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

Date of Decision: 24th November, 2021

+ **RSA 82/2021 & CM APPLs. 41610/2021, 41611/2021 & 41612/2021**

INDU DEVI

..... Appellant

Through: Mr. Medhanshu Tripathi and Mr.
Manindra Dubey, Advocates.
(M:9810597966)

versus

INDIRA DEVI

..... Respondent

Through: None.

CORAM:

JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J. (Oral)

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.
2. The present second appeal arises out of the final judgment/order dated 12th February, 2020 passed by the Id. ADJ-1, North District, Delhi (*First Appellate Court*), vide which the first appeal against the order dated 5th April 2012, passed in *Suit No. 556/10* and the order dated 8th February 2019, passed in *Execution Case No. 54409/2016*, has been dismissed.
3. The brief background of the present second appeal is that a suit was filed by the Respondent/Plaintiff Smt. Indira Devi i.e. mother-in-law of Smt. Sindhu Devi- Defendant No.1 seeking permanent injunction against dispossession from the property bearing Old Jhuggi No. CN-272, D Block, Near Milk Dairy, Shahabad Dairy, Delhi (*hereinafter, "suit property"*). In the said suit, she had arrayed two ladies i.e. her daughter-in-law Smt. Sindhu Devi as Defendant No.1, and Smt. Indu Devi as Defendant No.2. The

Defendant No. 2 in the said suit is the Appellant in the present proceedings.

The prayers sought in the said suit were as under:

“a. An order for a decree of permanent injunction in favour of the plaintiff and against the defendants thereby directing the defendants their agents, staffs etc. or any person acting on their behalf not to disposes of the plaintiff from the suit property without due process of law the property bearing Jhuggi No. CN-272, situated D-Block near Milk Dairy Shahibabad Delhi more specifically shown in the red colour in the site plan, in the interest of justice.

b. Any other relief may also be passed in favour of the plaintiff and against the defendants which this Hon'ble Court deems fit and proper under the facts and circumstances of the case, in the interest of justice.”

4. The said suit was filed in October, 2010, and on 5th January, 2012, statements were made by the Defendant Nos.1 & 2 before the Trial Court, to the following effect:

“Statement of Sh. Vijay Khanna, Ld. Counsel (D-52-99), for defendant no. 1.

Without Oath

I am the counsel for defendant no.1 in the present case. I have instructions from the defendant no.1 that without prejudice to rights of the defendant no.1 and without admitting the contents of the plaint, she will not dispossess the plaintiff from the suit property bearing no. Jhuggi No. CN-272, D-Block, Near Milk Dairy, Shahbad Dairy, Delhi without following the due process of law.

xxx

DW-2: Statement of Smt. Indu Devi, W/o Sh. Ram

Avtar, R/o. Jhuggi, Shahbad Dairy, Delhi.

ON SA

I am the defendant in the present case. Without prejudice to my rights and without admitting the contents of the plaint, I state that except by due process of law, I will not dispossess the plaintiff from the suit property bearing no. Jhuggi No. CN-272, D-Block, Near Milk Dairy, Shahbad Dairy, Delhi.”

5. In view of the above two statements made by the Defendant Nos.1 & 2, the Plaintiff also made a statement before the Trial Court to the following effect:

“PW-1: Statement of Smt. Indira Devi, W/o. Sh. Sant Lal Mandal, R/o. Old Jhuggi No.CN-272, Near D-Block Milk Dairy, Shahbad Dairy, Delhi.

ON SA

I am the plaintiff in the present case. I am satisfied with the statement of the defendant no. 2 and counsel for defendant no.1, that they will not dispossess me without following the due process of law from the suit property. Hence, I do not want to proceed further with the present case against defendants. Present case may be disposed off as withdrawn.”

6. Having recorded the above statements on behalf of the Defendants as well as the Plaintiff, the suit was disposed of as satisfied by the Id. ACJ, North West, Rohini Courts, Delhi (*Trial Court*) on 5th January 2012. The order of the Trial Court reads as under:

“It is stated by the counsel for defendant that defendants are willing to give a statement that they shall not dispossess the plaintiff from the suit property without due process of law. Plaintiff also submits that if defendants are ready to make this statement, he will withdraw the suit.

*Statements of parties is recorded separately. Counsel for defendant no.1 has given statement on behalf of the defendant no. 1. I have perused the same. In view of the statements of the parties, the suit of the plaintiff is disposed off as satisfied. Parties shall be bound by their respective statements. Original documents, if any be returned to the parties subject to filing of signed photocopies thereof. File be consigned to **Record Room.**”*

7. Thereafter, the Plaintiff Smt. Indira Devi had filed an application under Section 12 of the Contempt of Court Act, 1972, contending that the Defendant No. 2, Ms. Indu Devi and her husband Shri Ram Avatar had forcibly taken possession of the suit property and had begun certain construction work. Vide order dated 15th February 2016, passed in **CS No. 400/14** by the Civil Judge, North West, Rohini Courts, Delhi, the said contempt application was dismissed on the ground that a specific procedure of execution of a decree of injunction is already envisioned within the CPC and accordingly the said contempt application is not maintainable.

