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

Date of decision: 18.08.2023

+ CM(M) 472/2023 & CM APPLs.14033/2023, 42471/2023

KAMAL KISHORE KHULLAR Petitioner

Through: Mr. Digvijay, Advocate with
Petitioner in person.

versus

SUDERSHAN KHANNA AND ORS Respondents

Through: None.

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This petition filed under Article 227 of the Constitution, impugns the order dated 10.03.2023 passed by ADJ (South), Saket Court, New Delhi ('Trial Court'), in Review Petition No. Misc. DJ 51/2022, titled as ***Kamal Kishore Khullar v. Sudershan Khanna & Ors.***, dismissing the review petition filed by the Petitioner seeking setting aside of the impugned judgment and decree dated 26.11.2019, passed by ADJ (South) Saket Court, New Delhi ('Trial Court'), in Civil Suit No. 6905/2016, titled as ***Sudarshan Khanna & Ors. v. Kamal Kishore Khullar***, wherein the suit was partly decreed against the defendant i.e., Petitioner herein.

2. The Petitioner herein was the sole defendant and the Respondents herein were the plaintiffs in the civil suit.

2.1. The civil suit was filed by the Respondents initially under Order 37 of



the Code of Civil Procedure, 1908 ('CPC') for recovery of Rs. 5 lakhs based on a written agreement dated 19.07.2008 executed between the parties.

2.2. The leave to defend application filed by the Petitioner herein was duly allowed *vide* order dated 15.10.2011, thereafter, the defendant (i.e., the Petitioner) filed his written statement and raised the objection that the plaintiffs i.e., the Respondents herein has no locus to file the suit and that the said suit is filed on the basis of forged, fabricated and manipulated document i.e., the loan agreement dated 19.07.2008. Evidence was led by the parties and thereafter, the Trial Court passed a detailed judgment dated 26.11.2019 in favour of the Respondents and against the Petitioner.

2.3. The civil suit was decreed by the Trial Court *vide* judgment and decree dated 26.11.2019 and the Respondents were held entitled to recover a sum of Rs. 5 lakhs along with interest at 12% per annum from the date of grant of loan till its actual realisation.

3. The Petitioner herein elected not to file any appeal against the said judgment and consequently the said judgment attained finality.

4. The Petitioner herein on 02.12.2020 filed an application (Review Application No. 50/2022) under Order 47 Rule 1 CPC, before the Trial Court seeking review of the judgment and decree dated 26.11.2019.

4.1. Since, the review application was filed beyond the period of limitation, Petitioner also filed an application for condoning the delay of 1 year 9 days in filing the review application. The Trial Court *vide* impugned order dated 10.03.2023 held that it did not find any sufficient cause for condoning the delay and the application was dismissed.

4.2. Consequently, in the application for review filed under Order 47 Rule 1 read with Section 114 and 151 CPC for review of the judgment and decree



dated 26.11.2019 also stood dismissed and disposed of being barred by limitation.

5. The Respondents filed an execution petition before the Trial Court for execution of the decree dated 26.11.2019 and the same has been numbered as execution proceedings no. 36/2021.

5.1. The Petitioner has made part payments towards the decree and it is stated by the counsel for the Petitioner during oral arguments that approximately 4.8 lakhs stand paid. However, he admits that an amount in excess of 5.5 lakhs continues to remain due and payable.

5.2. During the course of arguments, learned counsel for the Petitioner states that in this petition, he is seeking a stay of the execution proceedings as Petitioner is willing to make payments of the remaining decretal amount in instalments. He states that the Petitioner is willing to pay a further amount of Rs. 50,000/- to the Respondents and prays for stay of the execution proceedings.

6. This Court has considered the submissions of the learned counsel for the Petitioner and perused the record.

7. The aforesaid facts evidences that the Petitioner herein is relying upon and pursuing the present proceedings only for securing a repayment schedule in instalments for the payment of the decretal amount. The Petitioner is not challenging the correctness of the judgment and decree dated 26.11.2019.

8. This Court is of the opinion that the present petition is not the appropriate proceeding for seeking the relief of instalments of the payment of the decretal amount. Such a relief can be sought by the Petitioner before the Executing Court itself by moving an appropriate application before the said Court. The present proceedings for the said relief is not maintainable in the



facts of this case.

9. This Court is also of the opinion that, the impugned order of the Trial Court refusing to condone the delay in filing of the review application, being an order passed in exercise of the discretion vested in the learned Additional District Judge, merits no interference by this Court in the exercise of its supervisory jurisdiction under Article 227 of the Constitution.

