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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.F.A. 16/2022 & CM APPL. 41701/2022, CM APPL. 41702/2022, CM APPL. 41703/2022

SUNNY BANSAL Appellant
Through: Mr. Ravi Gupta, Sr. Adv. with
Mr. Rishabh Gupta, Mr. Sachin Jain, Mr.
Alok Jha and Mr. Himanshu Yadav, Advs.

versus

SAROJ DEVI SHEHRAWAT Respondent
Through: Mr. Vikas Dudeja and Mr. S.K.
Kaushik, Advs.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
21.09.2022

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1. The appellant assails, in this Execution First Appeal, order dated 17th September 2022, passed by the learned Additional District Judge (“the learned ADJ”) as the executing court, whereby the objections of the appellant – judgment debtor, preferred under Order XXI Rule 58 of the Code of Civil Procedure, 1908 (CPC), have been rejected.

2. The aforesaid execution proceedings emanate out of a judgment and decree dated 4th December 2012, passed by the learned ADJ in CS(OS) (Comm) 19/2019.



3. The said judgment and decree was carried in appeal to this Court by way of RFA 1087/2019, which was disposed of, by a coordinate Single Bench of this Court, *vide* order dated 24th March 2022.

4. Inasmuch as the said order constitutes the judgment and decree which forms subject matter of the execution proceedings in which the impugned order has come to be passed, the order merits reproduction, *in extenso*, thus:

“1. Pursuant to the last order, learned counsel for the appellant has obtained instructions. Today, he submits that instead of pressing the present ' appeal on merits, the appellant is willing to handover vacant possession of the premises to the respondent on' or before 30.09.2022 and pay the outstanding amount in two equal installments by 15.05.2022 by calculating the amount in terms of the lease agreement between the parties. The first installment will be paid on or before 15.04.2022, and the remaining 50% ,amount will be paid on or before 15.05.2022. He further submits that, till vacant possession of the premises is handed over to the respondent, the appellant will, alongwith electricity and water charges, continue to pay the ' monthly mesne profits, which for the present, would be paid as per the terms of the lease agreement.

2. Learned senior counsel for the. respondent submits, on instructions, that the said proposal is acceptable to the respondent.

3. The appeal is, accordingly, disposed of, with consent of the parties, by directing the appellant to file within three days an affidavit of undertaking before this Court in the following terms.

(i) The appellant will handover vacant and peaceful possession of the premises to the respondent on or before 15.05.2022.

(ii) The appellant will not create any third-party



rights in the property.

(iii) The appellant will pay 50% of the arrears by calculating the means profits, on or before 15.04.2022, and the balance 50% on or before 15.05.2022. The said amount will be calculated on the basis of the lease agreement, which for the purpose of clarity, is being noted hereinbelow:

Period	Amount
Till 31.12.2018	Rs.1,47,500/-
Till 31.12.2021	Rs. 1,69,000/-
Till 31.03.2022	Rs. 1,85,150/-

(iv) The appellant will, W.e.f. 01.04.2022, pay "mesne profits @ Rs. 1,85,150 per month, till vacant possession of the property is handed over to the respondent. The said payment will be made on or before the 7th day of every calendar month.

(v) The payment of the aforesaid amount will be subject to orders passed in the pending suit before the learned Trial Court for determination of mesne profits.

5. Learned senior counsel for the respondents, on instructions, submits that the respondent will render the necessary compensation to the appellant in pursuing its claim for compensation from the Delhi Police, for the period during which the premises were occupied by the Delhi Police, on account of the COVID 19 Pandemic.

6. In the light of the aforesaid agreement arrived at between the parties, no further orders are called for in the appeal, which is disposed of on the basis of the undertaking given on behalf of the appellant, as noted hereinabove, and an affidavit as already directed, will be filed within three days.

7. It has been made clear to the appellant that, in case he violates any of these conditions, the respondent will not only be entitled to seek immediate execution of the decree, but will also be entitled to initiate contempt proceedings against the appellant.



