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

+ **CM (M) 369/2019**

M/S KAMADGIRI CONSULTANCY PVT LTD. Petitioner

Through: Mr. R. M. Sinha, Advocate.
(M:9811478026)

versus

PARVEEN Respondent

Through: Mr. Bijender Singh and Mr. Surendra,
Advocates. (M:9654397323)

CORAM:

JUSTICE PRATHIBA M. SINGH

ORDER

% **06.01.2020**

1. The grievance of the Petitioner in the present petition is that the impugned order dated 1st December, 2018, has, in fact, rendered the execution proceedings completely toothless, as the Executing Court has held that the same would be proceeded with only after the review application, which was proposed to be filed, is disposed of.
2. The Petitioner had filed a suit for recovery of possession, recovery of rent, *mesne* profits and permanent injunction. On 11th November, 2016, after deciding the application under Order XII Rule 6 CPC, a decree for handing over vacant and peaceful possession of the first floor of property bearing No. QD-11 FF, Pitampura, Delhi-110088 (*hereinafter*, “*suit property*”), was passed. The operative portion of the said order reads as under:

“From the above mentioned judgments, it is reflected that once landlord tenant relationship is admitted and notice of termination of tenancy has been given then the tenant is liable to vacate the property. It has been further considered vide the above judgments that even if no notice is given then filing of the suit itself amounts to giving notice and tenant is liable to vacate the

property. In the present case, giving of legal notice is disputed, however, in the light of Judgment Nopani Investment (Supra), these submissions are not tenable in the eyes of law. Therefore, as per mandate laid down in above judgments, defendant is liable to vacate the premises.

In terms of above findings, the application filed under Order 12 Rule 6 CPC is allowed. Defendant is liable to hand over the peaceful vacant possession of the suit property in question i.e. first floor of built up property bearing no. QD-11 FF, Pitampura, Delhi-110088. Decree sheet be prepared accordingly. Order pertaining to cost shall be passed at the time of final disposal of the case. The suit shall proceed further with regard to the other reliefs.”

3. The Petitioner, thereafter, sought to execute the said decree. On 1st December, 2018, the following order was passed in the execution proceedings:

“The counsel for JD seeks liberty to withdraw the applications u/s 340 CrPC; Section 151 CPC and Section 47 CPC are disposed off as withdrawn.

It is made clear that the execution shall proceed once the review application proposed to be filed in CS No. 76610/16 by the JD is disposed off.

To come up for further proceedings with the connected CS No.76610-16 on 10.01.2019.”

4. Ld. counsel appearing for the Petitioner submits that the above order has, in fact, resulted in a stay on the execution proceedings while the Respondent continues to enjoy possession of the suit property without paying any rent.

5. On the other hand, ld. counsel for the Respondent submits that review applications had been filed seeking review of several orders and on the very same day i.e., 1st December, 2018, the Executing Court had permitted the

Respondent to file a consolidated review application. It is for this reason that the Executing Court did not pass orders in the execution petition. Further, it is submitted that the Respondent has also filed a counter claim in the suit itself, therefore, no money is liable to be paid.

6. A perusal of the judgment/decreed dated 11th November, 2016, shows that the same is clear and categorical in that vacant and peaceful possession of the suit property was to be handed over to the Petitioner. The said judgment/decreed has attained finality as the same has not been challenged by the Respondent. Any application for review cannot indefinitely hold up the execution of the said decree.

7. Accordingly, the impugned order is set aside and the Executing Court is directed to proceed with the execution of the decree. Further, the Executing Court shall take into consideration the stand of the Petitioner that no rent has been paid by the Respondent since 1st October, 2013. The Ld. Counsel for the Respondent submits that an amount of Rs.3.6 lakhs has been paid in 2016. The question as to how much rent is due, if any, and the amounts which have already been paid by the Respondent, shall be considered by the Executing Court. Parties are permitted to make their respective submissions before the Executing Court, which shall pass appropriate orders in the same within a period of three months from today.

8. The petition and all pending applications are disposed of in the above terms. *Dasti*.

PRATHIBA M. SINGH, J.

JANUARY 06, 2020/dk