

UPAG030022742023



## JUDGE OF SMALL CAUSES COURT, AGRA.

Misc. No. 80/2023

Sandeep Kumar S/o Shri Ram Roop Gautam R/o Sector 4A, Avas Vikas Colony, Sikandra, Agra.

----Applicant

V/s

1. Ramveer Sharma S/o Shri Kailashi R/o Village Janaura, Post Bamrauli Katara, Tehsil Sadar, District Agra.
2. Indian Bank through its Authorised Agent/Officer Manager Agra University Branch, Paliwal Park, Agra.

----Opp. Parties

**Date:- 09-09-2024**

Applicant filed application 4C stating that that Shri Babulal was the recorded Bhumidhar tenure holder with transferable rights of the land comprising the Khasra No. 19, Mauza Lakawali, Tehsil and District Agra measuring 1060 Sq. Mtrs. Out of the total land area, the State of U.P. acquired a large portion of the Khasra No. 19 measuring about 900 Sq. Mtrs. Before actual acquisition vide order No. 617 dated 15.12.2001 and being an old man and illiterate villager, Shri Babulal executed a general power of attorney in favour of Shri Raj Kapoor son of Sukhvasi Lal resident of Basai Kalan, Police Station- Tajganj, Agra dated 04.12.1996 in respect of 413.4 Sq. Yrds., out of the acquired area of 900 Sq. Mtrs. to get release from the Agra Development Authority and to file Suit, Writ, Revision and Appeal to get higher compensation which is registered in Bahi no. 4, Zild No. 155, pages 205-210 on Serial No. 754. It is most pertinent to mention here that the Power of Attorney was executed in respect of only 413.4 Sq. Yrds. of the property which was shown to be bounded as East-Land Balram, West- Land Basant Lal, South-Common Way, North- Land Babulal (Remaining Land). The said piece of land measuring 413.4 sq. Yrds. was part of the acquired land. It is relevant to state here that remaining land in the North side belonged to Babulal after acquisition. Out of the total 1060 Sq. Mtrs. Land of Shri Babulal, 900 Sq. Mtrs. was acquired by Agra Development Authority, Agra and the remaining land having area 160 Sq. mtrs. only were left under the ownership of Shri Babulal after acquisition. This remaining 160 Sq. Mtrs. Land was transferred by Babulal to the plaintiff Shri Sandeep Kumar vide registered sale deed dated 18.12.2013 which is registered in Bahi No. 1, Zild No. 5900, Pages 177 to 218 on Serial No. 14382. On the basis of this sale deed, the plaintiff applied for Mutation in Tehsil Sadar, Agra and as

per the order of Nayab Tahsildar, Kundol Tahsil dated 10.07.2021 in Suit No. T2021101010101125/2021, separated the name of Sri Babulal from Khasra No. 19 of Khata No. 231 having area 160 Sq. Mtrs. Mauza-Lakawali, Tehsil and District Agra and entered the name of Plaintiff Sandeep Kumar. But Raj Kapoor deliberately executed an agreement to sale on 10.10.2013 in favour of his relative Shri Chandra Pal on the basis of above mentioned Power of Attorney. In which Shri Raj Kapoor dishonestly mis-represented the boundaries of the demise property as mentioned in the Power of Attorney and as recorded in the agreement. And only after 2 months, Shri Raj Kapoor again executed a registered sale deed on 10.12.2013 in favour of and in conspiracy with one Chandra Pal in which again dishonestly mis-represented the boundaries as mentioned in agreement and the same were fraudulently recorded in the sale deed. Again only after 22 days, Shri Chandra Pal sold the demise property to the defendant Shri Ramveer Sharma vide sale deed dated 03.01.2014 wherein the demise property is shown by boundaries of the demise property which belongs to Shri Babulal. The said property never belonged to the defendant but the defendant filed a suit no. 967/2014 (Presently 340/2018) and obtained an ex-parte 'Status Quo' order from the civil court on 24.07.2014 by concealing the true facts and misleading the court. After getting 'status quo' order by the Hon'ble court, the defendant, under the conspiracy with the employees of the Allahabad Bank (Now Indian Bank) Branch Paliwal Park, Agra, violated and misused the status quo order and fraudulently transferred the suit property by way of equitable mortgage in favour of Allahabad Bank (Presently-Indian Bank) Agra University Branch, Agra under the conspiracy with the employees of the said bank. Thus, knowingly and intentionally violating the status quo order dated 24.07.2014. As soon as the plaintiff came to know about his plot being fraudulently mortgaged, he lodged a written complaint on the Jansunwai Portal and to the Lead District Manager, Khandari, Agra on 23.01.2021. On such complaint, Sr. Manager of the Indian Bank has posted a letter dated 02.02.2021 regarding the enquiry on the Jansunwai Portal. Apart from this, the information regarding mortgage of the above said land/plot in the Indian Bank, Agra University Branch, Agra by the defendant came to my notice when the bank pasted a possession notice dated 20.09.2021 under SARFAESI Act on the wall of the said plot. The above said Indian Bank, Agra University Branch, Agra also published a notice related to the possession information under SARFAESI Act in the daily newspaper Dainik Jagran on 28.11.2021. The defendant is thus guilty of breach and disobedience of the ex-parte status quo order dated 24.07.2014 passed by the Hon'ble court and necessary action against the defendant deserves to be taken according to law. The defendant has abused the status quo order dated 24.07.2014 with ulterior motive. Shri Ramveer Sharma, defendant owns the following properties:- (i) Agricultural Land situated in Mauza Janaura, Gram Sabha- Bisedi Bhand, Tehsil and District- Agra. (ii) Residential House in Village Janaura, Thana-