8. All pending applications stand disposed of.”
5. Two execution petitions were filed by the respondent towards execution of the aforesaid decree and judgment passed by this Court.
6. The first execution petition was for recovery of possession of the suit property. A bailiff was appointed and possession of the suit property was recovered by the respondent on 26th May 2022. To that extent, therefore, the aforesaid judgment and decree stood executed.
7. A second execution petition, namely, Ex. 255/2022 was instituted by the respondent for recovery of the amounts awarded by this Court in the aforesaid judgment and decree towards *mesne* profits.
8. There is no dispute about the fact that the appellant was indeed in default of payment of the mesne profits as directed by the aforesaid judgment and decree dated 24th March 2022.
9. The appellant, as the judgment debtor in the execution petition, moved an application under Order XXI Rule 58 of the CPC, which stands rejected by the learned ADJ *vide* the impugned order dated 17th September 2022.
10. The said order dated 17th September 2022 has been carried in appeal to this Court by means of the present Execution First Appeal.



11. I have heard Mr. Ravi Gupta, learned Senior Counsel for the appellant, at considerable length and also perused the material on record.

12. The submission of Mr. Ravi Gupta is essentially that the appellant was entitled to four adjustments against the amounts payable by way of *mesne* profits.

13. The first adjustment is of security deposit, deposited by the appellant with the respondent in terms of Clauses 9 and 10 of the lease deed dated 19th August 2014, whereunder the suit property was taken on lease by the appellant from the respondent. The said clauses read as under:

“9. That the Lessee has deposited with the Lessor a sum of Rs. 7,50,000/- (Rupees Seven Lacs fifty Thousand Only) as interest free refundable security deposit for the Demised Premises vide Demand Draft No. 837460 Dated 08.07.2014 drawn on YES BANK LIMITED, Rohini, New Delhi the receipt of which is admitted and acknowledged by the Lessor. This deposit shall be refunded by the Lessor to the Lessee upon determination of the Lease and upon handing over vacant peaceful possession of the Demised Premises to the Lessor.

10. That the Demised Premises shall be used by the Lessee for Guest-House/Restaurant/Bar purposes and/or for such other activity as may be permissible under law. The Lessee while using the Demised Premises shall abide by all lawful orders or directions issued to the Lessee by the MCD, DDA or other statutory or local bodies.”

14. Secondly, Mr. Gupta submits that security deposit of ₹ 1,35,000/- was also paid by the appellant towards provision of



electricity, as is reflected in the Electricity Bill, raised in respect of the suit property which has also been placed on record. This payment, submits Mr. Gupta, was also adjustable against the decretal amount.

15. The third adjustment that Mr. Gupta seeks from the *mesne* profits payable as per the impugned judgment and decree passed by this Court, is with respect to goods which, according to Mr. Gupta, belong to the appellant and are lying in the premises of the respondent, of which possession was recovered by the respondent on 26th May 2022. Mr. Gupta submits that, the value of these goods is in the range of ₹ 70 lakhs and would more than suffice to meet the amounts payable by the appellant to the respondent by way of *mesne* profits.

16. The fourth amount of which Mr. Gupta submits that the appellant would be entitled to adjustment is conversion charge of ₹ 5,90,116/-, stated to have been deposited by the appellant with the Municipal Corporation of Delhi (MCD), on behalf of the respondent, towards the suit property.

17. Seeking adjustment of the aforesaid four amounts, the appellant, as already noted, moved an application before the learned ADJ under Order XXI Rule 58 of the CPC.

18. The prayer clause in this application reads thus:

“It is, therefore, most respectfully prayed that this Hon’ble Court may graciously be pleased to;



(i) Stay 'the Execution proceedings against the Applicant / Objector till the Applicant/ objector is allowed to take back all his goods from the property of the decree holder and satisfy the decree after selling all the movable assets (as presently goods amounting to Rs. 75 lacs are already attached by the Decree Holder).

