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

+ CM(M) 863/2022, CM 37037/2022 and CM 37038/2022

MADAN LAL SURYAWANSHI Petitioner

Through: Mr. Sumit Chandra, Adv. with
petitioner in person

versus

TARA DEVI (NOW DECEASED)
THROUGH ITS LRS

..... Respondent

Through:

CORAM:

HON'BLE MR. JUSTICE C .HARI SHANKAR

JUDGMENT (ORAL)

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26.08.2022

1. Suit 212/2010, under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of ₹ 2,45,050/-, which was instituted by the respondent against the petitioner, was decreed *ex parte* by the learned Civil Judge, *vide* judgment and decree dated 25th May 2011, to the extent of ₹ 1,45,000/- in favour of the respondent and against the petitioner.

2. The petitioner assailed the said decision before this Court by way of CM (M) 18/2016, which was dismissed, reserving liberty, however, with the petitioner to prosecute his interest before the learned Civil Judge by raising the issue of abatement of proceedings in the suit, if a case for such request was made out. The concluding paragraphs of the said decision read thus:



“Whilst in the absence of appropriate steps in terms of Order XXII CPC, the petitioner cannot take these proceedings further, the impugned order even otherwise is not found to be suffering from any error. The learned trial judge took a very fair view of the matter by not only granting relief to the defendant by reviving the proceedings in the suit setting aside the *ex parte* judgment, but also protected the interest of the plaintiff of the case by requiring deposit of about half of the principal sum claimed in the suit.

In the above facts and circumstances, no case for interference by this Court at this stage is made out.

The petition is disposed of with clarification that the defendant may prosecute his interest before the trial Court including by raising issue of abatement of the proceedings in the suit, if a case for such request is made out.

The petition and the application filed therewith are disposed of in above terms.”

3. The petitioner, thereafter, filed an application under Order IX Rule 13 for setting aside of the *ex parte* judgement dated 25th May 2011 along with an application under Section 5 of the Limitation Act. The delay in filing of the said application was condoned and the judgement dated 25th May 2011 was set aside by the Id. Civil Judge, subject to deposit of sum of ₹ 75,000/-.

4. Despite the dismissal of the CM (M) 18/2016, the petitioner, instead of depositing the aforesaid amount of ₹ 75,000/- in Court, the petitioner moved Application No. Misc. CJ 59975/2016 before the Civil Judge for a reduction of the said amount of deposit. Quite obviously, this application was misconceived, as this Court had upheld



the direction for deposit of ₹ 75,000/-.

5. By the impugned order dated 29th March 2022, the learned Civil Judge has, noting the fact that despite the dismissal, by this Court, *vide* its order dated 12th February 2018, of CM(M) 18/2016, the petitioner had yet not deposited the amount of ₹ 75,000/-, dismissed the application, clarifying, in the process, that the judgment and decree dated 25th May 2011 would continue to remain in operation.

6. Against the said order dated 29th March 2022, the petitioner moved an application for review, which stands dismissed by order dated 16th July 2022, also impugned herein.

7. Mr. Sumit Chandra, learned Counsel for the petitioner, submits, on instructions, that his client is willing to deposit the aforesaid amount of ₹ 75,000/-.

8. Complete miscarriage of justice would result, in the opinion of this Court, if the said offer is accepted at this stage. The petitioner was directed to deposit ₹ 75,000/- as far back as on 18th September 2015. CM (M) 18/2016, under Article 227 of the Constitution of India, preferred by him against the said order, stood dismissed by this Court by order dated 12th February 2018. We are now six years since 18th September 2015 and over four years since 12th February 2018. Till date, the said amount has not been deposited.

9. Article 227 of the Constitution of India confers, on the High Court, supervisory, not amnesty, jurisdiction.



10. No fault can, therefore, be found with the decision of the learned Civil Judge, as would merit interference by this Court within the limited confines of the jurisdiction vested in it by Article 227 of the Constitution of India.

11. The petition is accordingly dismissed *in limine*. All miscellaneous applications also stand disposed of.

12. This Court records its appreciation for the efforts of Mr. Sumit Chandra, who, on a day's notice, has competently canvassed the case of the petitioner.

13. This order would not, however, preclude the petitioner from approaching the learned Civil Judge with an offer of deposit. In case he does so, it would be for the learned Civil Judge to take a decision either to accept the offer or reject the offer and, if the decision is to accept the offer, to also decide on the amount that the petitioner would have to pay.

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C.HARI SHANKAR, J

AUGUST 26, 2022
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