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

+ EX.F.A. 33/2018

SADRUNISHA

..... Appellant

Through: Mr. B.K. Mishra, Adv.

Versus

O P AGGARWAL & ORS

..... Respondents

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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27.07.2018

CM No.29640/2018 (for exemption)

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

EX.F.A. 33/2018, CM No.29639/2018 (for condonation of 13 days delay in preferring the appeal) & CM No.29641/2018 (for stay)

3. This Execution First Appeal has been preferred against the order [dated 3rd April, 2018 in Execution No.23345/2016 of the Court of Additional District Judge (ADJ)-01, District Central] of dismissal *in limine* of the objections under Section 47 read with Order XXI Rules 26 and 99 of the Code of Civil Procedure Code, 1908 (CPC) to the execution preferred by the appellant.
4. The appellant preferred the objections, claiming to have purchased the property on 8th September, 2015 from Nizamuddin by way of unregistered Agreement to Sell, General Power of Attorney (GPA), Receipt, Possession Letter, Affidavit etc. and claiming title to the property independent from the judgment-debtor.

5. The objections were dismissed, recording that (i) the unregistered Agreement to Sell, GPA, Will, Affidavit etc. dated 8th September, 2015 were of after 13th December, 2003 when the suit, of decree wherein execution was sought, was decided and also of after 15th March, 2012 i.e. the date when the appeal against the judgment and decree in the suit was allowed and the suit decreed in favour of the plaintiff; (ii) the documents filed by the appellant did not disclose as to from where Nizamuddin, who had executed the documents aforesaid in favour of the appellant, derived his title; no chain of documents/title deeds from the registered owner to Nizamuddin or from the recorded owner to Nizamuddin was produced; (iii) one of the documents produced by the appellant herself showed occupation of the subject property by the judgment-debtor; and, (iv) the objections preferred by the appellant had no merit since the chain of documents were not produced.

6. The appellant, along with this appeal has as annexures A3 to A9 filed the chain of documents.

7. There is nothing to indicate that the said annexures were produced before the Executing Court. No application for filing documents which were not before the First Court, has been filed.

8. The counsel for the appellant also admits that the said documents were not before the Executing Court when the objections were dismissed. As usual, blame is placed on the earlier advocate for the appellant but without realising that similar blame can be put on the counsel now appearing who has not only not made out any case for filing of additional documents in appeal but has also not filed along with this memorandum of appeal, the judgment and decree which is under execution.

9. The counsel for the appellant however states that the appellant has sought review of order dated 15th March, 2012 of this Court of dismissal of RFA No.127/2004 in which the decree under execution was passed. On enquiry, it is informed that the appellant was not a party to the RFA No.127/2004. It is stated that this petition be adjourned awaiting the disposal of the review.

10. I am unable to see the correlation between the two.

11. Without the documents filed along with this appeal being before the First Court and / or furnishing justification for non-filing thereof before the First Court and filing for the first time before this Court, the appeal cannot be entertained.

12. The appeal is dismissed with liberty to the appellant to take appropriate remedies on the basis of the documents filed for the first time before this Court, including of either applying before the ADJ or of preferring a properly constituted appeal.

RAJIV SAHAI ENDLAW, J

JULY 27, 2018

‘gsr’..