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

% Judgment delivered on: 21.12.2022

+ EX.F.A. 28/2022 & CM APP Nos.55575-76/2022

RAKESH KUMAR & ORS.

..... Appellants

versus

VIJAY KUMAR & ORS.

..... Respondents

Advocates who appeared in this case:

For the Petitioner : Mr. Achal Gupta and Ms. Alizaah Rais,
Advocates

For the Respondent : Mr. S.D. Singh and Mr. Siddharth Singh,
Advocates

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. Learned counsel for the Appellants assails the order dated 02.11.2022 whereby the learned Executing Court has dropped the execution proceedings on the ground that Clause 5 in the Settlement Deed precludes the Appellants from evicting the occupant on the subject plot except by way of recovery of possession in accordance with law.

2. Recording the aforesaid, the Executing Court has decided that the execution petition alongwith the applications have become infructuous and were disposed of.

3. Learned counsel for the Appellants submits that the impugned order

as well as the observations made therein are in the teeth of the judgment of the Supreme Court in *Shreenath and Anr. Vs. Rajesh and Ors.*, (1998) 4 SCC 543, rendered on 13.04.1998 whereby the Supreme Court while examining the provisions of sub-clause (1) of Order XXI Rule 35 of the CPC, 1908 had observed that the Executing Court shall deliver the actual possession of the disputed property to the Decree Holder, if necessary, by removing occupant who refused to vacate the said property.

4. Learned counsel submits that the learned Executing Court was not only bound by the dicta of the Supreme Court in *Shreenath (supra)* but also the procedure as prescribed in Order XXI Rule 35 and 36 CPC. Learned counsel for the Respondent who appears on advance notice submits that no doubt the Petitioner is bound by clause 5 of the Settlement Deed, however, he has no objection and Respondents No.1 and 2 will not create any obstruction or hindrance in the execution proceedings.

5. Learned counsel appearing for the Respondent also submits that as per the terms mentioned in clause 5 of the Settlement Deed, Respondent Nos.1 and 2 have removed the Pujari who it is informed is since deceased. Learned counsel submits that Respondent Nos.1 and 2 would assist the appellant in ensuring that terms of the settlement as recorded in the decree are implemented.

6. In view of the above submissions as also the dicta laid down by the Supreme Court in *Shreenath (supra)* and in terms of Order XXI Rules 35 and 36, this Court deems it fit to direct the learned Executing Court to revive the proceedings and proceed in accordance with law.

7. With the aforesaid and in view of the consent and position of law, present appeal and the applications filed herewith are disposed of with no

orders as to costs.

8. Appellant is directed to appear before the learned Executing Court on 10.01.2023 alongwith the copy of this order.

9. The order passed today may be transmitted to the learned Executing Court as per Rules.

TUSHAR RAO GEDELA, J

DECEMBER 21, 2022/ yg

