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

% *Order decided on: July 30, 2013*

+ **CM(M) No.721/2013 & C.M. No.10961/2013**

SMT LAXMI DEVI (DECEASED) THR HER LR SHRI SHIV
NARAIN Petitioner

Through Mr.Daljinder Singh, Adv.

versus

SHRI MOHD UMAR Respondent

Through Mr.S.D. Ansari, Adv. with
Mr.I.Ahmed, Adv.

CORAM:

HON'BLE MR. JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J. (ORAL)

1. By way of the present petition under Article 227 of the Constitution of India, the petitioner has assailed the order dated 23rd April, 2013 whereby the petitioner's application under Order XIV, Rule 5 CPC was dismissed.
2. By virtue of the judgment and decree dated 23rd January, 2012 in favour of the petitioner, the petitioner filed an execution proceeding wherein a Bailiff was appointed by the Court and the possession of the property in question was handed over to the petitioner. Thereafter, the respondent filed objections as well as the application under Order XXI, Rule 97 read with section 151 CPC. The respondent was not a party to the suit or the execution proceedings. It is sated that in fact, the judgment-debtor/defendant in the main suit did not file any objection in the execution petition.
3. On hearing the parties on the said application, the Executing Court on 8th March, 2013 framed the following issues:

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- (i) Whether the applicant/objector Mohd. Umar was in possession of the property in question at the time of execution of warrants of possession of the decree passed in suit bearing no. 15/9 of 1989 entitled Smt. Lakshmi Devi v. Ram Chander? OPA
 - (ii) Whether the applicant/objector Mohd. Umar was dispossessed from the property in question in execution of the decree in the above noted case? OPA
 - (iii) Whether the applicant/Objector is entitled to put into possession of the property in question? OPA

4. Thereafter, the petitioner filed the application under Order XIV, Rule 5 CPC for modification of two issues so framed, as under:

- (i) Whether the applicant/objector Mohd. Umar was in possession of the property in question **“as tenant”** at the time of execution of warrants of possession of the decree passed in suit bearing no. 15/9 of 1989 entitled Smt. Lakshmi Devi v. Ram Chander? OPA
- (ii) Whether the applicant/objector Mohd. Umar was dispossessed from the property in question in execution of the decree **“illegally”** in the above noted case? OPA

5. After the arguments on the said application, the same was dismissed by the Executing Court vide order dated April 23, 2013. Hence the present petition on the ground, mainly, challenging the jurisdiction of the Executing Court to frame issues at such stage, and also to the issues framed as such.

6. During the course of hearing, the learned counsel appearing on behalf of the petitioner has not denied the factual position that the decree was passed in favour of the petitioner only in respect of 7 ft. x 11 ft. land, however, the petitioner has taken possession of the built up property admeasuring 28 ft. x 17 ft. i.e. the portion in respect of which the decree was

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passed as well as other portion occupied by the objector who was dispossessed by execution of decree.

7. Without observing and deciding anything on merits, I am of the view that the Executing Court in view of the facts and circumstances has framed the correct issues. Therefore, the prayer sought by the petitioner in the present case cannot be allowed.

8. The petition is accordingly dismissed. Pending application also stands disposed of.


(MANMOHAN SINGH)
JUDGE

JULY 30, 2013