8. The Plaintiff then filed an execution petition bearing **Execution Case No. 54409/2016**, seeking execution of the decree dated 5th January 2012. In response to the said execution petition, objections were filed by Defendant No.2 - Smt. Indu Devi. Vide order dated 8th February, 2019 passed by the Id. Civil Judge, North West, Rohini Courts, Delhi (*Executing Court*), the said objections were dismissed. The rationale given by the Executing Court was that the Executing Court cannot go behind the decree. It was observed by the Executing Court that the Defendant No.2 was asserting ownership of the suit property and refuting the title of the Plaintiff after having made a statement on oath. Accordingly, the Executing Court held that once a

statement was made, and was recorded by the Trial Court which passed the order dated 5th January 2012, the Defendant No. 2 could not be permitted to retract from the same. The relevant portion of the order of the Executing Court reads as under:

“5. The powers of an executing Court are very limited. It is trite that an executing Court cannot go behind the decree to appreciate or re-appreciate the facts and evidence of the parties. JD is asserting her ownership over the suit property and refuting the title as well as the possession of the DH. On 05.01.2012, she already made a statement on oath before the Court that she would not dispossess the DH herein without following the due process of law. Once such a statement has been made, she cannot now retract from the same saying the she was misled by her counsel into making such statement, especially given that no complaint against the said counsel has been made. There is nothing on record to support her version. If such an excuse were to be accepted by the Court on its face value, it would open a Pandora's box where every other litigant would use this tool to wriggle out of the settlements and statements made on oath. Thus, such an argument cannot be accepted.”

9. Thereafter, an appeal was filed challenging the said order passed by the Executing Court as well as the original decree passed by Trial Court, by the Defendant No. 2 and her husband. The said appeal has been dismissed vide the impugned order dated 12th February, 2020 passed by the First Appellate Court.

10. The reasoning given by the First Appellate Court in the impugned order is that since the appeal is barred by limitation as it has been filed almost 7 years after passing of the initial order of the Trial Court dated 5th January 2012, the same is not maintainable. The relevant portion of the

order of the Appellate Court reads as under:

“Perusal of the appeal preferred by the appellants reveals that though in the said appeal, they have mentioned the orders dated 05.01.2012 and 08.02.2019, however their main grievance is only against order dated 05.01.2012.

The appellants challenged the order dated 05.01.2012 by way of appeal filed on 14.03.2019 which is hopelessly barred by the period of limitation. No separate application for condonation of delay in filing the appeal has been filed by the appellants.

During the course of the arguments, counsel for the appellants pleaded that after passing the order dated 05.01.2012, the respondent filed one contempt application against the appellants and the proceedings therein continued for about three years. Once the respondent could not succeed in contempt application, the respondent filed the said execution petition no. 544/9/16. Hence, there was delay in preferring the appeal.

The above mentioned proceedings initiated by the respondent had nowhere prohibited the appellants from challenging the order dated 05.01.2012 within the period of limitation nor the appellants are entitled to exclusion of the period lapsed in the said proceedings for the purpose of calculation of the period of limitation.

In ground (a) of the appeal, the appellants pleaded that the appellant no. 2 came to know about the order dated 05.01.2012 on 24.08.2016, hence the appeal is within the period of limitation. Firstly, as held above, Ram Avtar was not the party to the subject proceedings. Secondly, the period of limitation to prefer the appeal is 30 days from the date of decree. Hence, the said plea raised by the appellants is of no consequence.

No doubt while deciding the application for condonation of delay a liberal approach should be

adopted. However, to enable the court to exercise the discretion and to adopt the said approach, the appellants have to make out a case. However, the conduct of the appellants in the present case shows total callousness and negligence. As such, the appellants have completely failed to show that there was due diligence on their part to take the prompt steps for preferring the appeal. Simultaneously, the right accrued in favour of the respondent should not be disturbed lightly.

Accordingly, in my opinion, the appeal against the order dated 05.01.2012 is hopelessly barred by the period of limitation.

In view of the foregoing discussions, the appeal is dismissed being hopelessly barred by the period of limitation as well as non maintainable in law.”

11. Mr. Tripathi, Id. counsel appearing for the Appellant submits that when the initial statements were made by the Defendants before the Trial Court on 5th January 2012, the same was due to wrong advice and a fraud played by the Id. counsel representing the Defendants, who was allegedly in collusion with the Plaintiff. He submits that the Appellant herein, being an illiterate lady, did not understand the intent and purport of the statement made by her on 5th January, 2012.

12. Heard Id. Counsel and perused the record.

13. A perusal of the statements recorded on 5th January, 2012 before the Trial Court shows that on behalf of the Defendant No. 1- daughter in law i.e. Smt. Sindhu Devi, the statement of her Counsel has been recorded. However, insofar as Defendant No. 2/ Appellant herein- Smt. Indu Devi is concerned, it is clear she had personally appeared before the Court and made the statement that has been recorded on oath. Thus, the allegation of fraud, that is being canvassed by Id. Counsel for the Defendant No. 2 before this

Court, in the opinion of this Court, is devoid of any merit. In any event, the order which has been passed by the Trial Court on 5th January 2012 is that the Plaintiff cannot be dispossessed without following the due process of law. Thus, even though the Defendant No. 2 claims to be in possession of the suit property, in view of the statement made by her before the Trial Court, the Plaintiff cannot be dispossessed from the suit property otherwise than in accordance with law. Execution proceedings seeking execution of the decree dated 5th January, 2012 to continue.

14. Accordingly, if the Defendant No. 2 wishes to seek possession from the Plaintiff, she may avail of her remedies in accordance with law if available. The present second appeal, however, does not deserve to be entertained as the impugned order does not call for any interference. No substantial question of law arises.

15. The present second appeal is accordingly dismissed. All pending applications are also disposed of.

PRATHIBA M. SINGH
JUDGE

NOVEMBER 24, 2021/dk/Ak