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

+ RSA 65/2018, CM No.16114/2018 (u/S 151 CPC for stay)

PUSHAP RAJ

..... Appellant

Through: Mr. Anil Sharma, Mr. Kailash
Sharma, Ms. Nishi, Advocates along with the
appellant in person

versus

BUDH RAM @ BUDH SINGH & ANR

..... Respondents

Through: Mr. Raj Kumar Bhartiya, Adv. for R1
Mr. Nitin Jain, Adv. for R2/DUSIB

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

20.07.2018

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1. This Regular Second Appeal under Section 100 of the CPC impugns the judgment and decree (dated 29th January, 2018 in RCA No.61712/2016 of the Court of Additional District Judge-01, Central) allowing the First Appeal under Section 96 of the CPC preferred by the respondent No.1 against the judgment and decree (dated 16th September, 2015 of the Court of Civil Judge-06, Central) of dismissal of Suit No.515/2014 (Unique ID No. 02401C1302952008) filed by the respondent No.1/plaintiff against the appellant/defendant for recovery of possession of one room, bathroom, latrine, varandah and stairs of the second floor of premises bearing No.105, Block No.11, Dakshin Puri Extension, New Delhi. Resultantly, the First Appellate Court passed a decree for possession in favour of the respondent No.1/plaintiff and against the appellant/defendant.

2. This appeal came up first before this Court on 24th April, 2018 and thereafter on 16th May, 2018 when on the contention of the counsel for the appellant, that the property with respect to which the decree for possession had been passed is situated in South District and the Additional District Judge-01, Central thus had no jurisdiction over the subject matter of the suit, notice of appeal was ordered to be issued. Vide subsequent order dated 21st May, 2018, execution of the decree was stayed.
3. The counsel for respondent No.1/plaintiff appears and has rightly drawn attention to Section 21 of the CPC.
4. Pass-over is sought on behalf of the counsel for respondent No.2/DUSIB.
5. The respondent No.2/DUSIB was impleaded as defendant No.2 in the suit but else has no role in the suit and the counsel for respondent No.2/DUSIB is not required to be heard.
6. The counsel for the appellant/defendant admits that the appellant/defendant did not take the plea of the court, in which the suit was decided, not having territorial jurisdiction over the same and else has no answer to Section 21 of the CPC. The counsel for the appellant has thus been heard on the substantial question of law, if any, arising in this second appeal.
7. The counsel for the appellant/defendant, after failing to convince this Court of any substantial question of law arising for adjudication in this second appeal, for the same to be entertained, under instructions from the appellant/defendant stated to be present in Court, states that the appellant/defendant withdraws this appeal and will remain bound by the judgment and decree of the First Appellate Court but seeks one year's time

to vacate the premises.

8. The respondent No.1/plaintiff, also stated to be present in person, appears to be very old and states that not only is the appellant/defendant continuing in unauthorized possession, but inspite of being son of the respondent No.1/ plaintiff, is also causing acute harassment and disturbance to the respondent No.1/plaintiff and other family members residing in the remaining property.

9. After some parlay, the appellant/defendant seeks time till 31st March, 2019 and states that he is willing to give an undertaking to this Court to the said effect and to maintain peace in the household.

10. The respondent No.1/plaintiff has been persuaded for the same and has agreed, realising that the same will eliminate the delays, if any, in execution of the decree.

11. The appellant/defendant, as identified by advocate, undertakes to this Court:

- (i) To, on or before 31st March, 2019, hand over vacant peaceful physical possession of the entire portion in his possession in property No.105, Block No.11, Dakshin Puri Extension, New Delhi to the respondent No.1/plaintiff and in the event of demise of respondent no.1 / plaintiff by then, to Smt. Maha Devi wife of respondent no.1/plaintiff, also present in the Court.
- (ii) To continue to pay charges for water and electricity for which a separate meter for the portion of the appellant/defendant is stated to have been installed, till the date of vacation of the premises.

- (iii) To not cause any damage to the property or any part thereof and not to deal with the property in any manner otherwise than this undertaking.
- (iv) To not file any other cases against the respondent No.1/plaintiff or any other family member and not make any complaint to the police against the respondent No.1/plaintiff or any other family member.
- (v) To not cause any harassment / disturbance or inconvenience to the respondent no.1 / plaintiff or any other member of the family residing in the same house.

12. The aforesaid undertaking of the appellant/defendant is accepted and the appellant/defendant is ordered to be bound by the same and cautioned of consequences of breach of undertaking given to this Court.

13. If the appellant/ defendant is in breach of any of the undertakings, he, besides being liable to be evicted forthwith in execution of the decree, shall also be liable for consequences of breach of undertakings to this Court.

14. The appeal is therefore dismissed as withdrawn. However, subject to the appellant/defendant complying with the undertakings aforesaid, the impugned decree be not executed till 31st March, 2019.

15. The parties are left to bear their own costs.

Order *dasti*.

RAJIV SAHAI ENDLAW, J

JULY 20, 2018
Pk..