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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) No.678/2017 & CM No.23427/2017 (for stay).
SHEELA DEVI Petitioner

Through: Mr. D.K. Sharma, Adv.

versus

KAMLA DEVI Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **17.07.2017**

CM No.23428/2017 (for exemption).

1. Allowed, subject to just exceptions.
2. The CM stands disposed of.

CM(M) No.678/2017 & CM No.23427/2017 (for stay).

3. This petition under Article 227 of the Constitution of India impugns the order dated 1st June, 2017 of the Court of Civil Judge-01/MM, Patiala House Courts, New Delhi in Ex. No.6369/16 as well as order dated 31st May, 2017 of the Court of Additional District Judge-05, Patiala House Courts, New Delhi in RCA No.5255/16.

4. While the order dated 1st June, 2017 is of the Executing Court, the order dated 31st May, 2017 is of the Appellate Court before whom the decree under execution has been appealed against.

5. One single petition against two separate orders of two different Courts, even if between the same parties, does not lie. Reference if required can be made to (i) *Shail Kumari Vs. Saraswati Devi* (2002) 96 DLT 131; (ii) *Sujata Gupta Vs. Uma Gupta* (2014) 212 DLT 297; and, (iii) *Mahanagar Telephone Nigam Limited Vs. Mohd. Sher Bahadur* 2015

SCC OnLine Del 11928.

6. Though the petition is liable to be rejected on this ground alone, the counsel for the petitioner has also been heard on merits.

7. What transpires is that in a suit filed by the respondent Kamla Devi against the petitioner Sheela Devi there is a decree for recovery of possession of immoveable property and for recovery of *mesne* profits / damages for use and occupation in the sum of Rs.78,000/-; and, (ii) in execution of the said decree possession has already been recovered from the petitioner Sheela Devi and now warrants of attachment along with Police aid have been issued for execution of the decree for recovery of money.

8. The petitioner also claims to have filed a suit against Kamla Devi with respect to the same immoveable property and in which suit according to the counsel for the petitioner there was an order directing the parties to maintain *status quo* with respect to the property. The counsel for the petitioner argues that the petitioner has been dispossessed in execution in violation of the said order of *status quo*.

9. However that issue is not under challenge in this petition and was subject matter of some other orders in the Executing Court and which are not under challenge in this proceeding.

10. This proceeding as aforesaid is confined only to the refusal of stay by the Appellate Court and issuance of warrants of attachment with Police aid by the Executing Court.

11. The Appellate Court in the impugned order dated 31st May, 2017 has recorded that though the petitioner on 1st May, 2017 before the Executing Court had given an undertaking to deposit Rs.78,000/- in the Executing

Court but had not deposited the same; since the petitioner was found to be in breach of undertaking, the stay was refused and the appeal posted for arguments for 12th July, 2017.

12. The petitioner has not even placed before this Court the order dated 1st May, 2017. Obviously the petitioner is not challenging the findings with respect thereto in the order dated 31st May, 2017 of the Appellate Court.

13. Even otherwise with respect to money decrees it is the settled principle (See (i) *Sihor Nagar Palika Bureau Vs. Bhabhlubhai Virabhai & Co.* (2005) 4 SCC 1; (ii) *Malwa Strips Private Limited Vs. Jyoti Limited* (2009) 2 SCC 426; (iii) *Kanpur Jal Sansthan Vs. Bapu Constructions* (2015) 5 SCC 267; and, (iv) *Reliance Communications Ltd. Vs. Bharat Sanchar Nigam Ltd.* 2011 SCC OnLine Del 2718) that no stay thereof can be granted without having the decretal amount deposited in the Court or secured). No error is thus found with the order of the Appellate Court of refusal of stay of execution sought by the petitioner.

14. As far as the order dated 1st June, 2017 is concerned, again once the petitioner was in breach of undertaking and there was no stay of execution from any Court, the Executing Court could not have, merely for the reason of pendency of the suit filed by the petitioner and in which also there was no stay of execution of the decree, kept the execution proceedings pending.

15. There is thus no merit in the petition.

16. Dismissed.

17. No costs.

18. The counsel for the petitioner at this stage states that the petitioner is willing to deposit Rs.78,000/-.

19. It will be open to the petitioner to make an appropriate application in this regard before the Executing Court / Appellate Court.

RAJIV SAHAI ENDLAW, J

JULY 17, 2017
'pp'..

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