



\$~46(Appellate)

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

+ CM(M) 911/2022 & CM APPL. 39073/2022

SUBHASH SHARMA

..... Petitioner

Through: Mr.Chandan Kumar Mandal,
Adv.

versus

VINOD KUMAR AND ORS.

..... Respondents

Through: None

CORAM:

HON'BLE MR. JUSTICE C.HARI SHANKAR

J U D G M E N T (O R A L)

% **06.09.2022**

1. The prayer clause in this petition under Article 227 of the Constitution of India reads as under:

"In view of the aforesaid facts and circumstances of the case, it is therefore, most respectfully prayed that this Hon'ble Court may kindly be pleased to:-

i) set-aside the Impugned Order dated 04.06.2022 passed by the Id. Court of Ms. Neha Priya, ACJ/CCJ/ARC, Karkardooma Courts, District Shahdara, Delhi in Execution Petition bearing Old No.59/14, New No. 331/16 titled as "Sarvan Kumar Sharma & Anr. Vs. Vinod Kumar & Ors." as the execution Old No.59/14, New No. 331/16 should be heard on day to day basis being five years old matter.

ii) direct the respondent Nos.1 to 7 to hand over the peaceful physical vacant possession of the suit property bearing No.C-46/2-C/1, (New No.490), East Azad Nagar, Delhi-110051, as per Decree/Judgement dated 30.11.2012 passed by the Id. Court of Sh. Satish Kumar Arora, ACJ/CCJ/ARC, Karkardooma Courts, District Shahdara, Delhi;

iii) directing the Id. Execution Court to decide the Execution Petition bearing Old No.59 /14, New No. 331/16



titled as "Sarvan Kumar Sharma & Anr. Vs. Vinod Kumar & Ors." in time bound manner;

(iv) Any other order or direction as this Hon'ble Courts deems fit and proper be also granted in favour of petitioner and against the respondents."

2. The order dated 4th June 2022, which is impugned in prayer (i) in the petition reads thus:

"EX 331/16
SARWAN KUMAR SHARMA
Vs.
VINOD KUMAR

04.06.2022

Present: Sh. Chandan Kumar, Id. Counsel for DH.
Intern on behalf of the JD.

Pass over sought on behalf of the JD.

Ld. Counsel for DH submits that he is required to go to Patiala House Courts and will not be able to appear for second call. This court is not inclined to pass any order without hearing the JD. Ld. Counsel for DH submits that the matter be passed over and he will be available at second call.

List at 11.30 am.

(Neha Priya)
ACJ/CCJ/ARC/Shahdara
Karkardooma Courts/Delhi
04.06.2022

At 11.40 am

Present: Sh. Ashish Prajapati, Id. Proxy Counsel for DH.
Sh. D.D. Sharma, Id. Counsel for the JD.

Ld. Counsel for DB is stated to have been stuck in a bail matter at Patiala House Courts.



Both parties to remain present at the first call on the NDOH.

List for arguments on 07.10.2022.

(Neha Priya)
ACJ/CCJ/ARC/Shahdara
Karkardooma Courts/Delhi
04.06.2022”

3. The petitioner has made four prayers, viz. that (i) the order dated 4th June 2022 be quashed and set aside, (ii) Execution 331/16 be heard on day to day basis as it is a five year old matter, (iii) Respondents 1 to 7 be directed to hand over, to the petitioner, peaceful, physical, vacant possession of the suit property as per the decree/judgment dated 30th November 2012 passed by the learned Additional Civil Judge (the learned ACJ) and (iv) the executing court be directed to decide Execution Petition 331/16 in a time bound manner.

4. None of these four prayers, unfortunately, can be granted.

5. The order dated 4th June 2022 merely notes the fact that a passover was granted as learned Counsel for the petitioner was unavailable at first call and, when learned Counsel was not available even at second call, the matter was re-notified for 7th October 2022. It is obvious that this order cannot be set aside by this Court.

6. Insofar as the second prayer, to hear the execution petition on day to day basis as it is a five year old matter, is concerned, to a query from the Court as to whether there is any judicial authority or



administrative guideline, rule or circular issued either by this Court or by any other authority which requires execution petitions which are five years old to be heard on day to day basis, learned Counsel for the petitioner candidly acknowledges that he is not aware of any such binding authority. He, however, submits that his client is 65 years of age and that continued pendency of the execution proceedings is causing needless prejudice to him.

7. Given the workload before the learned Trial Courts, I regret that it is not possible for this Court to direct any petition to be decided on a day to day basis. Any such direction is likely to create judicial chaos, as other matters would languish, even though they may be of greater urgency. This prayer can also, therefore, not be granted.

8. The third prayer, which is for handing over of possession of the suit property to the petitioner, essentially seeks execution of the judgment and decree dated 30th November 2012. That is a matter which is pending before the learned ADJ in the execution proceedings and, therefore, this Court cannot grant the said relief at this stage.

9. The fourth prayer, which is for a direction to the learned executing court to hear and decide Execution Petition 331/16 in a time bound manner can also be not granted for the reasons already elucidated hereinabove.

10. However, the learned executing court is requested to deal with the matter as expeditiously as possible and accord it due priority on the basis of the age of the litigation and the period for which it has



been remained pending with the executing court. Needless to say, the learned executing court would be entitled to bear in mind the workload with which it is presently grappling, while taking a call on the priority to be accorded to the petitioner's case.

11. With the aforesaid limited direction, this petition is disposed of. Pending application also stands disposed of.

C.HARI SHANKAR, J

SEPTEMBER 6, 2022/kr