Bamrauli Katara, District- Agra. The above mentioned properties of Ramveer Sharma, defendant are liable to attach for the disobedience and intentional violation of ex-parte status quo order dated 24.07.2014 to ensure the compliance of the status quo order, failing which the attached property is liable to be sold of and the proceeds thereof may be order to be paid to the plaintiff as compensation which may be fixed by the Hon'ble court and defendant may also be detained in civil prison in accordance with order XXXIX Rule 2A C.P.C. Plaintiff shall suffer irreparable loss and injury, if the defendant is not directed to comply with the orders passed by this Hon'ble court in accordance with order XXXIX Rule 2A C.P.C. The plaintiff, therefore, prayed that the properties of Ramveer Sharma defendant No. 1 be attached for the disobedience and intentional violation of ex-parte status quo order dated 24.07.2014 to ensure the compliance of the status quo order, failing which the attached properties should be sold and compensate the plaintiff. Despite it, the defendant no. 1 should be taken in civil prison as per law.

Opp. Party No. 1 filed objection 16C stating that boundaries shown in plaint are incorrect. It is true to allege that 900 sq mts was acquired by Agra Development Authority, Agra. Neither the opposite party no. 1 nor the Bank are contemptner. The suit property was mortgage in bank and due to internal affairs of the bank the said loan was internally transferred to different branch, which causes no violation of any court's order. The bank is not a party in original suit and could not be made party in this case. The aforesaid order is not binding upon the opposite party no. 2. The application under reply is not legally maintainable and deserves to be rejected with costs.

Applicant filed Replication 29C of Opp. Party No. 1's reply 16C stating that Shri Babulal, the land owner, executed a general power of attorney in favour of Shri Raj Kapoor son of Sukhvasi Lal resident of Basai Kalan, Police Station- Tajganj, Agra dated 04.12.1996 in respect of 413.4 Sq. Yrds., out of the acquired area of 900 Sq. Mtrs. to get release from the Agra Development Authority and to file Suit, Writ, Revision and Appeal to get higher compensation which is registered in Bahi No. 4, Zild No. 155, pages 205-210 on Serial No. 754. The boundaries of such piece of land were shown as East-Land Balram, West- Land Basant Lal, South-Common Way, North- Land Babulal (Remaining Land). Shri Babulal was the recorded Bhumidhar tenure holder with transferable rights of the land comprising the Khasra No. 19, Mauza- Lakawali, Tehsil and District Agra measuring total 1060 Sq Mtrs. Out of the total land area, the State of U.P. acquired a large portion measuring about 900 Sq. Mtrs. And only 160 Sq. mtrs. land were left under the ownership of Shri Babulal after acquisition. After getting 'status quo' order from the Hon'ble court, the Opposite Parties/ Plaintiff, under the conspiracy with the employees of the Allahabad Bank (Now Indian Bank) Branch Paliwal Park, Agra, violated and misused the status quo order and fraudulently transferred the suit property by way of equitable mortgage in favour of Allahabad Bank

