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

+ CM(M) 733/2015

SNEH VAISH & ANR Petitioners

Through: Ms.Gurkamal Hora, Advocate.

versus

PURSHOTTAM BHAGERIA Respondent

Through: None.

AND

+ CM(M) 736/2015

SNEH VAISH & ANR Petitioners

Through: Ms.Gurkamal Hora, Advocate.

versus

FILATEX INDIA LTD Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE PRATIBHA RANI

ORDER

% **11.08.2015**

CM No.14640/2015 in CM(M) No.733/2015

CM No.14663/2015 in CM(M) No.736/2015

Exemption allowed, subject to all just exceptions.

Applications stand disposed of.

CM(M) No.733/2015 and CM(M) No.736/2015

1. The petitioners have filed these two petitions bearing CM(M) Nos.733/2015 and 736/2015 impugning the order dated 24.07.2015 passed in Execution Petitions No.23/2015 and 24/2015 respectively whereby the Executing Court was pleased to issue notice of the execution petitions to the respondents/judgment debtors.

CM(M) Nos. 733 & 736 of 2015

Page 1 of 4

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2. Though Caveat Nos.829/2015 and 830/2015 [in CM(M) No.733/2015] and Caveat Nos.834/2015 and 835/2015 [in CM(M) No.736/2015] have been filed but none has appeared on behalf of the caveators/respondents despite passover.
3. Issue notice to the respondents vide ordinary process, speed post and courier, returnable for October 15, 2015. Dasti, as well.
4. At this stage, learned counsel for the petitioners submits that as she wants to argue the matter today itself, no notice is required to be sent to the respondents and date October 15, 2015 may be cancelled.
5. As requested by learned counsel for the petitioners, date 15.10.2015 is cancelled.
6. Heard learned counsel for the petitioners.
7. The petitioners are aggrieved by the order dated 24th July, 2015 whereby the Court has issued notice of the execution petition to the JD for 9th October, 2015. The impugned order reads as under:-

*“Present: Proxy counsel for the DH
Today lawyers are stated to be on strike on the issue of
pecuniary jurisdiction.
Heard. Report perused.
Issue notice of this execution petition against the JD on
filing PF/RC for 09.10.2015*

*Sd/-
ADJ-04/Central/THC”*

8. Ms.Gurkamal Hora, learned counsel for the petitioners has submitted that in these cases the civil suits had been filed in December, 1999 for ejectment, recovery of damages, mesne profit and damages for unauthorized use and occupation of tenanted premises on the mezzanine and second floor in respect of the property bearing No.42, Community Centre, New Friends

3

Colony, New Delhi-110065. The said matters bearing Suit Nos. 361/2003 and 365/2003 were settled through mediation process at Mediation Centre, Tis Hazari Courts, Delhi and compromise decrees were passed in both the suits in terms of settlement dated 18th July, 2006.

9. Learned counsel for the petitioners submitted that under the terms of settlement the possession should have been handed over by the respondents to the petitioner-decree holder on or before 31st May, 2015.

10. It has been further submitted that on failure of the respondents to hand over the possession the Execution Petition Nos. 23/2015 and 24/2015 were filed but the learned Executing Court instead of issuing warrants of possession, issued notice to the JDs/respondents which has caused lots of harassment and hardship to the petitioners/decree holders.

11. Before appreciating the contention raised on behalf of the petitioners it is necessary to refer to Order XXI Rule 22 CPC which provides as to when notice to show cause has to be issued in execution proceedings. Order XXI Rule 22 CPC reads as under:-

“22. Notice to show cause against execution in certain cases.-

(1) Where an application for execution is made—

(a) more than two years after the date of the decree, or

(b) against the legal representative of a party to the decree or where an application is made for execution of a decree filed under the provisions of section 44A, or

(C) against the assignee or receiver in insolvency, where the party to the decree has been adjudged to be an insolvent).

The court executing the decree shall issue a notice to the person against whom execution is applied for requiring him to show cause, on a date to be fixed, why the decree should not be executed against him:

4

Provided that no such notice shall be necessary in consequence of more than two years having elapsed between the date of the decree and the application for execution if the application is made within two years from the date of the last Order against the party against whom execution is applied for, made on any previous application for execution, or in consequence of the application being made against the legal representative of the judgment debtor, if upon a previous application for execution against the same person the court has ordered execution to issue against him.

(2) Nothing in the foregoing sub-rule shall be deemed to preclude the court from issuing any process in execution of a decree without issuing the notice thereby prescribed, if for reasons to be recorded, it considers that the issue of such notice would cause unreasonable delay or would defeat the ends of justice.'

12. In the instant cases, the compromise decrees were passed in the year 2006. The Executing Court has committed no illegality in issuing notice to the respondents/judgement debtors. It may be further noted that despite the fact that lawyers were on strike, instead of giving simple adjournment the learned Executing Court issued notice on 24th July, 2015 for a short date i.e. 9th October, 2015. This order infact was a step forward for expeditious disposal of the execution petitions.

13. Finding no illegality or material irregularity in the impugned order, both the petitions are dismissed.

14. No costs.


PRATIBHA RANI, J.

AUGUST 11, 2015

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