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

+ **CONT.CAS(C) 1271/2016**

ZUMRUD

..... Petitioner

Through: Mr. Diwan Singh Chauhan, Advocate.

versus

IRSHADULLAH & ORS.

..... Respondents

Through: Mr. Nakul Sachdeva, Advocate with
respondents in person.

CORAM:

HON'BLE MS. JUSTICE HIMA KOHLI

ORDER

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10.02.2017

1. Appearance is entered by learned counsel for the respondents.
2. The petitioner (respondent in RFA 360/2013) had succeeded in a suit for possession instituted against the respondents, that was decreed in his favour as long back as on 23.4.2013. Vide order dated 02.3.2016 passed in the appeal, it was directed that the subject to the respondents herein (appellants in the appeal) depositing the use and occupation charges in respect of the suit premises @ Rs.12,000/- per month with effect from April, 2013 till March, 2016 and further, subject to their continuing to deposit the said amount on a month to month basis, on or before the 15th day of the month, there would be a stay of the execution. The said amount was directed to be deposited within four weeks.
3. Instead of complying with the order dated 02.3.2016 within the stipulated time, the respondents/appellants filed an application for modification of the said order (C.M. NO. 13370/2016) stating *inter alia* that

the property is incapable of fetching more than Rs.6,000/- per month and therefore, directions to deposit a sum of Rs.12,000/- per month may be modified. Describing the said application as *malafide*, the predecessor Bench had declined to modify the order dated 2.3.2016 while observing that the submissions made on behalf of the appellant that the property is not capable of fetching more than Rs.6,000/- per month is an afterthought. At that stage, counsel for the respondents/appellants had sought extension of time to deposit the arrears. The said request was acceded to and the time granted in terms of the order dated 2.3.2016, was extended to six weeks. The period of six weeks reckoned from 02.3.2016, would have expired on 13.4.2016. However, the respondents/appellants did not deposit the said amount. Instead, on 27.5.2016 they filed yet another application asking for extension of time.

4. Vide order dated 01.6.2016, the timeline to deposit the amounts was yet again extended on an undertaking given by the respondents/appellants that they shall comply with the earlier order, on or before 11.7.2016. At that time, it was made clear to them that if the amounts are not deposited as was undertaken, not only would the interim order be vacated, the court would be inclined to proceed against them for contempt on account of breach of the undertaking. Despite the same, the respondents did not comply with the said order and deposit the amount as undertaken by them. Instead, they merrily sat back till the petitioner/respondent filed the present petition for initiating contempt proceedings against them on the ground of breach of undertaking given to the court in the Appeal.

5. Except for tendering a lame apology, there is no explanation worth the name offered by learned counsel for the respondents for the gross breach of

the order dated 01.6.2016, in which the consequences of non-compliance were clearly spelt out. In the absence of any explanation for non-compliance, the said apology cannot be accepted. The respondents have continued to remain in occupation of the suit premises for almost 3 years after suffering a decree of possession, without paying a penny to the petitioner in all this duration.

6. The Court is not inclined to accept the submission made by learned counsel for the respondents that now that his clients were unable to arrange the funds earlier hereto and now that they have been able to do so, the same may be permitted to be deposited in the Registry.

7. The interim order dated 02.3.2016 passed in RFA 360/2013 is vacated. The petitioner (respondent in RFA 360/2013) is entitled to seek execution of the impugned judgment and decree dated 23.4.2013 in accordance with law. Needless to state that the same shall be subject to restitution in the event the respondents herein (appellants in the appeal), succeed in the appeal.

8. The petition is disposed of.

HIMA KOHLI, J

FEBRUARY 10, 2017

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