

\$~24

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

+ CM(M) 336/2016 & C.M. No.13260/2016

SUDESH SANORIA AND ANR ..... Petitioners

Through Mr. Satish Kumar Bhatti, Adv.

versus

RAKESH JAIN ..... Respondent

Through Mr. Vijay Gupta and Mr. Mehul  
Gupta, Advs.

**CORAM:**

**HON'BLE MS. JUSTICE INDERMEET KAUR**

**ORDER**

% **08.04.2016**

The petitioner is aggrieved by the impugned order dated 15.01.2016 vide which the application filed by him under Order 21 Rule 26 of the Code of Civil Procedure had been dismissed.

Record shows that a decree had been passed in favour of the decree holder on 26.05.2015. The formal decree-sheet had inadvertently not been drawn up by the concerned Court. The concerned Court i.e. the Court of Mr.D.K. Malhotra was terminated and thereafter this was brought to the notice of the successor Court at the time when the execution was filed. The successor Court had rightly noted that in terms of Order 20 Rule 8 of the CPC, such a decree can be drawn out by the successor Court. The decree was thus formally drawn up on 11.09.2015. The application filed by the judgment debtor under Order 21 Rule 26 of the CPC is to the effect that the execution proceedings be stayed as the decree suffers from an infirmity; submission before this Court being that not only was the decree-sheet drawn out by the successor Court which is against the legal proposition but even otherwise a perusal of the two decree-

sheets which have been placed on record (page 18 & page 36 of the paper book), show a difference in the date. One decree was drawn out on 11.09.2015 and the second decree is dated 22.09.2015.

The aforementioned documents have been perused. Although there is a difference in the dates and although the record shows that the decree-sheet was drawn on 11.09.2015 but the document at page 36 mentions a date of 22.09.2015. This is obviously due to typographical error as otherwise two decree-sheets are absolutely identical. It was only while preparing the decree-sheet for the second time i.e. at the time of handing over the certified copy of the same, the date of 22.09.2015 inadvertently appeared.

The impugned order had noted that being a money decree, no ground was made out by the judgment debtor for stay of the said decree. This Court has been informed that an application under Order XXXVII Rule 4 of the CPC seeking setting aside of the decree has been filed only in February, 2016. This Court will stay the decree if the entire decretal amount in terms of the decree dated 11.09.2015 is deposited in the Trial Court within a period of one week from today.

The impugned order is modified to that extent and it is reiterated that if the judgment debtor is willing to depositing the entire decretal amount along with interest before the Trial Court within a period of one week, no coercive steps be taken against him.

Petition disposed of in the above terms.

**INDERMEET KAUR, J**

**APRIL 08, 2016/A**