(Presently Indian Bank) Agra University Branch, Agra under the conspiracy with the employees of the said bank. Thus, knowingly and intentionally violating the status quo order dated 24.07.2014. It is a well settled principle of law that the pleading should be read and interpreted in totality and not in parts. A plain reading of para no. 7 of the affidavit clearly shows that the word 'defendant' has been erroneously typed in place of 'plaintiff'. The Applicant/Defendant has not filed the suit no. 967/2014 (Presently: 340/2023) accordingly in the statement that "the said property never belong to the defendant", the word 'defendant' has been erroneously typed in place of the word 'the plaintiff'. Under the conspiracy with the employees of the Allahabad Bank (Now Indian Bank) Paliwal Park Branch, Agra, the Opposite Parties/Plaintiff violated and misused the status quo order and fraudulently transferred the suit property by way of equitable mortgage in favour of Allahabad Bank (Presently - Indian Bank) Agra University Branch, Agra. Thus, knowingly and intentionally violating the status quo order dated 24.07.2014. The opposite Party No. 2 was not a party in the original suit because the suit filed by the Opposite Party No. 2 /Plaintiff in the 2014 and after getting the status quo order from the Hon'ble court on 24.07.2014, the Opposite Parties/Plaintiff deliberately and fraudulently transferred the suit property by way of equitable mortgage in favour of Allahabad Bank (Presently Indian Bank) Agra University Branch, Agra. And Opposite Party No. 2 the bank without verifying the documents and the order of the Hon'ble court to maintain the status quo, gave the loan by way of equitable mortgage with the collusion of Opposite Party No. 1. The Opposite Parties/ Plaintiff is thus guilty of breach and disobedience of the ex- parte status quo order dated 24.07.2014 passed by the Hon'ble court and necessary action against the Opposite Parties/ Plaintiff deserves to be taken according to law. The Opposite Parties/Plaintiff has abused the status quo order dated 24.07.2014 with ulterior motive. It is, therefore, prayed that the properties of Ramveer Sharma Opposite Party No. 1 be attached for the disobedience and intentional violation of ex-parte status quo order dated 24.07.2014 to ensure the compliance of the status quo order, failing which the attached properties should be sold and compensate the Applicant/Defendant. Further, the Opposite Parties/Plaintiff no. 1 and 2 should be taken in civil prison as per law.

Applicant filed following legal authorities:-

- 1- Amit Kumar Das, Joint Secretary, Baitanik, a registered society V/s Shrimati Hutheesingh Tagore Charitable Trust Special Leave Petition (C) No. 34892 of 2014, where Hon'ble Supreme court held that violation of status quo order in relation to possession of the suit premises amounted to civil contempt under Section 2(d) of Contempt of Court Act, 1971.
- 2- Balwantbhai Somabhai Bhandari V/s Hiralal Somabhai Contractor (Deceased) Rep. by LRs. & Ors. Civil Appeal No. 4955 of 2022, where Hon'ble Supreme Court held that court can always declare transfer of suit property pendente lite as void to maintain majesty of law. Court can issue

direction either for reversal of the transaction by declaring the transaction to be void. Guidelines was issued in respect of civil contempt under Section 2(d) of Contempt of Court Act, 1971.

3- N. Srinivas and Anr. V/s Naresh Kumar & Ors. Contempt Petition No. 114 of 2008, where Hon'ble Madras High Court held that where court granted an order of injunction restraining the respondent from interfering with their peaceful possession. Later on, court order status quo to be maintain. One of the respondent mortgaged the property to bank. This act is willful disobedience of the Court order. Nationalised bank failed to check the encumbrance over the property. It was argued that bank has initiative proceeding for recovery of loan money from the mortgager company through Debt Recovery Tribunal. Contemnor punished with fine along with imprisonment. Third party right created over the property after the status quo order will also set aside.

