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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of decision: 22nd July, 2021
+ **C.R.P. 52/2021 & CM APPLs. 21721/2021, 21722/2021 & 21723/2021**

DEEPAK ARYA Petitioner
Through: Mr. Ravendrapal Singh Sirohi and
Mr. Dev Raj Chhabra, Advocates (M:
9210103441).
versus

DEVANSH REAL ESTATE PVT LTD & ORS. Respondents
Through: None.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through video conferencing.
2. The present petition has been filed challenging order dated 25th March, 2021 by which the Petitioner's objections have not been taken on record by the Additional District Judge-02, Central District, Delhi (*hereinafter, "Executing Court"*) in *Execution No. 23604/2016*, titled '*M/s. Devansh Real Estate Pvt. Ltd. vs. M/s. Ankur Medico Pvt. Ltd. & Ors*'. The Petitioner was Defendant/Judgment Debtor No. 7 in the said execution petition.
3. The case of the Petitioner is that the Petitioner was a sub-tenant under M/s. Ankur Medico Pvt. Ltd. whose partners were Mr. Vijay Abbot and Mrs. Manju Abbot. The premises in which the sub-tenancy was taken by the Petitioner has already been vacated in April, 2012 by the Petitioner. However, a decree was passed by the Trial Court in 2015 in which the

defence of the main tenant was struck off. The other sub-tenants, being only persons claiming through the main tenant, no opportunity was given to them to defend the same. The decree passed is as under:-

“86. Relief: In view of my findings on the above issues the suit of the plaintiff is decreed as follows:

(a) A decree for actual physical vacant possession in respect of the “premises in suit” bounded as red in the site plan is passed in favour of the plaintiff and against the defendants.

(b) A decree for recovery of arrears of usufruct/rentals amounting to Rs. 1,27,908/- being the rental for the period 1-6-2010 to 23-4-2011 @ Rs. 11880/- per month along with interest @ 9% p.a. is passed in favour of the plaintiff and against the defendants.

(c) A decree for recovery of mesne profit/damages amounting to Rs. 641839/- for use and occupation for the period from 24-4-2011 till the date of the institution of the suit @ Rs. 1,97,000/- per month along with interest @ 9% p.a. is passed in favour of the plaintiff and against the defendants.

(d) A decree for damages for use and occupation i.e. mesne profit against the defendants and in particular against the defendant No. 1 @ Rs. 100/- per Sq. Ft. per month for the period from 24-4-2011 till the delivery of the actual physical vacant possession of the “premises in suit” to the plaintiff along with interest @ 9% p.a. is also passed. Cost of the suit is also awarded to the plaintiff.”

4. Thereafter, the decree holder sought execution of the said decree by impleading both the tenant, its partners, as also all the sub-tenants. In the said execution petition, apart from physical possession, recovery of the decretal amount is also sought. On 24th November, 2020, 15 days' time was granted to the Petitioner for filing of the objections in the said execution petition. However, due to the pandemic, there was a delay in filing the

objections and the Court has now refused to take the objections filed by the Petitioner-sub-tenant on record.

5. Ld. Counsel Mr. Sirohi submits that the sub-tenant has paid the occupation charges to Mrs. Manju Abbott and thus executing the decree against his client would be inequitable. He further submits that with the objections which were filed, the documents evidencing payment of rent were attached but the Court has rejected the objections.

6. The Court has perused the impugned order dated 25th March, 2021. The said order essentially records that on 18th January, 2021, opportunity was given to file the objections. Since the same were not filed and no explanation was given as to why the same were not filed in time, the objections were not taken on record and were dismissed.

7. The short case of the Petitioner-sub-tenant is that there can be no recovery directed by the Executing Court against the Petitioner, in view of the fact that the sub-tenant had duly deposited the use and occupation charges with Mrs. Manju Abbot, the partner of the main tenant itself. Hence, the Petitioner ought to be permitted to place the documents on record, including the rent receipts etc. Thus, the relief prayed for by the Petitioner in this case is very limited i.e., to the effect that the documents, including the rent receipts, showing the payment of use and occupation charges to Mrs. Abbot ought to be considered by this Court.

8. Considering the overall facts of this case, it is not in doubt that the Petitioner was given an opportunity to file objections which were not filed within two weeks. In any case, it would be relevant for the Executing Court to consider the rent receipts which may be filed by the Petitioner on record while considering the execution of the decree which has already been

granted in favour of the decree holder. Accordingly, even though the objections themselves may be dismissed, the rent receipts and the documents filed by the Petitioner shall be considered by the Executing Court in order to determine whether any order would be liable to be passed against the Petitioner-sub-tenant.

9. The Petitioner is permitted to file the said documents with an index before the Executing Court, alongwith an affidavit, within a period of four weeks. The said documents would be considered in accordance with law and orders also shall be passed *qua* the Petitioner in accordance with law.

10. With these observations, the present petition along with all pending applications is disposed of. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH
JUDGE

JULY 22, 2021
MR/AD/T