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

+ CM(M) 807/2017

GOLDY KAUR

..... Petitioner

Through: Mr. D.P.S. Guliani, Adv.

Versus

NEHA

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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02.08.2017

CM No.27165/2017 & 27167/2017 (both for exemptions)

1. Allowed, subject to just exceptions.
2. The applications are disposed of.

CM(M) 807/2017 & CM No.27166/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 23rd March, 2017 in MCA No.45210/2016 of the Court of Additional District Judge (ADJ), West District, Tis Hazari Courts, Delhi] of dismissal of the appeal filed by the petitioner against the order dated 7th October, 2016 in Execution No.61859/2016 of the Court of Civil Judge, West District III, Tis Hazari Courts, Delhi of dismissal of the application of the petitioner under Sections 6 and 151 of the CPC.
4. The plea of the petitioner in the application aforesaid under Sections 6 and 151 of the CPC was that the judgment and decree under execution was passed by a Court which did not have pecuniary jurisdiction; so the decree was a nullity.
5. The learned Civil Judge dismissed the application reasoning that no such plea having been taken by the petitioner during the trial of the suit

resulting in the judgment and decree, the same could not be taken in execution and was barred by *res judicata*.

6. The Appellate Court in the impugned order though has committed a mistake in proceeding on the premise that the challenge in the appeal was to the part of the order dated 7th October, 2016 dismissing another application filed by the petitioner under Order XXI Rules 26 and 29 of the CPC, but in my view the plea of the decree being a nullity on the ground of the suit as per its valuation being beyond the pecuniary jurisdiction of the Court of Civil Judge otherwise has no legs to stand.

7. The case of the petitioner is that as per the documents filed by the respondents / decree-holders in the suit also, the value of one floor of the property, for recovery of possession of ground floor whereof the suit was filed and had been decreed, was Rs.12 lacs and thus the Court of the Civil Judge before whom the suit was filed and which passed the decree, and against which decree the first appeal, second appeal and Special Leave Petition have been dismissed, and whose maximum pecuniary jurisdiction was Rs.3 lacs, did not have the jurisdiction to pass the decree and the decree was a nullity.

8. Though the counsel for the petitioner along with this petition has not filed copy of the plaint but on asking has drawn attention to the judgment and decree in the suit and wherefrom it transpires that the suit though titled as for recovery of possession and *mesne profits* was filed by the respondent as landlord for ejection of the petitioner from the tenancy premises claiming that the petitioner was a tenant at the rent of Rs.4,000/- per month and the tenancy of the petitioner had been determined. A perusal of the issues framed in the suit shows that only the following issues were framed in

the suit:

- “1. Whether the plaintiff is entitled to the relief of decree of possession, as prayed? OPP
2. Whether the plaintiff is entitled to the relief of damages and mesne profits, as prayed? OPP
3. Relief.”

9. From a perusal of the issues it appears that the petitioner at no stage in the suit raised the plea of the Court of the Civil Judge not having pecuniary jurisdiction to entertain the suit. Section 21(2) of the CPC provides that no objection as to the competence of a Court with reference to pecuniary limits of its jurisdiction shall be allowed by any appellate or revisional Court unless such objection was taken in the Court of first instance at the earliest possible opportunity, before settlement of issues, unless there has been consequent failure of justice. To the same effect is Section 11 of the Suits Valuation Act, 1887. Supreme Court in ***Kiran Singh Vs. Chaman Paswan*** AIR 1954 SC 340 held that a decree of a Court is not to be treated as null and void and that a valuation qua pecuniary jurisdiction should be dealt with in accordance with the said provisions.

10. Even otherwise, I have enquired from the counsel for the petitioner as to on the basis of which provision of law, it is argued that the suit should have been valued as per the value of the property of which possession was claimed.

11. The counsel for the petitioner has no inkling.

12. The position in law admits of no ambiguity.

13. Section 7(xi) of the Court Fees Act, 1870 provides that in the suit by a landlord against the tenant *inter alia* for recovery of immovable property including a tenant holding over after the determination of tenancy, the

valuation of the suit for the purpose of court fees shall be according to the amount of rent of the immovable property to which the suit refers, payable for the year next before the date of presenting the plaint. Per Section 8 of the Suits Valuation Act, 1887, the valuation of the suit for the purpose of jurisdiction has to be the same.

14. As per the plea on the plaint, of the rent of the premises being Rs.4,000/- per month, the valuation for the purpose of court fees and jurisdiction for the relief of recovery of possession would be Rs.48,000/-. A perusal of the judgment also shows that the claim in the suit was also for recovery of rent at the rate of Rs.4,000/- per month since June, 2011. The suit was instituted on 5th December, 2011 and the claim for arrears of rent also would thus be Rs.24,000/- the total valuation would be Rs.48,000/- plus Rs.24,000/- i.e. Rs.72,000/- and which was well within the pecuniary jurisdiction of the Civil Judge.

15. The counsel for the petitioner has argued that though the respondent claimed the petitioner to be a tenant, but the petitioner disputed that she was a tenant.

16. The said aspect has been the subject matter of judgment and decree in the suit and which as aforesaid has been challenged till the Supreme Court and it is not open to the petitioner to today contend that she was not a tenant in the property or that the suit for recovery of possession was on the basis of title.

17. There is thus no merit in this petition which is dismissed.

18. Before parting, I may record that the petitioner had earlier preferred C.R.P. No.190/2016 in this Court impugning the order dated 15th October, 2015, in the execution aforesaid, of dismissal of the application of the

petitioner under Order XXI Rules 26 and 29 of the CPC and which petition was dismissed on 25th November, 2016. It can safely be assumed that the said order of this Court would be on the file of the learned ADJ whose order is impugned in this petition. Notwithstanding the same, the learned ADJ proceeded on the premise that the challenge in the appeal was to the order of dismissal of the application under Order XXI Rules 26 and 29 of the CPC. It appears that the reference to the order dated 15th October, 2016 in the order in Revision Petition No.190/2016 is to the order dated 7th October, 2016 only.

19. A copy of this order be forwarded to the learned ADJ who has penned the impugned order with a request to be careful in future.

Dismissed.

No costs.

RAJIV SAHAI ENDLAW, J

AUGUST 02, 2017

‘gsr’..