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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) No. 1298/2013

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Reserved on: 5th August, 2014
Pronounced on: 27th August, 2014

SMT. NOOR JAHAN AND ORS. Petitioners
Through: Mr. R.L. Kohli, Advocate.

VERSUS

SHRI HARBIR SINGH AND ORS. Respondents
Through: Mr. R.D. Sharma, Advocate with Mr.
Rajat Sharma, Advocate.

CORAM:
HON'BLE MR. JUSTICE VALMIKI J.MEHTA

To be referred to the Reporter or not?

VALMIKI J. MEHTA, J

1. The challenge by means of this petition under Article 227 of the Constitution of India is to the impugned order of the executing court dated 27.11.2013 by which the executing court has refused the prayer of the petitioners/judgment debtors to dismiss the execution petition of the respondents/decreed holders. The petitioners, who are the judgment debtors in the court below, pleaded that the subject/present execution petition does not lie because an earlier execution petition was dismissed as satisfied.

2. The original judgment and decree which was passed in favour of the decree holders/respondents is dated 8.11.2012 and to execute which the execution petition was filed. The decree of eviction dated 8.11.2012 was passed by the Additional Rent Controller against the petitioners/judgment debtors on account of non-payment of rent and the default in complying with the order dated 1.7.2010 passed under Section 15(1) of the Delhi Rent Control Act, 1958 for depositing of the rent by the petitioners/judgment debtors. The fact that the judgment and decree dated 8.11.2012 was not appealed from and hence became final is not disputed by the petitioners/judgment debtors because in fact admittedly an earlier execution petition was filed for execution of the judgment and decree dated 8.11.2012.

3. What is contended on behalf of the petitioners/judgment debtors is that since an earlier execution petition was dismissed as satisfied on 24.5.2013 in terms of a statement made on behalf of the decree holders, therefore, the second/subject execution petition cannot lie. Reliance in support of the argument is placed upon the judgments of the Supreme Court in the cases of *Sarguja Transport Service Vs. State Transport Appellate Tribunal, M.P., Gwalior and Ors. AIR 1987 SC 88* and *Rampartap Vs. India Electric Works Ltd.1 (1966) ILR Punjab and Haryana 28*.

4(i) There is no quarrel to the proposition of law that once an
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execution petition is satisfied, a further execution petition cannot lie, however, it is equally settled law that if an execution petition is dismissed as satisfied on a specific statement of the decree holder based on a particular fact, and subsequently it is found that the factual basis on which the decree holder had stated that the execution petition was satisfied actually does not turn out to be true, then, the decree holder can surely apply for recall of the earlier order dismissing the execution petition as satisfied inasmuch as the premise and substratum on which the execution petition was dismissed as satisfied is not borne out of facts which subsequently come to light. Once the basis of making the statement goes then the order which was passed on the basis of the statement also indubitably goes. Therefore, the second execution petition is really not a second execution petition but actually it is to be treated only as an application for recalling of the order dated 24.5.2013 by which the earlier execution petition was dismissed as satisfied.

(ii) I may state that it is not disputed before this Court by the petitioners/judgment debtors that the earlier execution petition was dismissed as withdrawn as satisfied for no other reason except that there was an agreement by which the petitioners/judgment debtors had agreed to purchase the suit property from the respondents/decreed holders. Once there is no dispute between the parties that the earlier execution petition was

withdrawn as satisfied on 24.5.2013 only on account of parties having entered into an agreement, and which agreement ultimately either could not be entered into or the same did not fructify because the actual satisfaction did not take place, and resultantly the decree holder was put under a wrong impression for withdrawing as satisfied of the earlier execution petition, in law nothing consequently prevents a decree holder from again applying for execution. Of course, if the case of the petitioners/judgment debtors would have been that the settlement was that the judgment debtors had paid an amount to the decree holders as a result of which the earlier execution petition was withdrawn as satisfied on 24.5.2013 then the position would have been different, but, that is not the case here and the case of the petitioners themselves is only that the first execution petition was withdrawn as satisfied only because of an agreement that the petitioners/judgment debtors would purchase the property. In fact since as per the petitioners/judgment debtors the decree holders/respondents have failed to sell the property, therefore, petitioners/judgment debtors have filed a suit for specific performance against the decree holders/respondents which is presently pending.

(iii) Once therefore a mistake of fact occurs and which mistaken

impression led to withdrawing of the first execution petition, then, such

mistake of fact and impression can always be sought to be got corrected by seeking recall by the respondents/decreed holders of the earlier orders withdrawing as satisfied the first execution petition i.e the respondents/decreed holders can file a fresh execution petition and which is really an application to recall and deal with the earlier execution petition which was filed.

(iv) The case of the petitioners/judgment debtors is that the suit property was agreed to be sold for a sum of Rs.3,500 per sq yd; the suit property being of approximately 33 sq yds; and to which counsel for the respondents/decreed holders states that the same is not correct as the property actually is worth about Rs.75,000/- per sq yd and therefore it cannot be sold at Rs.3,500/- per sq yd. In fact, counsel for the respondents/decreed holders makes a very fair offer before this Court to the petitioners/judgment debtors that the respondents/decreed holders are in fact ready to pay to the petitioners/judgment debtors amount @ Rs.3,500/- per sq yd for the disputed property so that petitioners/judgment debtors vacate the suit property, but, the petitioners/judgment debtors are not agreeable to take the sum of Rs.3,500/- per sq yd for vacating the suit property.

5. In view of the above, it is clear that the present/second execution application is really an application for recall of the order dated *C.M.(M) No.1298/2013*

24.5.2013, and which order was premised on a mistake of fact and mistaken impression of finality of a compromise/agreement, but which compromise/agreement could not be arrived at. The agreement/compromise to purchase/sell the suit property could not reach finality because as per the decree holders/respondents it is the petitioners/judgment debtors who have committed the breach whereas as per the petitioners/judgment debtors it is not them but it is the respondents/decreed holders who are at fault.

6. In this view of the matter, though this petition is dismissed, nothing contained in the present judgment is a reflection on merits of the matter in the suit for specific performance filed by the petitioners/judgment debtors against the respondents/decreed holders and in case the petitioners/judgment debtors succeed in the suit for specific performance, then, the decree holders/respondents if they take possession in execution of the subject judgment and decree dated 8.11.2012, then they will hand over possession back to the petitioners/judgment debtors.

AUGUST 27, 2014
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VALMIKI J. MEHTA, J.