

\$~70

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

%

Date of Judgment : 24th September, 2019

+ EFA(OS) 14/2019
BIMAL SAXENA

..... Appellant

Through Mr. Sibor Sankar Mishra & Mr.
Niranjan Sahoo, Advocates.

versus

KAMALJEET SINGH

..... Respondent

Through Nemo.

CORAM:

HON'BLE MR. JUSTICE G.S.SISTANI

HON'BLE MR. JUSTICE ANUP JAIRAM BHAMBHANI

G.S. SISTANI, J. (ORAL)

CM APPL 42918/2019 (exemption)

1. Exemption is allowed subject to just exceptions.
2. Application stands disposed of.

CM APPL 42920/2019 (delay in filing)

3. This application has been filed by the applicant/appellant seeking condonation of 37 days delay in filing the present appeal.
4. For the reasons stated in the application, delay of 37 days in filing the present appeal is condoned.
5. The application stands disposed of.

EFA(OS) 14/2019

6. Challenge in this appeal is to the order dated 08.07.2019 passed by a learned Single Judge of this Court.
7. Some necessary facts required to be noticed for disposal of this appeal at the admission stage itself are that the appellant had filed an execution

petition seeking to execute a decree passed by a learned Single Judge of this Court which decree stands duly modified by order dated 14.02.2012 passed by a Division Bench of this Court. The operative portion of order dated 14.02.2012 reads as under :

“7. Taking on record the compromise aforesaid the appeal stands disposed of setting aside the impugned decree dated December 20, 1996 and the suit filed by the plaintiffs is decreed passing a decree in sum of Rs.5,00,00,000/- (Rupees Five crores only) by way of compensation payable by the defendant (through legal heirs); the sum of Rs.5,00,00,000/- payable as compensation would be paid in two installments, being Rs.1,00,00,000/- to be paid within three months from today and the balance sum of Rs.4,00,00,000/- to be paid within nine months thereafter and in case of default, the respective amount payable towards compensation would be paid together with interest @9% per annum (simple interest) reckoned from the due date of payment till paid.”

8. During pendency of the execution petition, the decree holder made an application being E.A. No.61/2018 seeking attachment of the residential house of the judgment debtor. An objection was raised by the judgment debtor that the said house cannot be attached under Section 60(1)(ccc) of the Code of Civil Procedure, 1908. Learned Single Judge had allowed the objection, which has led to the filing of the present appeal.
9. Mr. Sibbo Sankar Mishra, learned counsel appearing for the appellant submits that initially the decree holder had filed a suit for specific performance and the subject matter of the suit was a residential house. He submits that since the subject matter of the initial suit was immovable property, the proviso of Section 60(1)(ccc) of C.P.C. would not come to the rescue of the respondent. Counsel has placed reliance on the judgment dated 08.11.2004 passed by Punjab & Haryana High

Court in the case of Sikandar Singh Vs. Harjit Pal Singh, reported at PLR (2005) 139 P&H 591.

10. We have heard learned counsel for the appellant. The aim, objective and purpose of extracting para 7 of the judgment passed by the Division Bench of this Court is to show that the Division Bench modified the decree passed by the learned Single Judge and converted the same into a money decree for the sum of Rs.5 crores. The Division Bench made it clear that in case of amount not being paid, interest @ 9% per annum from the due date till the amount is paid would be attracted. In view of the above, the judgment in Sikandar Singh (supra) would have no application.
11. In view of para 7 of the order dated 14.02.2012 passed by the Division Bench, by which the initial decree was modified, the prayers made in this appeal cannot be acceded to. We find no infirmity in the order dated 08.07.2019 passed by the learned Single Judge. The appeal is accordingly dismissed.

CM APPL 42919/2019 (stay)

12. In view of the order passed in the appeal, this application also stands dismissed.

G.S. SISTANI, J

ANUP JAIRAM BHAMBHANI, J

SEPTEMBER 24, 2019

ck