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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ C.R.P. 195/2018 & CM APPL. 37358-37359/2018
P N PANDEY Petitioner
Through: Mr. AP Mohanty, Adv.

versus

VIJENDER KUMAR Respondent
Through: None.

CORAM:
HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER
% **12.09.2018**

Vide the present petition, the petitioner assails the impugned order dated 01.09.2018 of the Civil Judge, South-West, Dwarka vide which an application under Order 47 of the CPC filed by the petitioner herein as the judgment debtor in Execution No.266/2017 raising objections to the decree dated 20.07.2017 as sought to be executed in Execution 266/2017 was rejected. The observations in the impugned order itself indicate to the effect that it was contended by the judgment debtor that the decree of the learned trial Court concerned was without jurisdiction and was a nullity and could not be executed inasmuch as the learned trial Court did not have any jurisdiction; that the lease between the decree holder and the judgment debtor in respect of the suit property was a lease in terms of an oral lease and the period of tenancy continued for more than a year and an oral lease for more than one year must be treated as non-existent and unenforceable as per the provisions of Transfer of

Property Act, 1882 and the Registration Act, 1908 and that the learned trial Court did not have jurisdiction to pass the final decree for eviction and recovery of arrears of rent in respect of the suit property. The impugned order itself indicates that a contention had been raised on behalf of the decree holder in the said execution proceedings that the application had been filed seeking to delay the execution of the decree inasmuch as the judgment debtor had withdrawn his appeal and this Court had granted time to the judgment debtor to vacate the tenanted premises by 31.08.2018. The impugned order reflects also the catena of verdicts relied upon on behalf of the judgment debtor and observes vide para-5 to the effect that:

“5. The Court is of the view that although the JD has raised a valid objection that the decree passed by a court without jurisdiction is a nullity and this objection can be raised before the executing court, however, JD has failed to substantiate this objection in respect of the present case. No averments have been made regarding the lack of territorial, pecuniary or subject matter jurisdiction of the court which passed the decree by the JD. Only a bald averment that the present decree has been passed by a court without jurisdiction cannot be sustained. The second objection raised by the JD relates to the merits of the decree/judgment and the present Court cannot go behind the decree as per the settled law.”

A perusal of the record indicates further that vide order dated 13.09.2017 of this Court in RSA No.223/2017, the appeal that had been filed by the appellant thereof i.e. the present petitioner, had been disposed of as not pressed with time having been granted to the

appellant i.e. the present petitioner to vacate the suit premises on or before 31.08.2018 subject to the appellant clearing arrears of mesne profits within a period of four months from the said date i.e. 13.09.2017 and to keep on regularly paying month by month profit charges with directions to the appellant to clear all charges towards electricity, water etc. as payable for the suit premises till the time the appellant would remain in the possession of the suit property. Vide the said order dated 13.09.2017 in RSA No.223/2017, the appellant i.e. the present petitioner/ the judgment debtor before the learned trial Court in Execution 266/2017 was directed to file an affidavit of undertaking in terms of the order dated 13.09.2017 of this Court within two weeks from the said date and on the appellant filing the undertaking and complying with the terms of the undertaking, the appellant would not be evicted from the suit premises on or before 31.08.2018. It was further observed to the effect that the appeal was disposed of as not pressed in terms of the said observations.

A submission is made on behalf of the present petitioner that the effect of the order dated 13.09.2017 would come into play only if the affidavit of undertaking had been filed by the appellant in terms of the said order. Apparently the said submission cannot even be considered, taking into account the factum that the said undertaking was to be filed by the appellant only to permit the appellant to remain in the suit premises in question till 31.08.2018 and the petitioner cannot take any advantage for having not complied with any directions in terms of the order dated 13.09.2017 in RSA

No.223/2017.

A perusal of the record further indicates that the petitioner herein assailed the order dated 13.09.2017 of this Court in RSA 223/2017 vide Special Leave to Appeal (C) No.34936/2017 before the Hon'ble Supreme Court. The said leave petition was dismissed vide order dated 09.03.2018.

Learned counsel for the petitioner has fairly stated in reply to a specific Court query of this Court that the said SLP that had been filed by the petitioner herein against the order dated 13.09.2017 of this Court in RSA 223/2017, putting forth the grounds urged to the effect that the learned trial Court which passed the decree did not have the jurisdiction to so pass the same. A perusal of the record further indicates that placed as Annexure P-6 to the present petition is the true copy of order dated 02.05.2018 filed by the petitioner which is in the Review Petition (Civil) No.1188/2018 filed by the petitioner herein in Special Leave Petition (C) No.34936/2017. The Special Leave Petition (C) No.34936/2017 as already adverted to hereinabove had been dismissed vide order dated 09.03.2018 of the Hon'ble Supreme Court. The order dated 02.05.2018 of the Hon'ble Supreme Court in Review Petition (Civil) No.1188/2018 in Special Leave Petition (C) No.34936/2017 is categorically in terms to the effect that:

“We have carefully gone through the review petition and the connected papers. We find no merit in the review petition and the same is accordingly dismissed.”

The said review application is in relation to the SLP that had

been filed by the petitioner assailing the order dated 13.09.2017 of this Court in RSA No.223/2017 qua which as already observed hereinabove, it was submitted on behalf of the petitioner through the said SLP that the Court concerned which passed the decree did not have the jurisdiction for passing the same. The Review Petition in relation thereto as observed hereinabove vide observations dated 02.05.2018 in Review Petition (Civil) No.1188/2018 of the Hon'ble Supreme Court was dismissed observing to the effect that the Hon'ble Supreme Court had carefully gone through the review petition and the connected papers and found no merit in the review petition and the same was accordingly dismissed.

The submissions are sought to be made on behalf of the petitioner that the said order dated 09.03.2018 in Special Leave to Appeal (C) No.34936/2017 and in Review Petition (Civil) No.1188/2018 in the Special Leave Petition (C) No.34936/2017 dated 02.05.2018, were not on merits and were dismissed by non-speaking orders and thus this Court can continue to consider the matter further on merits.

The order dated 02.05.2018 in Review Petition (Civil) No.1188/2018 in Special Leave Petition (C) No.34936/2017 of which true copy has been placed on record by the petitioner himself along with the present petition, categorically indicates as observed hereinabove once again despite being repetitive that the Hon'ble Supreme Court had carefully gone through the review petition and the connected papers and found no merit in the same. Taking the same

into account, the said order 02.05.2018 in Review Petition (Civil) No.1188/2018 cannot be termed as non-speaking and is after the consideration of the merits or demerits of the prayer that had been made by the petitioner, which categorically observes to the effect that the Hon'ble Supreme Court had found no merit in the review petition which sought review of order dated 09.03.2018 in Special Leave to Appeal (C) No.34936/2017. Taking the same into account, the present petition C.R.P. 195/2018 and the accompanying applications are all dismissed.

ANU MALHOTRA, J

SEPTEMBER 12, 2018

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