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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1281/2022 & CM APPL. 50582/2022, CM APPL.
50583/2022

PRABHAKAR POKHRIYAL Petitioner
Through: Mr. Gaurav Jain, Adv.
versus

SURENDRA SINGH CHEEMA & ANR. Respondents
Through: Mr. Gurman Chahal, Adv.

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

JUDGMENT (ORAL)
23.11.2022

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1. On the Court indicating to Mr. Gaurav Jain that Prayer D in this petition was objectionable as drafted, Mr. Jain , on instructions, does not press the said prayer. As such, this petition would be limited to prayers A to C in the petition. Thus limited, the prayer clause in the petition reads thus:

“a. Set aside the Order dated 09.11.2022 passed by the Ld. ADJ-04, South, in the appeal (RCA DJ 08/2021).

b. Pass directions to the appellate court (presided by a Judge other than ADJ-04, South) to first decide the stay application and the restoration application in light of the Order dated 04.11.2022 passed in CM(M) 1185/2022.

c. Set aside the orders dated 22.03.2022, 24.03.2022 and 04.11.2022 passed in Ex No. 343/2021.”

2. This petition is a sequel to CM (M)1185/2022, which was disposed of by this Court *vide* the following order dated 4th November 2022.

“1. Learned Counsel for the petitioner seeks to restrict his relief in the present petition to a direction to the learned ADJ, before whom the proceedings in RCA DJ 8/2021 are stated to be coming up tomorrow to take up, forthwith, the application of the petitioner for restoration of possession of property no. 36-A, Third Floor, Begumpur, Malviya Nagar, New Delhi, as well as for stay of execution of the judgment and decree, dated 22nd March 2021. He submits that, even during the pendency of his stay application, against the aforesaid judgment and decree dated 22nd March 2021, in execution proceedings preferred by the respondent for execution of the judgment and decree, a Bailiff was appointed and his client was evicted from the premises forming subject matter of consideration.

2. He submits that, prior to the date when the eviction took place, arguments had been completely heard on the petitioner's stay application, but no orders were passed as the learned Presiding Officer who heard the matter was transferred.

3. RCA DJ 8/2021 is stated to be listed before the learned ADJ on tomorrow i.e., 5th November 2022.

4. In the circumstances, I deem it appropriate to dispose of this petition with a request to the learned ADJ to take up the petitioner's stay application as well as the application, if any, filed by the petitioner for restoration of possession in the property in question, tomorrow itself, or in case that is not possible, on a suitable date next week and to pronounce orders on the said application as expeditiously as possible thereafter.

This petition stands disposed of in the aforesaid terms, with no order as to costs.

A copy of this order be given *dasti* to learned Counsel for the petitioner under the signature of the Court Master. ”

3. As is clear from a reading of the afore-extracted order dated 4th November 2022, this Court had directed the learned Additional District Judge (the learned ADJ) to take up the stay application as well as the application for restoration of possession, filed by the petitioner before the learned ADJ, on the very next date or on a suitable date, the week thereafter and to pronounce orders thereon as expeditiously as possible.

4. Mr. Gaurav Jain, learned Counsel for the petitioner submits that the impugned order dated 9th November 2022 violates the directions contained in the order dated 4th November 2022 *supra* passed by this Court.

5. The impugned order dated 9th November 2022, to the extent it is relevant, notes the fact that the application filed by the petitioner for stay of operation of the judgment dated 22nd March 2021, passed by the learned Additional Senior Civil Judge (the learned ASCJ) has become infructuous, as possession of the suit property also stands taken by the respondents pursuant to orders dated 28th April 2022, passed by the learned Executing Court.

6. Mr. Jain points out that the judgment and decree forming subject matter of challenge in RCA DJ 8/2021 not only granted possession of the suit property (situated at 36-A, Cheema House, Begumpur, Malviya Nagar, New Delhi) to the respondent, but also granted, to the respondent, arrears of rent and *mesne* profits with interest thereon. Despite the possession of the suit property having been taken by the respondent, Mr. Jain submits that the prayer for stay of operation of the judgment and decree dated 22nd March 2021 would survive insofar as it directs payment of arrears of rent and *mesne* profits with interest.

7. The submission appears to be correct. The judgment and decree dated 22nd March 2021 was not restricted to directing delivery of possession, the stay application of the petitioner would survive for

consideration apropos the decree for arrears of rent in *mesne* profits.

8. The learned ADJ has, in the impugned order dated 9th November 2022, proceeded to deal with the petitioner's request, for a decision on his application for restoration of possession of the suit property. On this aspect, the impugned order also discloses that the petitioner brought, to the notice of the learned ADJ, the order dated 4th November 2022 passed by this Court in CM (M) 185/2022.

