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

+ EX.P. 20/2013

JOHN NAGAR

..... Decree Holder

Through: Mr. Ujjwal Jha, Adv.

Versus

DR. HANS U NAGAR & ANR

..... Judgement Debtors

Through: Mr. Amit Andlay & Mr. Arun K. Sharma, Adv. for JD-1.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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14.01.2020

Ex.P. No.20/2013, EA No.268/2017 (objection / reply by judgment-debtor no.1), EA No.299/2017 (under Section 151 CPC), EA No.375/2017 (under Order XXI read with Section 151 CPC) and EA no.21/2019 (of judgment-debtor No.1 under Order XXI Rule 26 CPC)

1. Execution is sought by decree-holder John Nagar, impleading Dr. Hans U Nagar as judgment-debtor and Ronald Nagar as proforma party, of judgment and decree dated 12th April, 2012 in Suit No.666/2008 and seeking (as per the amended Execution Petition verified in November, 2012) issuance of “warrants of possession with respect to two rooms / structures existing on the suit property at point A and B shown on the site plan, commonly known as Farm Land No.8, admeasuring 16 Bighas and 1 Biswa, comprised in Khasra No.197 min (0-12), 198 min (0-2), 245 min (4-16), 256 min (4-16), 244 min (1-18), 257 min (3-17), situated in Revenue state of village Gadiapur, 139, Nagar Estate, Hauz Khas, New Delhi.”

2. The counsel for the decree-holder John Nagar states that he is also appearing for the proforma party i.e. Ronald Nagar.

3. The counsel for the judgment-debtor Dr. Hans U Nagar has handed

over a copy of the order dated 6th September, 2019 in FAO(OS) No.3/2019 recording that, vide earlier order dated 13th February, 2019, *status quo* with respect to the keys of the two rooms was directed to be maintained; that the keys of the two rooms were in the custody of senior counsel appearing for the judgment-debtor Dr. Hans U Nagar; that the parties had agreed that the said keys can remain in the custody of the senior counsel till the disposal of the appeal, and clarifying that *status quo* order is only with respect to the two rooms and the decree-holder, during the pendency of the appeal shall be entitled to pursue the pending Execution Petition in respect of the remaining relief. The counsel for the judgment-debtor Dr. Hans U Nagar states that this execution petition, only with respect to said two rooms qua which *status quo* has been directed to be maintained and keys whereof are still in the custody of the senior counsel, the execution petition is misconceived.

4. The counsel for the decree-holder John Nagar however contends that the judgment-debtor Dr. Hans U Nagar has filed objections to execution by way of EA No.268/2017; that the said objections at least be decided.

5. The objections can be decided only to an execution and once execution does not lie in terms of the order aforesaid of the Division Bench, the objections cannot be decided in vacuum. It will be open to the parties to, in the hearing before the appellate Court, make the requisite contentions. EA No.268/2017 is disposed of with the said observation.

6. The counsel for the decree-holder John Nagar then states that EA No.375/2017 has been filed by proforma party Ronald Nagar, seeking execution of the part of the decree in his favour.

7. For such relief, proforma party Ronald Nagar will have to seek his own execution and as a proforma party cannot seek execution.
8. EA No.375/2017 is disposed of with liberty to proforma party Ronald Nagar to take his independent remedies.
9. The counsel for the decree-holder John Nagar draws attention to EA No.299/2017 seeking direction for release of Rs.15 lacs deposited in this Court, to the decree-holder John Nagar and directions to the judgment-debtor Dr. Hans U Nagar to pay monthly use and occupation charges at Rs.1,50,000/- from the date of the decree till the date of delivery of possession.
10. The counsel for the decree-holder John Nagar clarifies that use and occupation charges are claimed with respect to two rooms qua which execution is claimed.
11. In exercise of execution jurisdiction, no fresh claims can be adjudicated.
12. As far as release in favour of decree holder John Nagar of Rs.15 lacs stated to be deposited in this Court, is concerned, no decree for release thereof in favour of decree holder John Nagar is shown. Such direction cannot be given in execution.
13. EA No.299/2017 is equally misconceived and is also thus dismissed.
14. EA No.21/2019 has been filed by the judgment-debtor Dr. Hans U Nagar for stay of the present execution.
15. The execution having already been stayed in terms of the order aforesaid of the Division Bench, no orders are required on EA No.21/2019.

16. Execution petition is disposed of. Needless to state, that on disposal of the appeal, if decree-holder John Nagar is entitled to execution of the same part of the decree of which execution was claimed herein, he shall be entitled to apply.

RAJIV SAHAI ENDLAW, J.

JANUARY 14, 2020

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