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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
Date of Decision: 10th February, 2023
+ **W.P.(C) 1728/2023 & CM APPLs.6545-46/2023**
SUNITA DEVI Petitioner
Through: Mr. Gobind Malhotra, Adv. Lovish
Sharma, Adv. Mr. Gurpreet Singh,
Adv, Mr. Rehan Saifi, Advocate.

versus

PR SECRETARY CUM DIVISIONAL
COMMISSIONER AND ORS Respondents
Through: Appearance not given.

CORAM:
JUSTICE PRATHIBA M. SINGH

Prathiba M. Singh, J.(Oral)

1. This hearing has been done through hybrid mode.
2. The present petition has been filed challenging the impugned order dated 17th January, 2023 passed by the Divisional Commissioner, GNCTD by which the Divisional Commissioner has stayed the order of eviction passed by the District Magistrate (North-West) (*hereinafter*, “DM”) dated 17th November, 2022.
3. It is submitted by the Ld. Counsel for the Petitioner that the Respondent Nos. 2 and 3 are the son and daughter in law of the Petitioner and are not residing in the Petitioner’s property bearing no. D-7/378, Sector-6, Rohini, Delhi-110086 (*hereinafter*, “suit property”). However, by taking advantage of the impugned order, they are making attempts to encroach and to enter the suit property. He further submits that the appeal before the Divisional Commissioner may be directed to be disposed of expeditiously.

4. A perusal of the eviction order dated 17th November, 2022 passed by the DM would show that the DM had come to the conclusion that there was harassment of the Petitioner and had directed eviction of Respondent Nos. 2 and 3. The relevant portion of the eviction order is set out below:

“Thus as discussed above it is a fit case to pass the orders against the respondents and respondents are directed to evict from the above mentioned property and directed to handover peaceful vacant possession to the applicant with 30 days from receiving of this order and respondents are further directed not to encroach/ enter into any portion of the property belongs to the applicant and shall it create any hassles in the peaceful life of the applicant and further restrained themselves from causing any mental tension, threats and harassment to the applicant, as it is the duty of the District Magistrate to ensure the life and property of the senior citizens of the district are protected and they are able to live with security and dignity. Further in case of danger to life or property of a senior citizen, it is the duty of District Magistrate to protect the same”

5. The order of the DM has been stayed in the appeal by the Divisional Commissioner. In the impugned order the Divisional Commissioner has observed as under:

3. Appellants/applicants stated that they are residing separately at the second floor of the property in question whereas the respondent along with her husband is residing at ground floor and younger son of the respondent is residing at the first floor of the property in question along with his family. It is stated that the property in question is also the shared house hold of the appellant/applicant no. 2 and evicting her from the same is barred under the Domestic Violence Act in terms of S. Vanitha Judgment of Hon'ble Supreme Court of India.

4. On the other hand, the respondent argued that she is the absolute owner of the property in question and is victim of

ill-treatment and harassment at the hands of the appellants. She argued that the appellants have been pressurizing them to transfer the property in question in their name and when refused, the family members of the appellant/applicant no. 2 came to her house and misbehaved and mentally and physically abused her, her younger son and his wife against which even a complaint was made but no action was taken. Respondent submitted that the appellants/applicants threatened her to implicate in false criminal cases. It is contended that the appellant/applicant no. 1 has stopped paying EMIs of the house which he was regularly paying earlier. She alleged that appellants are not taking care of her and have occupied 2nd floor of the property in question. She has even disowned and debarred the appellants from her movable / immovable properties and prayed for the dismissal of the stay application.

5. Arguments on the stay application have been carefully considered. The respondent has recognized that Appellant/applicant no. 1 was paying the regular EMIs of the housing loan against the property in question and that the appellants are residing at the second floor of the property in question. The respondent along with her husband is residing at the ground floor and younger son with his family on the first floor of the property in question. This appellate authority is prima facie of view that there could an angle of property dispute between the family members but there does not seem to be a case of ill-treatment or harassment. Both the sides are residing separately at different floors. Keeping in view the same. the appellants/applicants have Prima-facie case and balance of convenience in their favour and it will cause irreparable loss if stay is not granted. Thus in the interest of justice, stay is hereby granted against the execution of the impugned order dated 17.11.2022 till the disposal of the appeal.

The matter will be heard on merits.”

6. It is submitted on behalf of the Petitioner that during the proceedings before the DM the Respondent Nos. 2 and 3 have made a categorical

assertion that they do not reside in the suit property. Reliance is placed upon the reply filed before the DM which reads as under:

“1. That, I and my wife ie respondent No. 2 are not residing in the property bearing No. D-7/378, Sector 6, Rohini, Delhi 110085 from the day of conflict arose; I am residing at my maternal uncle's house. Thus there is no cause of action for eviction from their house.”

7. Ld. Counsel for the Petitioner submits that though the Respondent Nos. 2 and 3 are not residing in the suit property, they have put locks on the second and third floor of the suit property. Further, while the appeal before the Divisional Commissioner is pending, the direction of the DM to the effect that the Respondent Nos. 2 and 3 would not encroach into the suit property ought to be maintained.

8. The Court has perused the order of the DM and the reply which was filed before the DM. It is clear that the DM had directed that the Respondent Nos.2 and 3 shall not to encroach into the suit property and create any hassles in the peaceful life of the Petitioner. They were also restrained from causing mental tension, threats and harassments to the Petitioner. Considering that the appeal is pending, the said direction of the DM which is necessary for maintaining peace and tranquillity between the parties, shall continue to apply during the pendency of the appeal before the Divisional Commissioner. Moreover, the *status quo* as on today in terms of Respondent Nos.2 and 3 not residing in the suit property shall also continue during the pendency of the appeal as the stay order ought not to be used to change the *status quo*.

9. The appeal is listed on 19th April, 2023. The Divisional Commissioner shall endeavour to conclude the arguments on the said date and pass an order

in the main appeal within a period of one month.

10. It is clarified that this Court has not gone into the merits of the matter.

11. Parties are permitted to move an application if they wish to seek any modification of this order.

12. This Petition along with all pending applications is disposed of.

**PRATHIBA M. SINGH
JUDGE**

FEBRUARY 10, 2023

Rahul/KT