(ii) That the actual outstanding rental dues amounts to Rs.19,68,415/- (without adjusting the security deposit and conversion charges) instead of Rs.22,10,900/- and the same is liable to be paid without GST.

(iii) Allow the present application / objections and adjust the security deposit amounting to Rs.7,50,000/- and conversion charges amounting to Rs. 5,90,116/- paid by the Judgement Debtor from the Decretal amount (unilaterally decided by the Decree Holder);

(iv) Allow the Applicant] objector to disconnect the electric meter and seek refund of Rs. 60,610/- after adjusting the outstanding electricity bill or Rs. 74,390/- from security of Rs. 1,35,000/-

Or/in alternate,

An amount of Rs. 60,610/- be adjusted against the outstanding dues liable to be paid to the Decree Holder and the Judgement Debtor shall transfer the Electricity manner in the name of the Decree Holder”

19. Side by side, the appellant moved an application before the learned ADJ under Section 47 read with Section 151 of the CPC, whereby the appellant sought stay of the execution proceedings, or, in the alternative, for permission to take back the goods from the suit property and satisfy the decree after selling all immovable goods lying in the suit property.

20. The learned ADJ has, *vide* the impugned order dated 17th



September 2022, rejected the appellant's objections and directed issuance of warrants of attachments against the appellant.

21. Mr. Gupta has placed reliance, to support his submissions, on Order 21 Rule 2 and Section 47 of the CPC. He has also cited the decision of the Supreme Court in *Sultana Begum v. Prem Chand Jain*¹.

Analysis

22. Having heard learned Counsel for the parties and perused the materials on record, I am of the opinion that neither of the provisions, on which Mr. Gupta placed reliance, can support the stand that he seeks to canvass.

23. Sub-rules (1) and (2) of Order XXI Rule 2 read thus:

“2. Payment out of Court to decree-holder.—

(1) Where any money payable under a decree of any kind is paid out of Court, [or decree of any kind is otherwise adjusted] in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly.

(2) The judgment-debtor [or any person who has become surety for the judgment-debtor] also may inform the Court of such payment or adjustment, and apply to the Court to issue a notice to the decreeholder to show cause, on a day to be fixed by the Court, why such payment or adjustment should not be recorded as certified; and if, after service of such notice, the

¹ (1997) 1 SCC 373



decree-holder fails to show cause why the payment or adjustment should not be recorded as certified, the Court shall record the same accordingly.”

24. The import and implication of Order XXI Rule 2(1) and (2) are obvious. Order XXI Rule 2(1) refers to money payable under a decree of any kind. It envisages two situations, viz. where (i) any money payable under a decree of any kind is paid out of court or (ii) a decree of any kind is otherwise adjusted in whole or in part to the satisfaction of the decree holder. *Both these contingencies envisage satisfaction of the decree.* The first contingency envisages payment of money payable under a decree. The second contingency envisages adjustment of the decree in whole or in part to the satisfaction of the decree holder. In either of these two situations, where the decree is satisfied by payment or adjustment, Order XXI Rule 2(1) provides that the decree holder shall certify such payment or adjustment to the executing court which would record the same.

25. The meaning of the clause is plain. In the case of money decree, if the money payable under a decree is paid without intervention of the court, or by agreement between the parties, or the money is otherwise adjusted in whole or in part, the executing court has naturally to be informed of such adjustment and to record the same. The clause says nothing more. It does not give a license to a judgment debtor to *suo motu* make adjustments out of amounts payable under a decree, of any amounts which, according to him, may be owed by the decree holder to him. No such authority is even obliquely conferred by Order XXI



Rule 2(1).

