

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

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Date of decision: 19th December, 2013

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RFA No.352/2012

SUMAN OJHA

..... Appellant

Through: Mr. Rajiv Kumar, Adv.

Versus

SMT. KIRAN OJHA

.....Respondent

Through: None.

CORAM :-

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

RAJIV SAHAI ENDLAW, J.

1. The appeal impugns the judgment and decree (dated 27.08.2011 of the Court of Additional District Judge (ADJ)-1, South District, Saket Courts, Delhi in suit No.143/2011 filed by the respondent) of recovery of possession of house No.S-97 (new No.A-127), Gali No.6, Gagan Vihar, Badarpur, New Delhi from the appellant.

2. Notice of the appeal and the accompanying applications for condonation of 263 days delay in filing the appeal and for stay of execution was on 21.08.2012 ordered to be issued. The notice could not be served either owing to the default of the appellant in taking steps or for the reason of service report being awaited. Ultimately, service report of

the premises being locked and / or of the respondent / plaintiff having shifted from Delhi was received.

3. When the matter came up before this Court on 10.09.2013, finding that the appellant had not been represented on the previous two dates and had also not taken any steps for service of the respondent / plaintiff, it was enquired from the appellant appearing in person as to who is in possession of the property. The appellant on that date stated that the respondent, who is none other than the mother-in-law of the appellant, was in possession of the property. The appellant however stated that she wanted to pursue the appeal; as such opportunity was given to her to serve the respondent including at any fresh address of the respondent.

4. The appellant again appearing in person on the next date i.e. 26.11.2013 stated that the respondent had been served at her address of Pratapgarh, UP; however the report was not before this Court; the appeal was as such adjourned to 13.12.2013.

5. On 13.12.2013, the respondent was found to have been served; none appeared on behalf of the respondent; the respondent was proceeded against *ex parte* and the delay of 263 days in filing the appeal was

condoned. The appellant on enquiry stated that the premises were lying locked and on further enquiry as to whose lock was there on the premises stated that locks of both, the appellant as well as the respondent existed on the property. The Trial Court record and the record of the execution was as such requisitioned and last opportunity granted to the appellant to call her advocate to argue the appeal.

6. The Trial Court record and the execution record have been received and which shows, i) that notice of the execution was issued and it was reported that the appellant had refused to accept the notice; ii) as such warrants of possession were issued but which were returned with the report that the appellant did not allow the same to be executed; iii) the respondent / decree holder thereafter applied for police aid and which was allowed; iv) the appellant thereafter filed an application under Order 21 Rule 26 of the CPC for stay of execution of the decree pleading that the appellant had filed a complaint under Section 12 of the Protection of Women from Domestic Violence Act, 2005 and vide order dated 03.03.2008 therein had been granted the residence order; it was also pleaded that though an order directing the husband of the appellant to pay maintenance to her had also been passed but no maintenance had been

paid and for which reason the husband of the appellant was sent to jail; v) the order dated 06.02.2012 of the execution Court records the appellant / judgment debtor to have filed General Power of Attorney, Agreement to Sell, Affidavit, Receipt, Possession Letter; vi) on 28.01.2011 the counsel for the respondent / decree holder informed the execution Court that the proceedings in which right of residence has been given to the appellant / judgment debtor were dismissed in default; the counsel for the appellant / judgment debtor could not controvert the same; vii) the executing Court accordingly vide order dated 06.07.2012 dismissed the objections / application of the appellant / judgment debtor under Order 21 Rule 26 of the CPC and issued fresh warrants of possession for execution with police aid; viii) the appellant / judgment debtor yet again filed an application for stay of execution but which was also dismissed on 12.07.2012; ix) the order dated 03.08.2012 in the execution records that as per the report of the Bailiff, possession of the property had been delivered to the respondent / decree holder; x) the respondent / decree holder thereafter moved an application that the appellant / judgment debtor had trespassed back into the property on 28.08.2012; xi) accordingly, after notice to the appellant / judgment debtor, fresh warrants of possession were issued and

which were as per the order dated 23.11.2012 again reported to have been executed.

7. Notwithstanding the aforesaid, the counsel who appears for the appellant today, except for repeatedly stating that the appellant is still in possession and is a poor lady with three daughters and nowhere to go, is unable to make any other arguments challenging the decree.

8. A perusal of the Trial Court file shows that the respondent had instituted the suit from which this appeal arises for recovery of possession from the appellant on the ground; i) that the appellant was residing in the property on account of being married to the son of the respondent / plaintiff; ii) that the appellant / defendant had filed several cases against the respondent / plaintiff, husband of the respondent / plaintiff and her own husband and also ousted the respondent / plaintiff from the house; and, iii) pleading that the appellant / defendant had no right to remain in the house, the suit for recovery of possession was filed.

9. The appellant / defendant was served with the summons of the suit and though initially appeared but failed to file written statement and also stopped appearing and was proceeded against *ex parte*.

10. The appellant / defendant in this appeal filed on 14th August, 2012 i.e. after possession of the house had been recovered from her in execution of the decree impugned, has not disclosed any defense to the suit or any right to remain in possession of the property or anything which disentitles the respondent / plaintiff from recovering possession. Though it is stated that the appellant / defendant was not served with summons, but there is no explanation as to why no step for setting aside of *ex-parte* decree was taken.

11. Though the appellant in execution, filed objections but therein also did not disclose any right to remain in the property except on account of order under the Domestic Violence Act and which proceedings also the appellant did not pursue and were dismissed in default.

12. I have also perused the GPA and Agreement to Sell photocopies of which the appellant filed in the execution proceedings. The same are dated 28.01.2011. It may be stated that the suit from which this appeal arises was filed on 01.03.2011 and it is the pleading therein that the disputes between the appellant / defendant and her in laws were brewing for sufficiently long time prior thereto. The said documents for this

reason are highly suspect. Moreover inspite of copies thereof being filed in the execution, the appellant on the basis thereof did not set up any independent title to the property. No such grounds have been taken in this appeal also. Rather, it is admitted that the appellant/defendant was residing in the property as the daughter-in-law of the respondent/plaintiff.

13. I am therefore satisfied that there is no merit in the appeal. Even otherwise, the appellant by her conduct has allowed the same to become infructuous. The appellant also indulged in material suppression. Though possession of the property, in execution of impugned decree had already been recovered from the appellant prior to filing this appeal but the said fact was not disclosed and by seeking stay of execution, it was misrepresented that the appellant/defendant was even then in possession. The appellant/defendant, for this reason also is not entitled to any relief.

14. The appeal is accordingly dismissed.

No costs.

Decree sheet be drawn up.

RAJIV SAHAI ENDLAW, J.

DECEMBER 19, 2013

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