Opp. Party No. 1 filed following legal authorities:-

1- Mostt. Manju Kumari Sharma and Ors. V/s Bhupendra Narain Singh 2005(6) R.C.R. (Civil) 594, where Hon'ble Patna High Court held that sale deed executed in favour of third party despite the undertaking that status quo of suit property would not be changed pending disposal of appeal. This is covered by Section 52 of Transfer of Property Act. So, contempt of court act not attracted.

2- Charanjeet Kaur Khurana V/s S Manmohan Singh Oberoi and others 2023(296) DLT 275, where Hon'ble Delhi High Court held that exparte injunction was granted in favour of plaintiff. Defendant No. 1 gave undertaking that he shall not sell or transfer the title of immovable property. However, property was mortgaged to a financial institution. No default in payment of loan. So, application under Order 39 Rule 2(a) C.P.C. is not maintainable.

3- State of Bihar V/s Rani Sonabati Kumari 1961 AIR (SC) 221, where Hon'ble Supreme Court held that notification by state government have statutory affect of divesting owner of estate of his title to property.

4- N. Ramaiah V/s Nagaraj S. 2001 AIR (Karnataka) 395, where Hon'ble Karnataka High Court held that execution of will by one party during the order of status quo is not violating of court order as it is only a legal expression of the intention of person by a will neither possession nor title is altered.

5- Vikram Shrivastava V/s Rampur Finance Corporation Pvt. Ltd. and Ors. 2023 (4) Civil LJ 844, where Hon'ble Madhya Pradesh High Court held that when the order of status quo is not clear then it should be read and construed only in relation to the prayer made in the application for temporary injunction. In the instant case, property was alienated and demolition was started. Status quo was granted in respect of 1/6th share of plaintiff. It was held that agreement in relation to property is not synonymous with alienation of property.

From the perusal of the file/record, it is clear that applicant has alleged suit property belongs to Babulal. Babulal executed power of

attorney in favour of Shri Raj Kapoor on 04-12-1996. Out of total 1060 Sq. Mt. Land, 900 Sq. Mt. was acquired by Agra Development Authority. Rest 160 Sq. Mt. property was left with Babulal. Babulal transferred the rest 160 Sq. Mt. property to plaintiff through sale deed dated 18-12-2013. Meanwhile, Raj Kapoor executed Agreement to sale in favour of Chandra Pal on 10-10-2013 relying on power of attorney. On 10-12-2013 executed sale deed in favour of Chandra Pal. Chandra Pal sold the property through sale deed dated 03-01-2014 to Shri Ramveer Sharma. Ramveer Sharma filed suit no. 967/2014 (New No. 340/2018) and obtained status quo order on 24-07-2014. Ramveer Sharma mortgaged the above property to Allahabad Bank as guaranter. Bank started SARFAESI ACT proceeding in respect of the above property due to non payment. Property was attached and notice was issued on 28-11-2021. Above property will be sold in SARFAESI proceedings.

Opp. Party No. 1 Ramveer Sharma filed reply 16C. It was alleged that suit property never belong to defendant/applicant. It was admitted that suit property was mortgaged to bank. Allahabad bank appeared in the proceeding and filed adjournment application 17D. Later on, documents of loan was filed through list 19C. From the document, it is clear that loan was taken by firm M/s Pitambara Constructions (Proprietor- Prashant Sharma). Loan amount was 90 lacs. Two properties were offered as security. First property is suit property, which was valued as 84.40 lacs. Second property was valued as 24.13 lacs. Opp. Party Ramveer Sharma became guaranter of the loan (20C/1). O.P. Ramveer Sharma also filing affidavit 22C/1 in bank declaring that suit property was not subject matter of any suit. This affidavit was filed on 17-03-2017. Loan was sanctioned on the affidavit of Ramveer Sharma. Legal opinion in relation to property was also annexed 24C. Sale deed dated 03-01-2014 was filed with bank. Applicant has filed possession notice of Indian Bank dated 20-09-2021. Loan liability was shown as Rs. 1,10,71,542/- as on 24-05-2021. It was stated that guaranter has failed to repay the amount. Possession notice was published in local Newspaper "Dainik Jagaran".

