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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ RSA 194/2023

LATE AKSHEM CHAND THROUGH  
LR ATLO DEVI

..... Appellant

Through: Mr. Swadesh Kumar, Appellant  
2 in person

versus

SURESH BALA & ORS.

..... Respondents

Through:

**CORAM:**

**HON'BLE MR. JUSTICE C.HARI SHANKAR**

**JUDGMENT (ORAL)**

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**14.03.2024**

**CM APPL. No. 15380/2024 (Exemption)**

1. Allowed subject to all just exceptions.
2. Application stands disposed of.

**CM APPL. No. 15379/2024 (u/s 195 read with Section 340 CrPC)**

3. It is a matter of concern and, in fact, despair that the present application under Section 340 of the Code of Criminal Procedure, 1973 (CrPC) has been instituted by a litigant who happens to be a practising advocate.
4. This application is the worst kind of abuse of the legal process.



I have repeatedly put the applicant, who appears in person, on notice, as to whether he is pressing this application. He insists on pressing it.

5. The facts are stark.

#### The first round of litigation

6. One may start the recital of facts from CS 417/2009 which was instituted by one Suresh Bala (Respondent 1) and her husband Angad Ram against late Akshem Chand (of whom the present applicant is the son) and his sons and daughters (hereinafter referred to as “Akshem Chand etc.”). Suresh Bala and her husband, Angad Ram claimed to be absolute owners of a property situated at 1/4055, Ram Nagar Extension, Loni Road, Shahdara, Delhi (hereinafter referred to as “the suit property”), in which they had allowed Akshem Chand and his family to stay as licencees. The licence having been terminated, and Akshem Chand etc. having failed to vacate the suit property, Suresh Bala and Angad Ram instituted CS 417/2009, seeking a decree of possession, permanent injunction and mesne profits against Akshem Chand and his family apropos the suit property.

7. CS 417/2009 was decreed in favour of Suresh Bala and Angad Ram by the learned Additional Senior Civil Judge (“the learned ASCJ”) *vide* a detailed judgment dated 4 July 2012.

8. Akshem Chand etc. (which includes the present applicant and his wife), challenged the aforementioned judgment and decree dated 4 July 2012 of the learned ASCJ before the learned Additional District Judge



(“the learned ADJ”) by way of RCA 42/2014. By judgment dated 15 April 2014, the learned ADJ dismissed RCA 42/2014.

**9.** The said judgment dated 15 April 2014 of the learned ADJ in RCA 42/2014 was carried further by Akshem Chand etc. (including the present applicant) in second appeal to this Court by way of RSA 157/2014 (*Akshem Chand and Ors v. Suresh Bala and Ors*) under Section 100 of the CPC.

**10.** When RSA 157/2014 came up before this Court, the appellants therein Akshem Chand etc. (which includes the present applicant), *stated that they were not pressing the appeal on merits but sought a year’s time to vacate the suit premises.* This court, *vide* order dated 8 July 2014, granted the applicant and other appellants in RSA 157/2014, time till 30 June 2015 to vacate the suit property subject to filing of an undertaking to that effect, on or before 30 June 2015.

**11.** *According to the applicant, as he never filed the undertaking as required by the order dated 8 July 2014, there was no obligation on him to vacate the suit property.*

**12.** Instead of complying with the aforesaid statement, Akshem Chand etc. (including the present applicant) filed Review Petition 373/2014 seeking review of the order dated 8 July 2014.

**13.** By order dated 19 August 2014, this Court dismissed the Review Petition.



**14.** Akshem Chand etc. (including the present applicant) proceeded to challenge the order dated 8 July 2014 passed by this Court in RSA 157/2014 before the Supreme Court by way of SLP (C) CC 13636/2015.

**15.** The Supreme Court disposed of the said SLP by the following order dated 7 August 2015:

“Heard the petitioner in-person.

Delay condoned.

