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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 1224/2018**

AMARNATH

..... Petitioner

Through: Mr. Arun Sharma, Advocate
versus

JEE RAM & ANR

..... Respondents

Through:

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **08.10.2018**

CM No. 41906/2018

Exemption allowed, subject to just exceptions.

CM(M) 1224/2018 and CM No. 41906/2018

Submissions have been made on behalf of the petitioner.

Vide the present petition, the petitioner assails the impugned order dated 21.3.2014 of the learned Trial Court of Additional District Judge-09 (Central) Tis Hazari Courts, in Execution No. 13/14 whereby the execution application was disposed of as settled in terms of the statements made by the parties with liberty to the Decree Holder to file a fresh execution petition in the event of default by the Judgment Debtor in terms of the statement of the parties.

A perusal of the record indicates that the suit filed by the Decree Holder bearing No. 649/08 against the defendant arrayed as now the Judgment Debtor arrayed as the petitioner of the present petition, was filed by the plaintiffs of the said suit i.e., the Decree

Holder, seeking decree against the defendants, i.e., the present petitioner i.e., the judgment debtor seeking possession of the first floor comprising of two rooms, latrine, bathroom and balcony in premises No. 64/1 Shakar Pur Khas, Delhi-92 as shown in red color in the site plan attached with the plaint along with permanent injunction in favour of the plaintiff against the defendant seeking a restraint against the defendants, their agents, associates, attorney etc. from giving the possession or transferring any portion of the suit premises or selling, transferring, mortgaging or delivering the possession of the suit property to any third person or creating any third party interest in any manner in the suit property apart from also seeking a decree of damages and *mesne* profits @ Rs.4,000/- per month along with Rs. 400/- per month for consumption of electricity and water charges from the date of service of notice.

The said suit is indicated to have been decreed vide judgment dated 23.2.2011 of the Court of the Additional District Judge-14 (Central) Tis Hazari Courts, with direction to the defendant i.e., the present petitioner to hand over peaceful possession of the suit property to the plaintiff of the said suit apart from the injunctions as prayed having been granted against alienation, selling, transferring any portion or parting away with the possession of any portion in the suit premises and also from selling, transferring, mortgaging or delivering the possession to any third person or creating any third party interest in any manner in the suit premises till the possession of the property is with the defendant, i.e., the present petitioner and the

present petitioner was also directed to pay *pendente lite* and future interest @ 9% per annum on the decretal amount till the realisation of the decretal amount and the possession of the suit premises is handed over to the plaintiff to the said suit.

Pursuant thereto during the course of proceedings before the learned Trial Court it is indicated that the said decree pursuant to order dated 23.2.2011 in the said suit was modified vide order dated 21.10.2016, whereby the details of the suit property which had not been incorporated in the decree made also in relation to the first floor of the property to the effect:

“ The decree dated 10.5.2011 stands modified in terms of the order dated 22.01.2016 and rectified decree reads as under:-

The details pertaining of suit property namely, “ first floor of property bearing no. 64/1, Shakur Pur Khas, Delhi-110092 consisting of two rooms, latrine, bathroom and balcony shown in red colour in the site plan attached with the plaint” are hereby incorporated in the decree dated 10.5.2011.”

were incorporated into the decree dated 10.5.2011.

The record further indicates that as per the list of dates and events submitted on behalf of the petitioner herein itself that RFA 355/2011 was filed against the judgment and decree made initially which was dismissed in default on 21.11.2013. Pursuant to the amendment made in the decree as observed herein above pursuant to the application under Section 152 of the Cr.P.C. on 22.1.2016, the present petitioner herein filed RFA 394/17 alleging fresh cause of

action with regard to the amendment in the decree sheet which RFA 394/17 was dismissed by this Court vide judgment dated 15.5.2017, with it having been directed specifically vide the said judgment that the Judgment Debtor, i.e., the present petitioner herein would hand over the vacant possession of the suit property to the respondent, i.e., plaintiff to the said suit before the next date of hearing, i.e. 25.5.2017 of the Execution Petition and that in case the possession was delivered, the costs would not be payable and in default the executing Court would ensure the delivery of the possession of the suit property to the decree holders without any further delay.

The record further indicates again that as per the list of dates and events submitted on behalf of the petitioner herein itself and borne out from the copy of the proceedings in Review Petition No. 245/2017 and CM No. 23490/2017 in the said RFA No. 394/2017 that the application by the present petitioner as the petitioner of the said review petition seeking the review of the judgment dated 15.5.2017, was also dismissed vide the order dated 19.12.2017.

The submission that is now sought to be made on behalf of the petitioner is to the effect that the petitioner was not assisted by any counsel on 21.3.2014 when the statement was made by the petitioner herein for making payment of a sum of Rs.60,000/- to the decree holder Jag Roshani arrayed as Decree Holder No.2 in Execution Petition no.13/14. It is also submitted through the present petition that the petitioner is soon to become a senior citizen and has no other alternative accommodation to live and also have a meagre source of

income which is not sufficient to maintain his small family and he needs two-three years' time to make alternative arrangement for his family members and that the present petitioner has himself spent a sum of Rs.4,50,000/- in the construction of the suit property was not considered at all because of the undertaking which was given on the date 21.3.2014 which was in violation of his fundamental rights.

It is considered essential to reproduce the proceedings dated 21.3.2014, i.e., the impugned order in Execution No. 13/14 which read to the effect:

“ JD has brought Rs.60,000/- as part payment towards the decree amount. The amount shall be received by the DH from Nazir of this Court as per the prescribed procedure.”

(emphasis supplied)

which itself is an indicator that the judgment debtor had brought Rs.60,000/- as part payment towards the decretal amount. Proceedings of the said order dated 21.3.2014 indicate also that the learned Trial Court had observed to the effect that the Court explored the possibilities of an amicable settlement and at the intervention of the Court, the parties discussed the matter and thereafter agreed to settle the dispute and the statements of the parties were recorded.

Taking into account the factum that the RFA No. 355/11 against the initial decree dated 22.3.2011 was dismissed in default on 21.11.2013, the factum that RFA 2394/17 against the amended decree in the same suit was dismissed on merits on 15.5.2017 and the review petition filed against the same bearing No. 254/2017 was dismissed

on 19.12.2017 and taking into account the proceedings dated 21.3.2014 wherein it has been specifically recorded in the statements of the petitioner herein, i.e., the judgment debtor by the learned Trial Court to the effect:

*“ I am JD in the present execution. I have compromised amicably with the DHs. I undertake and state that I shall vacate the suit property bearing no. 64/1, Shakarpur Khas, Delhi-110092 on or before 01.10.2014. I have have brought Rs.60,000/- which I have paid to DH no.2 before the court. I hereby further undertake that I shall pay rest of Rs.1,70,000/- on or before 01.10.2014 and in case I am not able to make this payment the I shall be liable to pay interest @ 18% p.a. on the amount at reducing balance till final payment. **I undertake that I shall abide by my statement I have made the statement within my own free will, without any pressure or compulsion whatsoever from any corner.**”*

which indicates also to the effect that the statement was made by the petitioner herein as the judgement debtor to execution petition 13/14 of his own free will or without any pressure or compulsion from any corner. Thus there is no merit in the prayer made by the petitioner and the petition and the accompany applications are thus declined.

ANU MALHOTRA, J

OCTOBER 08, 2018/sv