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

+ RSA 215/2016

HAR SWAROOP SHARMA

..... Appellant

Through: Mr. Manish Kohli, Mr. Pranav Joshi
and Mr. Kush Bharadwaj, Advocates.

versus

GIAN PRAKASH & ORS

..... Respondents

Through: Mr. Neeraj Bhardwaj and Mr. Dheeraj
Bhardwaj, Adv. for
caveator/respondent no.2 with
respondent no.2 in person.

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **10.08.2016**

Caveat No. 707/2016

Counsel appears for the caveator. Caveat stands discharged.

RSA 215/2016 & CM No. 28997/2016 (stay) & CM No.28999/2016 (stay)

1. Counsel for the appellant was heard in detail. It is found that two issues have been decided by the courts below. First issue is that suit is barred under Section 41(b) of Specific Relief Act inasmuch as judicial proceedings cannot be filed to prevent a person from filing any judicial proceedings

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including an application. The second issue is that the case as set out in the plaint of an understanding having arrived at between Sh. Jai Lal with the appellant, Sh. Narender Kumar and Sh. Gauri Shankar whereby the decree passed in suit no.75/74 which has been upheld till the Supreme Court is not relevant but what is relevant is the fact that as many as three times ie three courts have dismissed objections on the similar facts as referred to in para 18 of the judgment of the first appellate court and which reads as under:-

“18. In fact, the appellant had also approached the said courts where the money is lying deposited by raising objections. The court of Sh. Pitamber Dutt, Ld. ADJ, Delhi in M-1/2012 in RCA No.36/2006 titled as “*Ram Niwas Vs. Jai Lal & Ors*” vide order dated 22.08.2012 dismissed the contention of the appellant as raised by him in the present suit regarding his entitlement in the share of Smt. Anar Devi through Sh. Gauri Shankar and it was observed that Sh. Jai Lal was the sole legal heir of Smt. Anar Devi as per the Will dated 19.02.1972 and the respondents no.1 to 4 herein being his LRs are entitled to receive the amount deposited in lieu of share of Smt. Anar Devi. Again same issue was raised by the appellant before the Court of Sh. Abhilash Malhotra, Ld. Civil Judge, Delhi where respondent no.1 to 4 filed an application u/s 151 CPC for withdrawal of money of Smt. Anar Devi deposited in the said court. The appellant also filed an application u/s 47 and Order 21 Rule 58 CPC for apportionment/payment of share of Smt. Anar Devi as per order dated 01.05.1975 passed by the Court of Sh. O.N.Vohra, Ld. ADJ and as a legal heir of Sh. Gauri Shankar, which was dismissed by the said court vide order dated 03.03.2012. Similarly, court of Ms. Ruchi Aggarwal, Ld. Civil Judge, Delhi vide order dated 15.03.2013 allowed the application of

respondent no.1 to 4 for withdrawal of money of Smt. Anar Devi deposited in the said court by dismissing the objections raised by the appellant. Admittedly, the appellant has not challenged the aforesaid orders passed by different courts and same have attained finality whereby the respondents no. 1 to 4 were held entitled to withdraw the amount of Smt. Anar Devi lying deposited in the said courts. As such, the appellant cannot seek injunction to restrain the respondents no. 1 to 4 from realizing/withdrawing the money of Smt. Anar Devi deposited in different courts and apparently relief of permanent injunction as sought by him is hit by Section 41(b) of Specific Relief Act as rightly observed by the Ld. Trial Court.”

2. I have put it to the counsel for the appellant that the subject application besides being under Order 7 Rule 11 CPC in fact would be under Order 12 Rule 6 CPC because the suit has been dismissed on account of admitted facts i.e admitted position that as many as three times objections filed on the similar facts/issues have been decided against the appellant and also that as per Section 41 (b) of Specific Relief it is not necessary that judicial proceedings only in the nature of suit have to be instituted but judicial proceedings can be in the nature of even applications in court.

3. Counsel for the appellant has taken instructions from the appellant who is present in person and at the stage of dictation of the judgment, it is

agreed that this second appeal be disposed of as not pressed.

4. The second appeal is disposed of as not pressed accordingly.

VALMIKI J. MEHTA, J

AUGUST 10, 2016/ib

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