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

+ EX.F.A. 27/2018

BHARAT CHADHA

..... Appellant

Through: Mr. Keshav Kumar, Adv.

Versus

SHAHID JAMEEL

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

O R D E R

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03.07.2018

CM No.25803/2018 (for exemption)

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

EX.F.A. 27/2018 & CM No.25802/2018 (for stay)

3. This Execution First Appeal impugns the [order dated 28th May, 2018 in Execution No.615/2018 of the Court of Additional District Judge (ADJ)-1, South-East District, Saket Courts, New Delhi] dismissing the objections filed by the appellant / defendant / judgment-debtor and ordering the warrants of possession of house bearing No.110, Second Floor, Jasola, New Delhi-110025, in pursuance to the decree of which execution was sought, to be issued and directing the respondent / plaintiff / decree-holder to appear before the learned Administrative Civil Judge on 3rd July, 2018 at 2:00 pm for appointment of a bailiff; the concerned Station House Officer (SHO) was also directed to render necessary assistance to the bailiff for proper execution of the warrants and the bailiff was also granted liberty to break open locks or remove any hindrance, since the warrants issued on an earlier date had been returned unserved owing to the appellant / defendant /

judgment-debtor having refused to open the door of the house or to vacate the house.

4. The impugned order records that the only plea taken by the appellant / defendant / judgment-debtor in the objections which have been dismissed was, that the time for approaching the appellate Court was yet to expire and some time may be granted to the appellant / defendant / judgment-debtor to vacate the house.

5. The same does not constitute an objection under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (CPC), for an appeal to lie against the order of dismissal of such an objection and which in law has been conferred the status of a decree. I have thus enquired from the counsel for the appellant as to how the appeal is maintainable.

6. The counsel for the appellant / defendant / judgment-debtor, without appreciating the question put to him, states that the appeal is maintainable because the impugned order is of 28th May, 2018 and he has filed the appeal within the prescribed time. Subsequently, it is argued that the appeal is preferred also under Section 151 CPC. He is however unable to explain as to how an appeal can be preferred under Section 151 CPC. Yet further, Section 104 of the CPC is invoked but the counsel for the appellant / defendant / judgment-debtor is unable to even argue as to how Section 104 of the CPC applies and is not even carrying the CPC with himself.

7. The appeal, for the reason aforesaid, is not maintainable and ought not to have been entertained by the Registry of this Court.

8. The counsel for the appellant / defendant / judgment-debtor also argues that the appellant / defendant / judgment-debtor wants time till 15th

July, 2018 only, to vacate the premises and which request was also made before the ADJ.

9. It is not as if the learned ADJ has refused to grant time till 15th July, 2018 without any reason. The learned ADJ found the appellant / defendant / judgment-debtor to be in arrears of rent for over 12 months and which amount has not been paid till date also. Moreover, the appellant / defendant / judgment-debtor did not make the said request at the initial stage and in fact the decree was passed against him on his promise to vacate the premises by April, 2018.

10. The counsel for the appellant / defendant / judgment-debtor states that the appellant / defendant / judgment-debtor is suffering from knee pain and ulcers.

11. The said averments are not such which can come in the way of the appellant / defendant / judgment-debtor vacating the premises.

12. No error on merits also is thus found in the impugned order. Moreover as aforesaid, the appeal in any case does not lie and is accordingly dismissed.

RAJIV SAHAI ENDLAW, J

JULY 03, 2018
‘gsr’..