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

+ CM(M) 748/2016 & CM Nos.28034/2016 & 28035/2016

PUNJAB & SIND BANK Petitioner
Through Mr.Harish Katyal, Ms.Vinny
Shangloo and Mr.Uttam Km., Manager (Legal),
Punjab National Bank

versus

O P KAPOOR (SINCE DECEASED) THR LRS..... Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER

% **05.08.2016**

CM No. 28035/2016 (exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 748/2016 & CM No.28034/2016 (stay)

1. The present petition is filed seeking to impugn the order dated 15.7.2016 passed by the trial court. By the said order the trial court had issued warrants of attachment for the remaining decretal amount to be calculated by the Nazir of the court, keeping in consideration the calculation sheet filed by the decreeholder.

2. The background of the Execution Petition is a decree passed in favour of the respondents by a Division bench of this court in RFA No.404/2002 dated 30.5.2006 by which order the petitioner undertook to vacate the suit

CM(M) 748/2016

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premises on or before 30.6.2006. It was also ordered that the respondent shall be entitled to mesne profit, damages for the unauthorised use and occupation of the premises in question at the rate of Rs.35 per sq.ft. per month for a total area of 2192 sq.ft. w.e.f. 6.10.1994 less a sum of Rs.10 lacs.

3. Learned counsel appearing for the petitioner submits that the impugned order passed by the trial court has been passed in undue haste inasmuch as perusal of the order itself shows that the counsel for the petitioner alongwith the authorised representative was present in court at 11.00 AM but the trial court had passed the order prior to. He secondly submits that the impugned order also ignores the order passed by this court on 15.11.2011 in CM(M)1314/2011 whereby a direction was passed to the trial court to in terms of the decree dated 30.5.2006 and in view of the calculations furnished by the respective parties pass a speaking order of the amount payable to the respondent, if any. He submits that without completing the exercise as directed by this court on 15.11.2011 the impugned order of attachment has been passed. Learned counsel for the petitioner submits that the petitioner bank has paid Rs.38,80,106/- inclusive of TDS to the respondents in full and final settlement of their share of the decree. He submits that the other co-owners similarly have been paid the same amount but they have not taken any coercive steps/measures against the petitioner bank.

4. Learned counsel for the petitioner submits that advance copy of the petition has been sent to learned counsel appearing for the respondent and to Mr.Udai Kapoor, LR of the deceased decree holder. He also points out that

Mr.Udai Kapoor was personally served by his Clerk. Despite service of advance copy, none is present for the respondents.

5. A perusal of the order of this court dated 15.11.2011 passed in CM No.1314/2011 shows that a direction was issued to the trial court to pass a speaking order based on the calculations furnished by the respective parties. A perusal of the impugned order shows that this exercise has not been done and warrants of attachment have been issued.

6. In view of the above, the order passed by the trial court dated 15.7.2016 is contrary to the order of this court dated 15.11.2011 in CM(M) No.1314/2011. Hence, the impugned order dated 15.7.2016 is quashed. However, the Nazir may file his calculations as directed by the trial court vide the said impugned order dated 15.7.2016. Petitioner would be at liberty to file objections to the calculations of the Nazir, if he finds that the same is not in accordance with the decreesheet passed by this court. The trial court may consider the objections and pass appropriate order and may try to complete the exercise within six weeks from today.

7. Petition stands disposed of.

8. Dasti.

JAYANT NATH, J

AUGUST 05, 2016

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