Possession notice of bank dated 20-09-2021 shows that suit property was under process of SERFAESI Act. From the perusal of Court order dated 24-07-2014, it is clear that both the parties of the suit were directed to maintain status quo. It is argued on the behalf of opp. party Ramveer Sharma that original application for temporary injunction 8C was on in relation to peaceful possession. In light of Vikram Shrivastava V/s Rampur Finance Corporation Pvt. Ltd. and Ors. 2023 (4) Civil LJ 844, Opp. Party was not barred from mortgaging suit property. From the perusal of plaint 4A, it is clear that suit was filed by plaintiff Ramveer Sharma in respect of possession as well as title of the property. If the argument of O.P. is accepted then also possession of suit property was not maintain intact as due to act of mortgaged concerned bank has pasted notice for possession of suit property. So, order of the court regarding status quo was indirectly interferred by the act of O.P. Ramveer Sharma. It

is clear that Ramveer Sharma filed false affidavit in Nationalised Bank O.P. No. 3 that no suit was pending in respect of suit property. It is also clear that nationalised bank has also not verified the credential of property as two sale deed of same property was executed within span of one month. Sale deed in favour of applicant/defendant Sandeep Kumar was executed on 18-12-2013. Whereas, sale deed in favour of plaintiff/O.P. No. 1 was executed on 10-12-2013.

Present case is different as plaintiff himself has violated the order of status quo. Mortgaging property knowing that ownership dispute is pending and defaulting in said loan clearly shows the intention of party as loan recovery is always done from the property mortgaged in bank through auction. This will defeat the whole purpose of the suit.

In present case, documentary evidence shows that SERFAESI proceedings has already started in respect of suit property. This petition has succeeded as documentary clearly shows that O.P. No. 1 Ramveer Sharma knowingly became guarantor in the loan of a firm. Suit property was mortgaged. Loan became non-performing asset within short time. O.P. No. 3 Indian Bank started proceeding under SERFAESI Act. Possession notice was issued by bank on 20-09-2021, which was precondition for auction proceedings. At this stage, status quo order was not followed by O.P. No. 1 Ramveer Sharma knowingly and furnished false affidavit in the bank to secure loan of Rs. 90 Lacs by offering suit property as security. In light of Balwantbhai Somabhai Bhandari V/s Hiralal Somabhai Contractor (Deceased) Rep. by LRs. & Ors. Civil Appeal No. 4955 of 2022, where Hon'ble Supreme Court held that court can always declare transfer of suit property pendente lite as void to maintain majesty of law. Court can issue direction either for reversal of the transaction by declaring the transaction to be void. Guidelines was issued in respect of civil contempt under Section 2(d) of Contempt of Court Act, 1971.

At this stage, it is clear that court order dated 24-07-2014 was obtained by plaintiff himself. O.P. No. 1/Plaintiff was aware about the dispute regarding title and possession of suit property. Instead of waiting for court order mortgage was done in favour of O.P. No. 2/Bank. False affidavit was furnished in Bank regarding pendency of civil suit. Loan account has become N.P.A. Thus, auction proceedings was initiated by publishing notice of possession. So, possession was also affected inspite of status quo order. Plaintiff has committed breach of Order dated 24-07-2017 passed by this Court Under Order XXXIX Rule 2 C.P.C. Consequence of such breach or disobedience has been provided under Order XXXIX Rule 2A C.P.C as-

(1) *In the case of disobedience of any injunction granted or other order made under rule 1 or rule 2 or breach of any of the terms on which the injunction was granted or the order made, the Court granting the injunction or making the order, or any Court to which the suit or proceeding is transferred, may order the property of the person guilty of*

such disobedience or breach to be attached, and may also order such person to be detained in the civil prison for a term not exceeding three months, unless in the meantime the Court directs his release.

(2) No attachment made under this rule shall remain in force for more than one year, at the end of which time if the disobedience or breach continues, the property attached may be sold and out of the proceeds, the Court may award such compensation as it thinks fit to the injured party and shall pay the balance, if any, to the party entitled thereto.

In Food Corporation of India v. Sukh Deo Prasad, (2009) 5 SCC 665, wherein it was held that the power exercised under Order 39 Rule 2A of the C.P.C. was similar to the power of the civil contempt under the Contempt of Courts Act, 1971 and the disobedience had to be proved 'beyond any doubt' by the person who complained of such disobedience.

