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

% Judgment delivered on: 24.03.2023

\+ EX.F.A. 9/2023 & CM APPL. 14557/2023, CM APPL. 14558/2023, CM APPL. 14559/2023

NAWAL SOOD .....Appellant

versus

AMAR SOOD ..... Respondent

Advocates who appeared in this case:

For the Appellant : Mr. Abhishek Sharma and Mr. Shivam Malik and Mr. P. Jain, Advs.

For the Respondent : Ms. Mahima Dayani, Adv.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

1. The appellant challenges the order dated 16.12.2022 passed in Execution No. 21/2021 (Ex. DJ No.:- 148/2021) titled *'Sh. Naval Sood Vs. Amar Sood @ Ors.'* whereby the Executing Court had dismissed the application filed on behalf of the appellant/judgment debtor under Order XXI Rule 29 r/w Section 151 CPC, 1908 seeking stay of the execution proceedings on the basis of having filed a suit for specific performance against the respondent/decree holder.

2. Learned counsel submits that the parties to the *lis* are real brothers and in pursuance of the purported *bayana*, the possession of the subject

suit property was handed over to the appellant/judgment debtor on the purported payment of Rs.21 lacs to the respondent/decree holder.

3. Learned counsel submits that since the respondent/decree holder was seeking to resile from his commitment under the purported *bayana* agreement, that the appellant/judgment debtor was constrained to file an independent suit seeking specific performance of such *bayana*.

4. Learned counsel submits that in the meanwhile, the respondent/decree holder sought to execute the decree of possession passed, questioning which the present impugned order was passed.

5. Learned counsel submits that since there was an apprehension of being dispossessed from the subject suit property, the appellant/judgment debtor was constrained to file an application under Order XXI Rule 29 r/w Section 151 CPC, 1908.

6. Learned counsel submits that it is not disputed that the appellant was put in possession of the suit property and submits that the said possession was in pursuance of the *bayana* which was executed between the parties on payment of valid consideration.

7. That apart, learned counsel submits that the learned Trial Court also did not consider the benefit of Section 53A of the Transfer of Property Act, 1881 which would accrue in favour of the appellant/decree holder. On the basis of above, learned counsel submits that the impugned order ought to be set aside and the possession of the appellant/judgment debtor be directed to be retained till the suit for specific performance filed by him is decided one way or the other.

8. Per contra, learned counsel appearing for the respondent/decree holder submits that the issue of the appellant/judgment debtor

continuing to be in possession cannot be countenanced for the reason that there is a valid decree of possession in favour of the respondent/decree holder and she submits that this is just a device to delay the handing over of possession.

9. Learned counsel submits that the said impugned order is based on facts and law and is sustainable and seeks dismissal of the present appeal.

10. This Court has considered the rival submission of the parties as also perused the impugned order and the other documents placed on record.

11. In order to appreciate the contentions raised by the appellant/judgment debtor in the present case, it would be appropriate to extract the provision of Order XXI Rule 29 r/w Section 151 CPC, 1908, which is as under:-

> *"29. Stay of execution pending suit between decree-holder and judgment-debtors.—Where a suit is pending in any Court against the holder of a decree of such Court [2] [or of a decree which is being executed by such Court,] on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided :*
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> *[2][Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]"*

A perusal of the aforesaid provision brings to fore that in circumstances where the judgment debtor is able to establish that a suit, which is pending between the parties and would affect the decree presented for execution, the Executing Court may, in appropriate cases, pass orders staying the execution pending before it.

12. It goes without saying that such exercise by the Executing Court has to be on the principles of equity, as also for reasons which have to be compelling. There could be a possibility where such inference is required, however, applying the said principles in the present case, this Court does not find any valid ground to do so. This is for the reason that the suit for specific performance is yet to be decided and once the said decree, if at all, is passed in favour of appellant/judgment debtor, the obvious consequence thereof would be that the appellant/judgment debtor would be put in possession of the subject suit property.

13. It cannot be now lost site of the fact that the said disposal of the suit would take its own time in trial. It would be unjust and onerous to expect that the respondent/decree holder to wait for such a long time before he is able to enjoy the fruits of his decree.

14. That apart, the submission of learned counsel that even if the pendency of suit for specific performance is not considered, the fact that the bayana is executed between the parties followed by possession, the natural corollary would be that the principles of section of 53A of the Transfer of Property Act 1881 would clearly be applicable in the present case and consequently his possession could not be disturbed.

15. The said contention has been recorded to be rejected. In the impugned order, the Executive Court has correctly placed reliance on the judgment of this Court in ***Joginder Tuli Vs. State NCT of Delhi***, ***2022 SCC OnLine Del 146*** and the relevant para of the said judgment

was also extracted.

16. It is clear and it is no more *res integra* that after the amendment of section of 53A of the Transfer of Property Act 1881, unless the said instrument is registered in accordance with law, no such influence can be drawn.

17. Keeping in view the aforesaid observations, there is no merit in the present appeal and the appeal is dismissed with no order as to costs.

18. Pending applications also stand disposed of.

TUSHAR RAO GEDELA, J.

MARCH 24, 2023
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