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

+ CM(M) 1114/2017

YASHPAL

..... Petitioner

Through: Mr. Amandeep Singh, Adv.

Versus

SURAJ BHAN CHAUHAN & ANR

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.10.2017

CM No.36345/2017 (for exemption)

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

CM(M) 1114/2017 & CM No.36344/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the order [dated 15th September, 2017 in Ex.No.276/2017 of the Court of Additional District Judge (ADJ)-01, South District, Saket Courts, New Delhi] of dismissal of objections preferred by petitioner to issuance of warrants of attachment and of issuance of warrants of attachment of flat No.C-330, SFS Flats, Sheikh Sarai, Phase-I, New Delhi and of property No.DG-2/101, Vikaspuri, Ground Floor, New Delhi.
4. The petitioner filed the objections aforesaid in response to an earlier order of issuance of warrants of attachment of 50% share of the respondent no.2/ judgment-debtor no.2 Ashok Kumar, who is the brother of the petitioner. However, subsequently when a decree was passed against the

petitioner as well, vide impugned order the objections earlier filed were held to be infructuous and warrants of possession of the entire share in the properties were ordered to be issued.

5. The counsel for the petitioner has argued that his challenge to the issuance of warrants of attachment is on the ground of the flat No. C-330, SFS Flats, Sheikh Sarai, Phase-I, New Delhi being the only residential property of the petitioner/judgment-debtor.

6. However, admittedly the said ground has not been raised before the Executing Court and the counsel for the petitioner is unable to show the said ground having been urged even in the objections earlier filed.

7. Faced therewith, the counsel for the petitioner states that the petitioner / judgment-debtor had no occasion to urge the said ground earlier when warrants of attachment only of 50% share of the property of the respondent no.2 / judgment-debtor no.2 in the said flat were issued. The counsel for the petitioner otherwise admits that the objections as filed had become infructuous. He however argues that this Court, in exercise of powers under Article 227 of the Constitution of India, deals with the plea urged, even though it is being urged for the first time before this Court only.

8. Article 227 of the Constitution of India does not permit the aforesaid procedure and the arguments are being made without studying the law or without even having any inkling of legal procedure.

9. Jurisdiction under Article 227 of the Constitution of India is a supervisory jurisdiction, to correct the errors if any in the proceedings of the Courts within the jurisdiction of this Court. Without the petitioner having

taken a plea as urged before this Court, before the Executing Court, the petitioner cannot for the first time urge the same in a petition under Article 227 of the Constitution of India.

10. The petition is thoroughly misconceived and is dismissed with costs of Rs.10,000/- payable to the Delhi High Court Bar Association Lawyers' Social Security and Welfare Fund, New Delhi.

11. List on 12th October, 2017 to submit proof of payment of costs as a condition for the petitioner / judgment-debtor for further participating before the Executing Court.

RAJIV SAHAI ENDLAW, J

OCTOBER 10, 2017

‘gsr’..