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

+ C.R.P. 147/2008

SUMEDHA BHARDWAJ & ANR. Petitioners
Through: Mr. Hameed S. Shaikh, Adv.
versus

JAGDEEP BHARDWAJ & ANR. Respondents
Through:

CORAM:

HON'BLE MR. JUSTICE SHIV NARAYAN DHINGRA

ORDER

12.09.2008

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This petition has been preferred against an order of the Executing Court dated 26th April, 2008 whereby an Execution Petition filed by the petitioner seeking issuance of warrants of possession of house No.368, Ground Floor, Sant Nagar, East of Kailash was dismissed.

The plaintiff who is wife of the respondent/JD had filed a suit before the Trial Court that she was not being allowed to freely assess the matrimonial home and her ingress and egress were being obstructed. In that suit, the defendants/JDs had taken the stand that they were not obstructing the petitioner from ingress and egress and petitioner was free to have ingress and egress in the matrimonial home. On the basis of this submission made by the respondent, Trial Court observed that suit of the petitioner was infructuous since no obstruction was being put. After

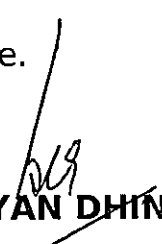
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dismissal of the suit as having become infructuous, an execution was filed by the petitioner on the ground that she was turned out of the matrimonial home and she wanted that possession of the house be restored to her in execution of the decree whereby the suit of the petitioner was held to be infructuous. The Executing Court dismissed the application observing that there was no decree of possession given in favour of the petitioner and possession cannot be handed over to the petitioner in execution of such a decree.

It is settled law that Executing Court cannot go beyond the decree and behind the decree. Once the suit has been dismissed as infructuous on the basis of submissions of the defendant and no undertaking of the respondent was recorded in the Court, no compromise was entered into, no relief was granted to the petitioner by the Trial Court, the Executing Court could not give possession of premises in execution of such decree.

I find no infirmity in the order. The petitioner would be at liberty to approach the appropriate forum under appropriate law seeking re-entry into the home.


SHIV NARAYAN DHINGRA, J

SEPTEMBER 12, 2008
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