

7

\$~16 to 19

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM (M) 1383/2019 and CM APPL. 41847/2019**

JAGBIR KAUR AHUJA Petitioner
Through: Mr. Prashant Singh, Advocate (M:
9810170243).

versus

NAND LAL & ORS Respondents
Through: Mr. Daviender Hora, Advocate with
Mr. Arun Kumar, Advocate for R-1
(M: 9810188760).

17 **WITH**
+ **CM (M) 1384/2019 and CM APPL. 41849/2019**
UMA WATI (SINCE DECEASED) THR LR Petitioners
Through: Mr. Prashant Singh, Advocate.
versus

NAND LAL & ORS Respondents
Through: Mr. Daviender Hora, Advocate with
Mr. Arun Kumar, Advocate for R-1.

18 **AND**
+ **CM (M) 1385/2019 and CM APPL. 41854/2019**
SURESH MITTAL Petitioner
Through: Mr. Prashant Singh, Advocate.
versus

NAND LAL & ORS Respondents
Through: Mr. Daviender Hora, Advocate with
Mr. Arun Kumar, Advocate for R-1.

19 **AND**
+ **CM (M) 1386/2019 and CM APPL. 41856/2019**
VINOD KUMAR HARI RAM Petitioner
Through: Mr. Prashant Singh, Advocate.
versus

NAND LAL & ORS Respondents
Through: Mr. Daviender Hora, Advocate with
Mr. Arun Kumar, Advocate for R-1.

CORAM:
JUSTICE PRATHIBA M. SINGH

B

ORDER
03.02.2020

%

1. The Petitioners have filed the present petitions challenging the impugned order dated 4th September, 2019, wherein, while adjourning the matter, the Id. Rent Control Tribunal (*hereinafter*, "RCT") has clarified that there is no stay of execution.
2. The grievance in these petitions is that an interim order had been granted by the RCT on 9th August, 2019 and the same could not have been vacated without any reason whatsoever. The Sr. counsel who had to reach the Court was on his way from the Airport and hence, by the time he could reach, the matter got over and the stay granted on 9th August, 2019 had been vacated.
3. Vide order dated 18th September, 2019, notice was issued and Id. counsel for Respondent No.1 was directed to be served. The said order reads:

"2. The present petitions have been filed challenging the order dated 4th September, 2019 by which the Id. District Judge has clarified that there is no stay of execution. Mr. S.K. Rungta, Id. Senior counsel submits that on the previous date i.e. 9th August, 2019, a stay order was granted in the following terms by the same Court: -

"Arguments on stay application heard further but could not be concluded due to paucity of time on account of administrative exigencies.

The appellants are allegedly sub tenants and were not party to the original eviction proceedings, though, the same is not mandatorily required and there was multiple litigation between the present respondents and their predecessors in interest, the dispute running from 1940s. Before the execution court, the appellants could not adduce evidence of title of Muni Lai Mehra

9

which led to the impugned order.

In view of circumstances of this case, which call for detailed hearing, learned counsel for respondent nos. 1 & 3 were requested and they consented that till next date they shall not get executed the eviction order out of which the impugned order arose, so that the appeal be heard at length.

Trial court record and execution court record be summoned two days before the next date of hearing.

List for arguments on 04.09.2019 as already fixed.

It is clarified that on next date no adjournment request shall be entertained."

3. The matter was adjourned for hearing on 4th September, 2019. It is submitted that Mr. S.K. Rungta, ld. Senior counsel had gone out of the country as part of an international delegation and in fact reached back. Only a Passover was sought in the morning, which was refused by the Ld. District Judge. The application under Order XXII Rule 4 CPC was decided and at the end of the said order it was clarified that there is no stay of execution.

4. It is submitted by Mr. S.K. Rungta that the entire appeal would be infructuous if the Executing Court appoints a Bailiff and warrants of possession are issued, inasmuch as, the appeal deserves to be heard on merits and the interim order which was passed on 9th August, 2019 could not have been vacated in this manner.

5. The Court has perused the order dated 9th August, 2019 and the impugned order dated 4th September, 2019. In the former, the Ld. District Judge records that a 'detailed hearing' would be required. However, in a cryptic manner, in the latter order, at the end the execution is allowed to proceed, by observing "Copy of this order be sent to the trial court clarifying that there is no stay of execution." There are no circumstances recorded as to why the said clarification was given that there is no stay of execution, by the ld. District Judge. In fact, this latter order, primarily deals with an application

/10

under Order XXII CPC for substitution of legal heirs. This clarification is not just a clarification but tantamounts to vacating the earlier granted order, without any reasons. It is submitted by Ld. Counsel that the Executing Court has fixed 24th September, 2019 as the next date in the execution proceedings and for appointment of Bailiff.

6. Under these circumstances, let notice be issued dasti to the ld. counsels appearing for the Respondents before the ld. District Judge for appearance on 19th September, 2019. Let a copy of the order be served upon the ld. counsels appearing in the said appeal.

7. List on 19th September, 2019 at 2:15 p.m.

8. Order dasti under signatures of the Court Master."

4. However, Respondent No.1 did not appear and on 19th September, 2019, this Court has passed the following order: -

"1. Further to yesterday's order, it is submitted on behalf of the Petitioner that the dasti notice was served upon the counsel for Respondent No.1, who accepted the service. However, Id. counsel for Respondent No.3 refused to accept the intimation of the order. The background of the impugned order, out of which the present petitions arise has been captured in the order passed by this Court yesterday i.e. on 18th September, 2019.

2. A perusal of the order dated 9th August, 2019, and subsequent order of 4th September, 2019 shows that the stay of execution, which was directed by the order dated 9th August, 2019 has been vacated by means of the impugned order which termed the same as a 'clarification'. The order dated 9th August, 2019 clearly records that the appeal pending before the District Judge required a detailed hearing, and under these circumstances, ld. counsel appearing for the Respondents had been directed not to proceed with the execution. The impugned order, which seeks to clarify that there is no stay of execution, is without any reasons

11

and the appeal, is in any case, still pending and has not been disposed of.

3. Despite intimation being given to Id. counsels appearing for the contesting Respondents before the Trial Court, none have appeared today on behalf of the Respondents. Under these circumstances, it is directed that there shall be stay of execution until disposal of the appeals in RCT Nos.95/2019, 80/2019, 81/2019 and 78/2019 by the Id. District Judge.

4. Issue notice to all the Respondents returnable on 3rd February, 2020.

5. A copy of this order be given dasti under signature of the Court Master."

5. Today, Id. counsel appearing for Respondent No. 1 submits that none of the other objectors has filed any petition before this Court to challenge the order dated 4th September, 2019. Thus, the interim order granted by this court ought to operate only *qua* the Petitioners in the above four petitions.

6. Thus, the present petitions are disposed of with the clarification that there shall be a stay of execution only *qua* the above Petitioners till the disposal of the appeals in RCT Nos. 95/2019, 80/2019, 81/2019 and 78/2019. It is made clear that there is no stay of execution in respect of any of the other parties. The RCT shall now adjudicate the appeals on merits and pass appropriate orders in accordance with law.

7. The petitions and all pending applications are disposed of in the above terms. *Dasti.*


PRATHIBA M. SINGH, J.

FEBRUARY 03, 2020/MR