

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

% **Date of decision: 24<sup>rd</sup> December, 2021**

+ **CM(M) 1218/2021**

**VISHWANATH OJHA** ..... Petitioner  
Through: **Mr. Sameer Abhyankar & Mr. Abhinav Mishra, Advocates.**

versus

**SURENDER SINGH BOHANIA** ..... Respondent  
Through: **Mr. Inderdeep Singh, Advocate.**

**CORAM:**  
**HON'BLE MR. JUSTICE AMIT BANSAL**

**JUDGMENT**

**AMIT BANSAL, J. (ORAL)**

**CM No.47667/2021(for exemption)**

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

**CM(M) 1218/2021 & CM No.47668/2021(for stay)**

3. The present petition under Article 227 of the Constitution of India impugns the order dated 21<sup>st</sup> December, 2021 passed by the Additional Senior Civil Judge, East, Karkardooma Courts, Delhi (Review Court) in Misc. No.21/2021, whereby the Miscellaneous application filed on behalf of the petitioner in the Review Petition filed by the petitioner, for stay of the execution proceedings filed on behalf of the respondent, has been dismissed.
4. The brief facts necessary for deciding the present petition are set out

below:

4.1 On 22<sup>nd</sup> January, 2016, a Civil Suit was filed by the respondent before the Additional Senior Civil Judge, East District, Karkardooma Courts, New Delhi (Trial Court) seeking *inter alia* possession of the second floor of the suit property.

4.2 The Civil Suit was decreed in favour of the respondent vide judgment dated 21<sup>st</sup> January, 2019.

4.3 Appeal against the said judgment was dismissed by the Appellate Court vide judgment dated 5<sup>th</sup> November, 2019.

4.4 Thereupon, execution proceedings were filed on behalf of the respondent on 15<sup>th</sup> January, 2020 before the Civil Judge, Shahdara, Karkardooma Courts, Delhi (Executing Court).

4.5 Regular Second Appeal filed on behalf of the petitioner against the judgment dated 5<sup>th</sup> November, 2019 was also dismissed as withdrawn on 28<sup>th</sup> February, 2020.

4.6 A petition being CM(M) 293/2021 was filed by the petitioner under Article 227 of the Constitution of India against one of the orders passed in the Execution Petition which was dismissed by this Court vide order dated 6<sup>th</sup> April, 2021 with costs.

4.7 On 3<sup>rd</sup> September, 2021, a Review Petition was filed by the petitioner against the judgment of the Trial Court dated 21<sup>st</sup> January, 2019.

4.8 An application was also filed on behalf of the petitioner before the Executing Court seeking stay of the execution proceedings in view of the

Review Petition having been filed by the petitioner. The said application filed on behalf of the petitioner was dismissed by the Executing Court vide order dated 25<sup>th</sup> October, 2021.

4.9 The petitioner preferred an appeal against the said dismissal of the stay application by the Executing Court, and the appeal filed by the petitioner was dismissed as withdrawn vide order dated 1<sup>st</sup> November, 2021.

4.10 Against the said dismissal, a petition under Article 227 was filed before this Court being CM(M) 996/2021.

4.11 This Bench, vide order dated 11<sup>th</sup> November, 2021 disposed of the said petition, while granting the petitioner opportunity to file a stay application in the pending Review Petition filed by him, and directed that warrants of possession shall not be executed against the petitioner till 18<sup>th</sup> November, 2021. This order was passed on the first date when the petition was listed in the absence of the respondent.

4.12 Thereafter, an application for stay was filed on behalf of the petitioner on 17<sup>th</sup> November, 2021 before the Review Court, seeking stay of the execution proceedings.

4.13 The said stay application was listed before the Review Court on 20<sup>th</sup> November, 2021. While adjourning the matter to 6<sup>th</sup> January, 2022, an issue of jurisdiction of the Review Court to grant a stay of the execution proceedings initiated before a different jurisdiction was raised.

4.14 On 24<sup>th</sup> November, 2021, fresh warrants of possession were issued by the Executing Court.

4.15 Thereupon, another application was filed on behalf of the petitioner on 13<sup>th</sup> December, 2021 seeking postponement of execution proceedings, which was dismissed by the Review Court on account of lack of jurisdiction.

5. Ultimately, vide the impugned order dated 21<sup>st</sup> December, 2021, the stay application filed on behalf of the petitioner was dismissed by the Review Court, observing/reasoning that there are no powers under the Code of Civil Procedure, 1908 (CPC) in the Court to stay the execution proceedings initiated before the Civil Court of another District.

6. Counsel for the petitioner submits that in view of the fact that the Review Petition is still pending, the execution of the warrants of possession be deferred.

7. Counsel appears on behalf of the respondent on advance notice and states that there has been suppression of facts in the present petition and relevant orders passed in the aforesaid proceedings have been concealed. He has handed over a copy of the order dated 28<sup>th</sup> February, 2020 passed by this Court in the second appeal filed on behalf of the petitioner being RSA No.30/2020. The said order is reproduced below:

*“The learned counsel for the appellant prays for leave to withdraw the present appeal with liberty to approach the learned Execution Court with a prayer to seek time to vacate the premises in question.*

*The appeal is dismissed as withdrawn with liberty as prayed for.*

*Dasti, under the signature of the Court Master.”*

8. There is no mention of this order in the petition filed by the petitioner and nor has a copy of the same been filed. In the opinion of this Court, this order has deliberately been concealed by the petitioner, as, in terms of the

said order the petitioner withdrew the second appeal filed before this Court with liberty to approach the Executing Court seeking time to vacate the premises in question. However, instead of approaching the Executing Court to seek time, the petitioner went ahead and filed the Review Petition against the judgment dated 21<sup>st</sup> January, 2019 passed by the Trial Court.

9. Once, the original judgment and decree has been upheld in appeal and the second appeal has also been withdrawn, obviously the attempt of the petitioner in filing the Review Petition was only to gain time and delay the handing over of the possession of the suit property in terms of the judgment of the Trial Court. As is evident from the narration of facts above, throughout the attempt of the petitioner has been to file various petitions and applications only so as to retain unlawful possession in the suit property. The conduct of the petitioner has been dishonest and reprehensible. Even the present petition has been filed by concealing relevant and material facts. It is settled position of law that equitable considerations have to be weighed in while entertaining petitions under Article 227 of the Constitution of India.

10. Dismissed with costs of Rs.50,000/-.

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**AMIT BANSAL, J.**

**DECEMBER 24, 2021**

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