26. Order XXI Rule 2(2) is merely a sequitur to Order XXI Rule 2(1). It states that the judgment debtor may also inform the court of *such* payments or adjustment, and apply to the court to issue a notice to the decree holder to show cause as to why *such* payments and adjustment be not recorded as certified. The use of the word “such” makes the intent of Order XXI Rule 2(2) apparent. The payment or adjustment to which Order XXI Rule 2(2) refers *has to relate back to the payments and adjustment envisaged by Order XXI Rule 2(1)*. In other words, both the sub-rules of Order XXI Rule 2 refer to payment of money payable under a decree or adjustment of the decree in whole or in part to the satisfaction of the decree holder.

27. Neither of these provisions, therefore, contemplate a situation in which the judgment debtor can claim *suo motu* adjustment of amounts which, according to him, are payable by the decree holder to him and which form no part of the judgment and decree under execution, towards the amounts payable under such judgment or decree.

28. *Sultana Begum*¹, on which Mr. Gupta relies, while being distinguishable on facts, fortifies the above interpretation. In that case, the decree under execution was a compromise decree, whereunder Prem Chand Jain (hereinafter referred to as “Jain”), the respondent before the Supreme Court, was to vacate the premises owned by Sultana Begum and hand over possession thereof to her, with an additional liability to pay rent @ ₹ 3,100/- per month from the



date of the suit till the date of delivery of possession. Jain did not vacate the premises or hand over possession to Sultana Begum as required by the compromise decree. Sultana Begum, thereupon, moved an application for execution, which Jain resisted.

29. Jain contended that, he had handed over possession of the premises to the attorney of Sultana Begum on 31st October 1991, who allowed Jain to remain in possession of as a licensee, on payment of licence fee of ₹ 5,000/- per month. Said licence fee, contended Jain, had already been paid by him to the attorney of Sultana Begum, who had issued a receipt in that regard.

30. It was in these circumstances that, the Supreme Court held that the amount of ₹ 3,100/- per month, which was payable by Jain to Sultana Begum under the compromise decree was subsumed in the licence fee of ₹ 5,000/- payable every month by Jain to the attorney of Sultana Begum.

31. Clearly, the facts of that case cannot even be remotely analogised to those of the present.

32. The decree required Jain to pay, to Sultana Begum, ₹ 3,100/- per month. Instead, Jain paid, to Sultana Begum, ₹ 5,000/- per month albeit as a licensee, consequent to the decree. As against that, in the present case, Mr. Gupta would seek, *suo motu*, to claim adjustment, against the decretal amount payable by the petitioner to the respondent, of other amounts payable by the respondent to the



petitioner, having no relation to the decree at all and which could not be regarded as even been remotely in the contemplation of the judgment and decree under execution.

33. Coming, next, to Section 47 of the CPC, the provision, in my opinion, has no application at all. It reads as under:

“47. Questions to be determined by the Court executing decree.—(1) All questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit.

(3) Where a question arises as to whether any person is or is not the representative of a party, such question shall, for the purposes of this section, be determined by the Court.

Explanation 1— For the purposes of this section, a plaintiff whose suit has been dismissed and a defendant against whom a suit has been dismissed are parties to the suit.

Explanation II—(a) For the purposes of this section, a purchaser of property at a sale in execution of a decree shall be deemed to be a party to the suit in which the decree is passed; and

(b) all questions relating to the delivery of possession of such property to such purchaser or his representative shall be deemed to be questions relating to the execution, discharge or satisfaction of the decree within the meaning of this section.”

34. Section 47 merely states that all questions arising between the parties to a suit in which the decree was passed, relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree.



35. Mr. Gupta's submission, as specifically vocalised by him, is that the plea of the appellant, regarding the satisfaction of the judgment and decree passed by this Court to the extent of the security deposit and other amounts payable by the respondent to the appellant, was required to be considered by the executing court separately under Section 47 of the CPC.