9.1. The Trial Court has carefully examined the explanation offered by the Petitioner for and thereafter, concluded that no sufficient cause has been given by the Petitioner for the admitted delay of 1 year 9 days in filing the review petition. The operative part of the judgment of the Trial Court rejecting the application of the Petitioner seeking condonation of delay reads as under:

“13. Be that as it may, even if, it is presumed, for the sake of arguments that the applicant had applied for certified copy on 30.11.2019 and that he had obtained the certified copy only on 14.10.2020, the application for review is clearly barred by limitation. Admittedly, the judgment and decree were passed by Ld. Predecessor on 26.11.2019 while the applicant had allegedly applied for certified copy on 30.11.2019. Thus, the period of 4 days from the date of decree till the application for certified copy has to be calculated for computing the limitation period of 30 days as per Article 124 of the Schedule to the Limitation Act. Further, as per the applicant himself, he had received the certified copy on 14.10.2020. As 4 days had already expired before the application for certified copy was moved, only 26 days had remained for filing the application for review of the judgment starting from 14.10.2020. Therefore, the limitation period to file the review application had to expire on 09.11.2020. The present application is shown to be made on 05.12.2020 i.e. after expiry of the limitation period on 09.11.2020. It is worth mentioning here that the applicant in the title of the application has mentioned the date as 05.09.2020. Even, on the application in the last page after the prayer, the date is mentioned as 05.09.2020. However, the application was not filed on 05.09.2020 as the affidavit of the applicant is shown to be attested on 02.12.2020. Thus, even on the date of the attestation of the affidavit of the applicant / defendant, the application was barred by limitation. Therefore, the statement in the application that the petition was filed within time is without merits and contradictory to the record.

14. In the light of the discussion hereinabove, I am of the considered opinion that the application for the review of the judgment and decree has been filed after expiry of 1 years and 9 days as mentioned hereinabove. Further, even if,



*the statement of the applicant regarding his applying for certified copy is considered to be true, the application for review is clearly shown to be made after expiry of limitation period. **The applicant has failed to explain the delay in moving of the application. He has failed to show any sufficient cause for delay in moving of the application. No ground is mentioned in the application explaining the entire delay from the date of judgment and decree till filing of the application. He has even not explained the delay which was caused by him as per his own case which is otherwise not proved by him in the Court.***

15. The judgment passed by Hon'ble Supreme Court of India in **SUO MOTU WRIT PETITION (C) NO. 3 OF 2020 IN RE: COGNIZANCE FOR EXTENSION OF LIMITATION** is not applicable in the facts and circumstances of the present case. The limitation period to file the review application in the present case had expired on 26.12.2019. The judgment of the Hon'ble Supreme Court of India directs that the period from 15.03.2020 till 28.02.2022 shall stand excluded for the purposes of limitation as may be prescribed under any general or special laws in respect of all judicial or quasijudicial proceedings. In the present case, the limitation period had already expired prior to 15.03.2022. Therefore, the applicant cannot rely upon the said judgment of the Hon'ble Supreme Court of India for condonation of delay in his matter.

16. In the light of the discussion hereinabove, I do not find any sufficient cause for delay in moving of the application shown by the applicant/defendant. The application is therefore, dismissed and disposed of accordingly.”

(Emphasis supplied)

9.2. No arguments have been addressed by the counsel for the Petitioner on the error, if any, in the order of the Trial Court. This Court finds no error of law in the order passed by the Trial Court.

10. What also weighs with this Court is that the Petitioner herein has not filed any appeal against the judgment and decree dated 26.11.2019; in fact, the Petitioner has accepted the correctness of the same and is willing to make payments thereunder. However, in the present petition the Petitioner seeks to interdict the execution proceedings even though the decree has become final and executable. These proceedings are therefore, an abuse of process of law. For this additional reason, this Court is not inclined to grant the reliefs sought



in this petition.

11. The Petitioner has filed successive applications including CM APPL. 14033/2023, CM APPL. 41606/2023 and CM APPL. 42471/2023 seeking stay of execution proceedings. Thus, the only intention behind filing of this petition is to stall the execution proceedings even though the judgment and decree dated 26.11.2019 has become final. The reliefs sought in these applications are untenable and impermissible in law.

12. Accordingly, the present petition and the said applications are dismissed.

13. All other pending applications stand disposed of.

14. The date already fixed i.e., 21.02.2024 stands cancelled.

MANMEET PRITAM SINGH ARORA, J

AUGUST 18, 2023/msh/sk

[Click here to check corrigendum, if any](#)

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