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

+ CM(M) 1364/2016

GULBADAN SINGH (DECEASED) THR LRS

..... Petitioner

Through: Mr. V.S. Dubey, Adv.

Versus

VIMLA DEVI

..... Respondent

Through: Ms. Nishtha Garg, Adv.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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04.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 28th September, 2016 of the Court of the Additional District Judge (ADJ)-02 (NE), Karkardooma Courts, Delhi allowing the appeal being MCA No.18/16 preferred by the respondent against the order dated 19th August, 2016 of the SCJ-Cum-RC (NE), Karkardooma Courts, Delhi of dismissal of objections preferred by the respondent in execution petition being No.151/2016 and remanding the matter to the Court of the SCJ-Cum-RC (NE), Karkardooma Courts, Delhi.
2. Notice of the petition was issued.
3. Being of the view that since the decision on objections in an execution has been conferred the status of a decree, whereagainst appeal lies and that the order of the learned ADJ though in an appeal titled MCA should have been in an EFA i.e. an Execution First Appeal and that against the order of the learned ADJ in an EFA, a second appeal would lie and the petition under Article 227 of the Constitution of India would not be maintainable, I have enquired so from the counsel for the petitioner.

4. The counsel for the respondent interjects to state that that is her contention also; however she is unable to show any judgment or any provision of law to substantiate the same.

5. The counsel for the petitioner states that the said issue is no longer open as the counsel for the respondent had raised the said plea on the very first date but the same was not accepted and the issue thus stands closed.

6. However in none of the orders till date in this petition there is any finding as to the maintainability of this petition under Article 227 of the Constitution of India or as to the second appeal being not maintainable. In the absence thereof it cannot be said that the question raised is not open for consideration.

7. The counsel for the petitioner also agrees that no order was passed on such contention of the respondent.

8. Mr. Sanjiv Bahl, Advocate present in the Court on enquiry draws attention to the current Roster of this Court to deal with Execution Second Appeals.

9. The counsel for the petitioner has argued i) that the respondent having not filed an Execution First Appeal against the order of the Senior Civil Judge of dismissal of objections, the petitioner could not have filed an Execution Second Appeal; and, ii) that the Execution Second Appeals are not being entertained by this Court and even the receipt thereof is being declined. Copies of (a) judgment dated 2nd March, 2007 of the High Court of Punjab & Haryana in CR No.1291/2017 (O&M) titled ***Zile Ram (deceased) through LR Vs. Dharam Narain (deceased) through LRs***; (b) ***Jaykant Mishra Vs. S. Chand & Co. Ltd.*** 2014 (1) Rajdhani Law Reporter 704; and,

(c) *Sadashiv Prasad Singh Vs. Harender Singh* 2014(1) Rajdhani Law Reporter 709 are handed over.

10. No merit is found in any of the aforesaid contentions of the counsel for the petitioner.

11. The respondent indeed filed an appeal against the order of dismissal of her objections and merely because the Court in which the appeal was filed numbered it as an MCA instead as an EFA will not be relevant. The appeal, order wherein is impugned in this petition thus has to be necessarily considered as a first appeal and the nomenclature thereof as an MCA is irrelevant. Even otherwise merely because the respondent did not file an Execution First Appeal and instead filed an MCA cannot be a ground to entertain this petition under Article 227 when the remedy of second appeal remains open to the petitioner.

12. Insofar as the contention of the counsel for the petitioner of this Court not entertaining Execution Second Appeals is concerned, the same is without any basis. Even if the said contention were to be believed, it is for the advocates to guide the Registry of this Court and / or to show case law as to the maintainability of Execution Second Appeal and if aggrieved therefrom approach this Court.

13. The petitioners admittedly have not done any of the said things. Without doing the same, when caught off guard, it is vaguely stated that Execution Second Appeals are not to be entertained.

14. As far as the judgments copies of which have been handed over are concerned, I am afraid a reading thereof does not show any of them to be applicable to the controversy in hand.

15. This petition under Article 227 of the Constitution of India is thus rejected owing to the availability of the efficacious remedy of Execution Second Appeal. The petitioner would of course have liberty to, in accordance with law, prefer an Execution Second Appeal.

16. Copy of this order be also forwarded to Hon'ble the Chief Justice to consider the feasibility of issuing a direction to the District Judges to change the nomenclature of the appeals preferred before the District Judges against order on objections in an execution from that as MCA to EFA.

JULY 04, 2017/‘gsr’..

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RAJIV SAHAI ENDLAW, J.

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