Regard being had to the facts and circumstances of the case, *while not inclined to interfere with the judgment and decree passed by the High Court, we are only inclined to extend the period till 5<sup>th</sup> January, 2016. All the other directions passed by the High Court shall remain in force.*

The special leave petition is, accordingly, disposed of.”

**16.** Thus ended the applicant’s first round of litigation.

#### The second round of litigation

**17.** Having thus unsuccessfully challenged the judgment and decree dated 4 July 2012 of the learned ASCJ in CS 417/2009 up till the Supreme Court, Akshem Chand etc. (including the present applicant), instituted a second suit (CS 8353/2016) before the learned SCJ, for a declaration that the judgment dated 4 July 2012 was null and void, having been obtained by fraud.

**18.** The respondents filed an application in CS 8353/2016 under Order VII Rule 11 of the CPC, seeking dismissal of CS 8353/2016.



19. The learned ASCJ, besides finding that the suit was itself not maintainable in view of the fact that the judgment dated 4 July 2012 passed by his predecessor in CS 417/2009 had attained finality till the Supreme Court, also found, on merits, that the allegations of fraud and misstatement was unsustainable on facts. It was specifically found that the allegations in the suit even on their face “do not disclose any existence of any kind of fraud being played upon the Court”.

20. Accordingly, by order dated 7 December 2018, the learned ASCJ allowed the respondents’ application under Order VII Rule 11 and, consequently, dismissed CS 8353/2016.

21. Akshem Chand etc. (including the present applicant) proceeded, undeterred, to challenge the above order dated 7 December 2018 passed by the learned ASCJ before the learned ADJ by way of RCA DJ 9/2019.

22. By judgment dated 25 January 2023, the learned ADJ dismissed RCA DJ 9/2019. Paras 9 to 11 and 13 of the judgment of the learned ADJ, deserve to be produced thus:

“9. After having heard either side and mulled over the entire record *coupled with findings of the Courts upheld upto Hon'ble Apex Court, this Court has no hesitation in concluding that the present appeal is a gross abuse of the process of Court.*

*Appellants have resorted to an irresponsible and frivolous litigation after the categorical findings in the judgments suffered by them. The record demonstrates that Appellants’ case was that they were residing at first floor of property and while Akshem Chand was employed with Northern Railways in various capacities, he had purchased the plot from income earned from his employment and*



also built the first floor. The case of Appellants throughout was that Appellant No.1 continued to reside at his official accommodation but after his retirement, he came to the first floor of the house and Respondents were permitted to live on ground floor portion by them as licensees. The case of Appellants as put up before the Id. trial court was that original documents of title of the suit property entrusted by Appellant to his mother, fell into the hands of Respondents after demise of mother and were destroyed by them just to obliterate the evidence of Title of Appellant No. 1 to the property. Another plea taken was that documents in favour of Respondents were forged and fabricated.

10. *It is an undeniable fact that Appellants exhausted all legal remedies in respect of the ownership and possession of the suit property upto the forum of Hon'ble Apex Court. In such a situation, issue is whether Appellants were entitled for the claim of Declaration in respect of the Judgment and Decree, which was affirmed by the Superior Courts upto the forum of Hon'ble Apex Court. Id. trial court in the impugned order rightly observed that suit for Declaration filed after resorting to all remedies was not entertainable in view of Explanation-IV of Section 11 of CPC. The alleged contention raising fresh dispute of ownership by Appellants now is not maintainable, even on account of applicability of Order 2 Rule 2 of CPC and principle of res-judicata.*