9. Apropos the petitioner's application for restoration of possession, the impugned order of the learned ADJ observes and holds as under:

“ Ld. Counsel for respondents submits that most of the grounds taken by the appellant in his application under Section 151 CPC for restoration of possession of the suit property (*status quo ante*) are same as taken by the appellant in his appeal. He further submits that Ld. Counsel for appellant is shying away from addressing arguments on present appeal.

Ld. Counsel for appellant submits that he is not ready for arguments on appeal today and seeks two weeks time to argue on the appeal and further prays to dispose of application of appellant for restoration of suit property (*status quo ante*) under Section 151 CPC.

Record shows that most of the grounds of appeal and application of appellant under Section 151 CPC for restoration of suit property (*status quo ante*) are same. Therefore, this Court is of the considered opinion that for convenience of parties as well as to save the precious judicial time of this Court arguments on both appeal as well as on application under Section 151 CPC for restoration of suit property (*status quo ante*) be heard together.

List for arguments on appeal as well as on application under Section 151 CPC for restoration of suit property (*status quo ante*) on 23.11.2022.”

10. A reading of the afore-extracted passages from the order dated 9th November 2022 passed by the learned ADJ reveals that the learned ADJ

was of the view that, as the grounds taken in the application for restoration of possession were largely the same as those taken in the appeal, it would be profitable to hear both together. As such, learned Counsel was directed to argue on the appeal, as well as the application for restoration of possession on 9th November 2022.

11. Learned Counsel, apparently, deferred from arguing on the appeal, whereupon the learned ADJ relisted the application for restoration of possession along with appeal to be heard today i.e. on 23rd November 2022.

12. Unfortunately, instead of arguing the appeal and the application for restoration of possession before the learned ADJ, the petitioner has chosen to come once again to this Court by means of the present petition under Article 227 of the Constitution of India, assailing the order dated 9th November 2022.

13. I see no reason to interfere with the impugned order.

14. The direction passed by this Court on 4th November 2022 was for the learned ADJ to expeditiously take up and consider the petitioner's application for stay as well as the application for restoration of possession. The impugned order dismisses the application for stay as having become infructuous. That decision is, however, as I have already observed, not correct, as the stay application does survive qua the aspect of *mesne* profits and arrears of rent.

15. Apropos the application for restoration of possession, if the learned ADJ felt that it would save time if the said application was taken up along with the main appeal and heard together on the same day, it is a matter relating to case management and entirely the prerogative of the learned ADJ. It is not for this Court to monitor the manner in which matters are heard by the learned Trial Courts, who are the best judges in that regard. It is not as though the learned ADJ was unwilling to take up the application of the petitioner for restoration of possession. She merely felt that the appeal could be heard along with the application. This Court, too does pass similar orders on numerous occasions, so as to avoid multiplicity of hearings. There is no justifiable reason for the petitioner to take exception to the said decision, unless, for any reason, the petitioner is unwilling to argue on the appeal.

16. As a consequence of the present misguided petition, the petitioner has let the opportunity, which the petitioner had, today, to argue on the appeal and the application for restoration of possession, go abegging.

16. Mr. Jain submits that, today, the matter was transferred to the Court of the learned Principal District and Sessions Judge (the learned Pr DSJ), Saket, before whom it is to be taken up later in the day.

17. As this matter has reached at 2:45 PM and it now 03:05 PM, it may not be possible for the learned Principal District and Sessions Judge to take up this matter today.

18. Accordingly, in order to avoid delay in this matter, the appeal, as

well as the application for restoration of possession and the application for stay of operation of the judgment and decree dated 23rd July 2021, (to the extent it survives), are directed to be listed before the learned Principal District and Sessions Judge on 30th November 2022.

19. It would be for the learned Pr DSJ, on the said date, to hear the appeal as well as the applications together, or to hear the applications individually. This Court does not express any view in that regard.

20. Let a copy of this order be transmitted to the learned Pr DSJ as soon as it is ready, by special messenger, and a copy be also emailed to learned Counsel for the petitioner as well as to Mr. Gurman Chahal, learned Counsel who appears for the respondent before the learned ADJ. The learned Pr DSJ is also requested to ensure that Mr. Guraman Chahal is intimated of the next date of hearing so that the matter is not delayed.

21. This petition is accordingly disposed of in the aforesaid terms.

C.HARI SHANKAR, J

NOVEMBER 23, 2022

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