36. That exercise, he submits, has not taken place till date.

37. To my mind, the argument is misconceived.

38. Section 47 (1) refers to questions arising between the parties relating to the execution, discharge or satisfaction of the decree. In other words, if the decree were to envisage adjustment of any amount payable by the judgment debtor to the decree holder against the amounts payable under the decree, and if the said amount was paid, then, to that extent, the discharge or satisfaction of the decree would be considered by the executing court.

39. The provision does not contemplate a plea being raised by the judgment debtor that, against the amounts payable by the judgment debtor to the decree holder under the decree, amounts which are owed by the decree holder to the judgment debtor should be adjusted, or require that question to be adjudicated by the executing court. This is for the simple reason that the decree does not envisage or contemplate any such adjustment.



40. The adjustments that Mr. Gupta seeks to effect, from the amounts payable by his client to the respondent under the decree, are adjustments to which the appellant *suo motu* believes himself to be entitled. The decree passed by this Court does not say so. The decree has not been defied or amended in any manner. The amounts payable by the appellant to the respondent have, therefore, to be paid upfront. Non-payment has necessarily to invite the consequence which Order XXI of the CPC envisages, which includes warrants of attachment and their inevitable sequelae.

41. Though the aforesaid findings answer all the submissions advanced by Mr. Gupta, I may also state that, with respect to the goods which are stated to be lying in the respondent's premises, Mr. Vikas Dudeja, learned Counsel for the respondent, has submitted that, according to his client, the goods belonged to the respondent and not to the appellant.

42. Mr. Gupta has drawn my attention to Clauses 5 and 21 of the Lease Deed dated 19th August 2014, executed in respect of the suit property. The clauses read thus:

“5. That since the Lessee is taking the Demised Premises for running a Guest House/Restaurant Bar and for the purpose would making huge expenditure for making the Demised Premises suitable for the purpose and also for the purpose would be incurring huge expenses for doing the interior work and for putting in expensive and ultra modern furniture and fittings and fixtures, it is understood between the parties that if the lessee keeping on paying the agreed rent as per the terms of this Lease, the Lessor shall not be entitled to determine this Lease during the period for it is granted.”



21. That the Lessee shall, on the expiry of the Lease period, hand over the vacant possession of the Demised Premises to the Lessor in goods condition subject to normal wear and tear arising from the day to day use or from such force majeure causes, which are beyond the control of the Lessee viz. fire, earthquake, floods, acts of terrorism etc.”

43. Neither of these clauses indicate that the furniture, fixture and fittings which the appellant got installed in the suit property belonged to the appellant or that the appellant is entitled either to dismantle or take away the said furniture and fittings and sell them towards satisfaction of the decree. The said plea, therefore, is also, *prima facie*, bereft of merit.

44. The learned ADJ has dealt with the submission of the appellant thus, in this impugned order dated 17th September 2022:

“As per record, the Hon'ble High Court of Delhi has not passed any orders thereby giving benefit of adjustment of security amount or any other outstanding amount to the JD. As per law, the set off or counter claim is required to be mentioned in the decree itself. This court being the court of execution cannot go behind the decree and has to consider only the amount which has been paid by the JD to the DH through this court. Considering the record, facts and circumstances of the case and law, I found no grounds to stay the warrant of attachment as the decretal amount has not been paid by the ID to the DH so far. The objections accordingly are dismissed.”

45. I see no reason to interfere with the impugned order dated 17th September 2022.



46. Accordingly, the present appeal, being bereft of merits, is dismissed. However, it is clarified that the observations entered hereinabove with respect to the rights or otherwise of the appellant with respect to the goods lying in the suit property have only been made while examining the correctness of the impugned order dated 17th September 2022. In case the appellant seeks to assert any rights with respect to the said goods or any other amounts, which according to him, the respondents are liable to pay to the appellant, this order shall not preclude the appellant from prosecuting such rights by separate proceedings in accordance with law.

47. Needless to say, the respondent would also be entitled to contest any such claims as and when made by the appellant.

48. No costs.

SEPTEMBER 21, 2022

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C. HARI SHANKAR, J.