11. *Once all the points already determined through findings by the Courts of Law, Appellants have attempted to create an illusion of cause of action in a mischievous manner and cleverly drafted the plaint to seek the relief which is not entertainable. The judgment of Id. trial court operates as a bar to the trial of the present suit as all issues raised in the present matter being directly and substantially in issue, have been finally decided by Id. trial court in earlier suit pending between parties litigating under the same title. Furthermore, the plea of Appellants that judgment was obtained by Respondents on account of alleged fraud not taken earlier before any judicial forum, they are precluded from agitating the same in any subsequent litigation. Id. Trial court therefore correctly observed that the objections so raised at the fag end by Appellants ought to have been taken before Id. trial court before the judgment was passed, where Appellants had to exhaust, all available grounds in support of their claim in the earlier writ; hence, the suit itself being hit by the doctrine of res-judicata.*

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13. *Therefore, applying the principles of law and adverting to*



*contents of the plaint of Appellants before trial court, cleverly, a cause of action has been created by Appellants on the premise of the alleged forgery and fraud at the behest of the Respondent, on the premise that suit property was owned by one Zafarulah. The plea falls flat in view of the categorical findings and observations of the courts. Furthermore, my attention was drawn to one suit for Recovery of Possession and Injunction filed by Mohd. Irshad against Respondents, titled **Mohd. Irshad v. Smt. Suresh Bala & Ors.** CS No.2142/2016 and the Order dated 12.09.2022 passed therein, which clearly shows that suit of Plaintiff Mohd. Irshad, who claimed himself to be the great grandson of one Zafarulah and thus claiming ownership on the strength of Will was found to be devoid of any cause of action in view of the Orders/judgments dated 04.07.2012, 15.04.2014 and 08.07.2014. The suit of Mohd. Irshad thus was dismissed being barred by principle of res-judicata.*

*The Judgment and Decree sought to be declared as null and void by Appellants was rendered between the same parties in respect of the same property and the same was decided on merits of the case after both the parties had led their respective evidence. The said judgment was upheld by Ld. ADJ as well as Hon'ble Delhi High Court and was upheld upto Hon'ble Apex Court and an attempt of Appellants to initiate a new round of litigation by contending that Mohd. Zafarulah was the owner of suit property, is completely an attempt to intentionally keep alive the litigation by raising such meaningless pleas.”*

(Emphasis supplied)

**23.** The learned ADJ, therefore, dismissed the appeal with costs of ₹ 40,000/-. Subsequently, *vide* order dated 10 February 2023, the costs were waived by the learned ADJ.

**24.** The decision of the learned ADJ was carried further in appeal to this Court, by Akshem Chand etc. (including the present applicant) by way of RSA 194/2023.

**25.** By judgment dated 10 October 2023, this Court found the appeal to be vexatious and expressed its concurrence with the view of



the learned ASCJ and the learned ADJ that CS 8353/2016 was a clear abuse of process of Court. The appeal was, therefore, dismissed with costs of ₹ 25,000/-.

**26.** The present applicant, along with other appellants in RSA 194/2023, thereafter filed Review Petition 353/2023, seeking review of the aforementioned judgment dated 10 October 2023.

**27.** By order dated 2 February 2024, Review Petition 353/2023 stands dismissed.

**28.** Thus ended the applicant's second round of litigation.

#### The third round of litigation

**29.** Undaunted at having thus failed time after time, before every Court from the ASCJ to the Supreme Court, the applicant, indefatigable as ever, has now instituted the present application under Section 340 CrPC read with Section 195 of the IPC, seeking institution of criminal proceedings against the respondents for having obtained the judgment and decree dated 4 July 2012 of the learned ASCJ in CS 417/2009 by fraud.

**30.** On being queried as to the basis of his allegation of fraud, the applicant submits that, in CS 417/2009, the respondent had sought to place on record fabricated documents such as family GPA and Will dated 18 March 2009, whereby the suit property was transferred to Suresh Bala. It is stated that, in an earlier suit (Suit 223/2009)





instituted by Akshem Chand etc. against the respondents, the respondent had specifically stated on affidavit that the husband of Suresh Bala was the owner of the suit property in July 2009. The documents dated 18 March 2009, which form the basis of CS 417/2009 were, therefore, according to the applicant, ante dated.

