 3686, Phool Mandi, Darya Ganj, Delhi, also known as Dargah Hazrat Sayed Shah Sabari Ali Chisti, Darya Ganj, Delhi as shown is red colour in site plan Ex.PW1/SA.

Cost of the suit are awarded in favour of the plaintiffs to be paid jointly by the defendants.

Decree sheet be prepared accordingly.

File be consigned to the record room after compliance.”

3. The petitioners appealed against the aforesaid judgment and decree dated 11th January 2022 to the learned ADJ *vide* RCA DJ 13/22.
4. The petitioner also applied, before the learned ADJ, for stay of operation of the judgment and decree dated 11th January 2022.
5. *Ex parte ad-interim* stay was sought by the petitioners, which was declined by the learned ADJ *vide* order dated 9th February 2022. The stay application itself stands rejected by the impugned order dated 21st March 2022.

6. The learned ADJ has, in rejecting the petitioners' application for stay, noted that the relief granted by the learned Civil Judge was not of such a nature as warranted indulgence by the learned ADJ at that stage.

7. Aggrieved thereby, the petitioners have approached this Court under Article 227 of the Constitution of India.

8. In my considered opinion, the application for stay, preferred by the petitioners before the learned ADJ in RCA 13/22 was itself completely misconceived. Per sequitur, the present petition is also equally misconceived, consequently, is the present petition.

9. Stay of a judgment or decree is a concept unknown to the law. What can be stayed is the *operation or execution* of a judgment or decree.

10. Where a judgment or decree is "injunctive" in nature, i.e. where the judgment or decree injuncts either of the parties before the Court from performing any particular act, ordinarily, no stay of such an order can be sought as it would amount to placing the clock back and restoring the *status quo ante*. More roughly expressed, a stay order cannot be stayed, save in rare and exceptional cases, where restoration of the *status quo ante* at an interlocutory stage is imperative in the interests of justice.

11. The judgment and decree dated 11th January 2022 of the learned ADJ merely injuncted the petitioners from dispossessing the

respondent from the suit property. Such an order, though amenable to challenge, cannot be stayed. There cannot be a stay of a direction not to dispossess. Had the order been a positive order directing placement of anyone in possession, such an order could have been stayed as it would be an order directing a positive act to be performed. An order which restraint dispossession cannot, ordinarily, be stayed at an interlocutory stage in appeal.

12. The petitioners' contention is that the respondent was not in possession of the suit property. That is not an aspect with which I need concern myself in the present petition. The judgment and decree dated 11th January 2022 of the learned Civil Judge does not, in any manner, direct that the respondent should be placed in possession of the suit property. It clearly proceeds on the premise that the respondent is in possession of the suit property and restraint the petitioners from dispossessing him.

13. The learned ADJ has correctly held that, at an interlocutory stage, no case for stay of such an order was made out. To reiterate, if the respondent is not in possession of the suit property, there was no need for the petitioners to ask for stay as the impugned order directs that the respondent be not dispossessed. If, on the other hand, the respondent is in possession of the suit property, grant of any order of stay against dispossession would amount to a direction to restore possession of the suit property to the petitioners at an interlocutory stage, which cannot be granted.

14. It would also result in grant, at an interlocutory stage, of the final relief sought in the appeal, which is also impressible.

15. I find no reason, therefore, to interfere with the impugned order dated 25th March 2022 passed by the learned ADJ in RCA DJ 13/22.

16. This petition is accordingly dismissed as misconceived. Pending applications also stand disposed of.

SEPTEMBER 12, 2022/kr

C. HARI SHANKAR, J

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