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

\+ CM(M) 1052/2016

GHALIB MEMORIAL COOPERATIVE
GROUP HOUSING SOCIETY LTD ..... Petitioner

Through: Mr.Sanjeev Rajpal, Advocate.

versus

MOHD SIDDQUE ..... Respondent

Through: Mr.S.A.Khan, Advocate

CORAM:
HON'BLE MS. JUSTICE PRATIBHA RANI

O R D E R

% **26.04.2017**

CM No.45629/2016

1. Exemption allowed, subject to all just exceptions.

2. The application is disposed of.

CM(M) 1052/2016

1. The petitioner has invoked the jurisdiction of this Court under Article 227 of the Constitution of India on being aggrieved by the direction given by the learned Executing Court vide order dated 7th September, 2016, passed in Ex. No.23322/2016 directing the parties to file their respective statement of account and also directing the Civil Nazir to prepare the statement of account showing the amount paid by the Judgment Debtor during the execution proceedings.

2. The learned Executing Court vide common order dated 7th September, 2016 disposed of two applications (i) by Decree Holder seeking correction/modification/review of the order dated 16th August, 2013, and (ii) by the Judgment Debtor seeking withdrawal of the warrants of attachment and for refunding the excess amount of ₹4,04,944.

3. Mr.Sanjeev Rajpal, Advocate appearing on behalf of the petitioner submits that the application filed by the Judgment Debtor was for release of the excess amount which as per calculation of the Judgement Debtor was ₹4,04,944. It has been contended that the report of Civil Nazir calculated the amount of ₹81,536.02 as TDS paid to the Income Tax Department in the account of Decree Holder.

4. The application of the petitioner/Judgment Debtor has been dismissed for the following reasons:

> *"27. So far as the application of the JD for release of the excess amount is concerned, JD has prayed that the amount of ₹4,04,944/- has been paid in excess and the same be directed to be released. To my mind, there is no basis for the calculation, which is contained in the abovesaid application of the JD to show that the amount of ₹4,04.944/- was paid in excess by the J to the DH. The Nazir in the report dated 23.08.2007 has stated that the excess amount, which was paid in excess by the J to the DH was to the tune of ₹2,89,868.02/-, but, it has to be seen that in the said report, Nazir has calculated the amount of ₹81,536.02/- as TDS paid to the Income Tax Department in the account of the DH.*
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> *28. As such, to my mind, the report of the Nazir as submitted on 23.08.2007, is not acceptable. As such I hereby dismiss the application of the JD for release of the excess payment of ₹4,04,944/-. The objections of th JD to the report of the Nazir dated 23.08.2007 are hereby allowed to the extent that the said report of the Nazir is not acceptable.*
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> *29. Both the parties are hereby directed to place on record their respective statements of accounts and the Nazir is hereby again directed to prepare the statement of account showing the amount, which has been paid by the JD to the DH during the pendency of the present execution petition. Ld. Counsels for the parties shall assist the Nazir in preparing the statement of account.*
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> *30. Now, to come up for further proceedings in the present execution petition on 21.10.2016."*

5. Mr.Sanjeev Rajpal, Advocate has submitted that the only reason given by the Executing Court for not accepting the report of the Civil Nazir is on account of ₹81,536.02 being paid as TDS to the Income Tax Department. Since the petitioner/Judgment Debtor is ready to forego this amount, the entire exercise for submitting the statement of account of the parties and then preparation of statement of account by the Civil Nazir will be an exercise in futile and the matter can be resolved by releasing the excess payment after recording that Judgment Debtor was not claiming the amount deducted towards TDS.

6. Since the scope of this Court under Article 227 of the Constitution of India is limited and restricted and in the normal circumstances, it is exercised where there is want of jurisdiction, error of law or perverse finding by the learned Trial Court, in the instant case none of the above situation exists.

7. Learned counsel for the petitioner seeks permission to withdraw this petition with liberty to approach the learned Executing Court with the prayer made herein above.

8. Petition is dismissed as withdrawn granting the liberty as prayed.

<u>CM No.38781/2016 (stay)</u>

Dismissed as infructuous.

PRATIBHA RANI, J.

APRIL 26, 2017/*'hkaur'*