**31.** The applicant also relies on the record of cross-examination of Suresh Bala in CS 417/2009. He seeks to contend that in the said cross-examination, Suresh Bala had denied the transactions having taken place on 18 March 2009.

**32.** However, a perusal of the record of cross-examination of Suresh Bala reveals that this is not correct. The relevant extract of the cross-examination of Suresh Bala reads:

“I also cannot tell as to whether any money was received by me on account of the suit property or not. I cannot tell as to whether any money was paid by me or received by me on 18.03.09 on account of the suit property”.

**33.** In any event, *the assertion that the documents of title dated 18 March 2009, on which the respondent as the plaintiff, placed reliance in CS 417/2009, were forged and fabricated, was specifically raised as a defence in the written statement filed by the applicant and other co-defendants in that suit. The assertion to that effect was rejected by the learned ASCJ in the judgment dated 4 July 2012, which was carried all the way upto the Supreme Court. Before this Court, the applicant and other co-appellants specifically stated on 8 July 2014 that they were not pressing RSA 157/2014 on merits and only sought*



*time to vacate the suit property. All assertions and allegations raised by the Akshem Chand and others – including the present applicant – were thereby, given up before this Court. The matter was nonetheless carried to the Supreme Court which, too, did not chose to interfere with the order of this Court and merely gave time to the appellants to vacate the suit property.*

**34.** In that view of the matter, there can be no manner of doubt that even *the second suit CS 8353/2016 was clear abuse of process of Court. Having taken the stand that the documents of title on which the respondents relied in CS 417/2009 were fabricated, and having failed to succeed in pressing home the said assertion during the proceedings in the said suit, having voluntarily stated before this Court that they were not contesting the matter on merits, on 8 July 2014, raking up the issue of documents of title dated 18 March 2009 as being fabricated, by way of the second suit CS 8353/2016, was ex facie abusive of the legal process.*

**35.** CS 8353/2016 was, therefore, rightly dismissed by the learned ASCJ as amounting to abuse of process. That decision was upheld by the learned ADJ, vide order dated 25 January 2023 and further upheld by this Court in judgment dated 10 October 2023 passed in RSA 194/2023 (in which the present application has been moved) with costs of ₹ 25,000/-. Review Petition 353/2023, which sought review of the said decision, also stands dismissed by order dated 2 February 2024.



**36.** The issue of the documents dated 18 March 2009 being forged and fabricated has now been sought to be resuscitated a third time by means of the present application under Section 340 of the CrPC.

**37.** The applicant is a practising advocate. This Court cannot believe that the applicant is unaware of the law. It is obviously in full knowledge and consciousness of what he is doing, and the manner in which he is abusing the legal process with impunity, that the applicant has filed the present application.

**38.** When the legal process is abused by members of the legal fraternity, who are supposed to be its protectors and preservers, the Court has to take an extremely stern view of the matter. This Court has had to spend almost over 40 minutes in hearing the arguments of the applicant and has had to spend another half an hour in dictating the present order.

**39.** In order to be fair to the applicant, I had put him on notice when this matter was listed yesterday as to whether he was pressing this application. Today, he appears and was again put on notice as to whether he wanted to press this application. He insisted on doing so.

**40.** It is not for this Court to divine the motives of the applicant in acting that he has. The Court, however, has to ensure that such misadventures and transparent attempts at abusing the legal process are nipped in the bud, so that other such trigger-happy litigants are deterred from committing similar misdemeanours.



**41.** The present application is, therefore, dismissed with costs of ₹ 1 lakh, to be deposited by way of a crossed cheque favouring the Delhi High Court Legal Services Committee (DHCLSC), with the Registry within a period of four weeks from today.

**42.** No application seeking review of the present order shall be entertained by the Registry till proof of payment of costs is tendered by the applicant.

**C.HARI SHANKAR, J**

**MARCH 14, 2024/yg**

*[Click here to check corrigendum, if any](#)*