The Court further relied on U.C. Surendranath v. Mambally's Bakery, (2019) 20 SCC 666 and opined that there had to be strict and irrefutable proof of disobedience for punitive action to follow under Order 39 Rule 2A of the C.P.C. The Court further opined that "in its zeal to uphold its majesty and ensure implementation of rule of law, the court cannot hold a person guilty of violation of its orders and proceed punitively against him merely because the circumstances give rise to a strong suspicion of the order of the court having been disobeyed. The principle that suspicion, howsoever strong, can be no substitute for proof may be justifiably be invoked while dealing with application under Order 39 Rule 2A of the CPC".

Samee Khan vs Bindu Khan AIR 1998 SC 2765, it has been held by Hon'ble Supreme Court that "the words 'and may also' in Rule 2-A cannot be interpreted the context as denoting to a step which is permissible only as additional to attachment of property of the opposite party. If those words are interpreted like that it may lead to an anomalous situation. If the person who defies the injunction order has no property at all the court becomes totally powerless to deal with such a disobedient party. he would be immuned from all consequences even for any open defiance of a court order. No interpretation shall be allowed to bring about such a sterile or anomalous situation (vide Constitution Bench in Vidya Charan Shukla vs. Khubchand Baghel [AIR 1964 SC 1099]. The pragmatic interpretation, therefore, must be this: It is open to the court to attach the property of the disobeying party and at the same time the court can order him to be detained in civil prison also if the court deems it necessary. Similarly the court which orders the person to be detained in civil prison can also attach the property of that person. Both steps can be resorted to or one of them alone need be chosen. It is left to the court to decide on consideration of the fact situation in each case."

In the present case, plaintiff himself violated the Court order dated 24.07.2014. Plaintiff pledged suit property in Loan to Bank/O.P No.2. Filed false affidavit that no case is pending regarding suit property{(Para- 8 of Affidavit dated 17.03.17-(22C))}. Stay order/Status quo order was

concealed. Loan account became Non Performing Asset (N.P.A) due to non payment. Bank issued possession notice dated 20.09.2021 under SARFAESI Act, 2003. This act is in clear violation of Court order dated 24.07.2014. Knowledge of Court Order is no ground for O.P No.1 as he himself filed the suit. Order dated 24.07.2014 was passed on his application 8C. It is necessary that property of O.P No. 1 (as mentioned in application 4C) be attached for one year. In this one year he will have opportunity repay the due loan amount as guarantor and make suit property encumbrance free as it was on 24.07.14. In case of his non compliance property belonging to O.P. No. 1 will be sold out and applicant will be compensated with appropriate compensation.

This case is peculiar as plaintiff himself has violated the order of injunction obtained by him in the suit. So, O.P. No. 1 Sri Ramveer Sharma [Plaintiff of O.S. No. 967/2014 (New No. 340/2018)] is liable to be sent in civil prison for the period of two weeks.

O.P. No. 2 Indian Bank is required to be restrained from proceeding against suit property under SERFAESI Act till the period of one year.

**Order**

O.P. No. 1 Sri Ramveer Sharma [Plaintiff of O.S. No. 967/2014 (New No. 340/2018)] is found to be liable for civil imprisonment for the period of 14 days. Sri Ramveer Sharma is directed to remain present before this court on 10-10-2024 for above punishment. Applicant Sri Sandeep Kumar is directed to deposit cost of civil imprisonment as per Jail Manual for 14 days.

Property of O.P. No. 1 Sri Ramveer Sharma [Plaintiff of O.S. No. 967/2014 (New No. 340/2018)] mentioned in application 4C is hereby attached for the period of 1 year (till 10-09-2025). Let Court Amin be sent to both the properties for pasting of Attachment Order on both the properties. Attachment Order be sent to local Revenue Officer for entry in revenue record.

O.P. No. 2 is hereby restrained from proceeding against suit property of O.S. No. 967/2014 (New No. 340/2018) under SERFAESI Act till the period of 10-09-2025.

List the case for further proceeding on 10-10-2024.

(Mritunjay Srivastava)  
Civil Judge (S.D.)/  
Judge of Small Causes Court,  
Agra.