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

+ CM(M) 1103/2017

RAM RICHPAL

..... Petitioner

Through: Mr. Ashok Gurnani, Adv.

Versus

BHUSHAN LAL SAWHNEY & ORS

..... Respondents

Through: None.

**CORAM:**

**HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW**

**ORDER**

% **27.09.2017**

**CM No.36025/2017 (for exemption)**

1. Allowed, subject to just exceptions.
2. The application is disposed of.

**CM(M) 1103/2017 & CM No.36024/2017 (for stay)**

3. The petition has been listed on urgent mentioning and has been received in this Court post-lunch hours and has been taken up at 1510 hours.
4. This petition under Article 227 of the Constitution of India impugns the order [dated 23<sup>rd</sup> September, 2017 in CIS No.5603/2006 of the Court of Senior Civil Judge (North-East), Karkardooma Courts, Delhi] issuing warrants of possession for 3<sup>rd</sup> October, 2017 “for restitution of the suit property”.
5. The petitioner, in execution of a decree for possession in his favour, recovered possession of the “suit property” being property No.641-D measuring 410 sq. yds. situated in Khasra No.2891/104, Village Chandrawali now known as Delhi Shahdara, near Loni Road, Ram Nagar, Delhi Shahdara, and marked as ABCD and shown in red colour in the site plan proved in the suit.

6. The counsel for the petitioner/plaintiff informs, that on the respondent/defendant preferring a first appeal against the decree, the matter was remanded to the Suit Court by framing two additional issues; that though the petitioner/plaintiff preferred a second appeal against the order of the First Appellate Court, but withdrew the same; the cross-objections preferred by the respondent/defendant are still pending before this Court.
7. The counsel for the petitioner/plaintiff on enquiry informs, that pursuant to remand, the suit is still pending and recording of evidence is going on.
8. The respondent/defendant made an application under Section 144 of the Code of Civil Procedure, 1908 (CPC) to the Suit Court and which was allowed and the petitioner/plaintiff was directed to deliver possession of the suit property back to the respondent/defendant. The petitioner/plaintiff preferred first appeal against the said order and the First Appellate Court directed *status quo* to be maintained. Against the said order, RSA No.350/2016 was preferred to this Court and which was allowed vide judgment dated 19<sup>th</sup> July, 2017 and the judgment/order of the Trial Court directing restitution was restored.
9. It is in pursuance to the aforesaid, that the warrants of possession have been issued vide the order impugned in this petition.
10. The first contention of the counsel for the petitioner / plaintiff is that the petitioner / plaintiff has preferred a Special Leave Petition (SLP) to the Supreme Court against the judgment dated 19<sup>th</sup> July, 2017 aforesaid.
11. More than two months have elapsed since the judgment dated 19<sup>th</sup>

July, 2017 and if the petitioner/plaintiff desired the SLP to be listed, he could have very well, in the said two months, got the SLP listed. Moreover, mere filing of an SLP is no reason for the Suit Court or for this Court to abstain from implementing its orders.

12. The counsel for the petitioner/plaintiff has next contended that the warrants of possession could not have been issued by the Suit Court and the respondent / defendant ought to have sought execution of the order of restitution.

13. No merit is found in the aforesaid contentions also. Section 144 of CPC mandates “the Court which passed the decree or order” to, on application of the party entitled to benefit by way of restitution, cause such restitution to be made. It is evident from language of Section 144 that the respondent/defendant was not required to file a separate application for execution of the order of restitution.

14. Supreme Court in ***Lal Bhagwant Singh Vs. Rai Sahib Lala Sri Kishen Das*** AIR 1953 SC 136 held that it is one of the first and highest duties of a court to take care that its acts do not injure any of the suitors and if any injury was caused to the judgment-debtor, it is the duty of the Court to undo the wrong caused to him. Similarly in ***Binayak Swain Vs. Ramesh Chandra Panigrahi*** AIR 1966 SC 948, it was held that the principle of the doctrine of restitution is that on the reversal of a decree, the law imposes an obligation on the party to the suit who received the benefit of the erroneous decree to make restitution to the other party for what he has lost; this obligation arises automatically on the reversal or modification of the decree and necessarily carries with it the right to restitution of all that has been

done under the erroneous decree; the Court in making restitution, is bound to restore the parties, so far as they can be restored, to the same position they were in at the time when the Court by its erroneous action had displaced them from. In ***Kavita Trehan Vs. Balsara Hygiene Products Ltd.*** (1994) 5 SCC 380 it was held that Section 144 of the CPC incorporates only a part of the general law of restitution and is not exhaustive. The jurisdiction to make restitution, was held to be inherent in every Court and was to be exercised whenever justice of the case demanded. This Court also in ***Jagdish Lal Arora Vs. M.E. Periera*** AIR 1977 Del 12 echoed the same sentiment and it was further held that the judgment-debtor is entitled to restitution even though ultimately, after fresh disposal, a decree is passed in favour of decree-holder. It was held that what has to be seen is whether at the time of the application for restitution, the judgment-debtor was entitled to restitution, because on that date, the decree in execution of which possession was recovered had been set aside. To the same effect are ***Jugal Kishore Vs. Maharaj Bahadur*** 1978 Rajdhani Law Reporter (Note) 80, ***Jaswant Kaur Vs. Tikam Dass*** 1986 II DRJ 117 and ***Sanjay Sharma Vs. Ajay Sharma*** 2013 SCC OnLine Del 316.

15. No other argument has been raised.

16. There is no merit in the petition.

17. Dismissed.

No costs.

**RAJIV SAHAI ENDLAW, J.**

**SEPTEMBER 27, 2017**

bs/R..