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

% Judgment delivered on: 22.05.2023

+ CM(M) 865/2023

BHAWANI FHER

..... Petitioner

versus

VINOD KUMAR SHARMA

..... Respondent

Advocates who appeared in this case:

For the Petitioner : Mr. Neerad Pandey, Advocate.

For the Respondent : None.

CORAM:

HON'BLE MR. JUSTICE TUSHAR RAO GEDELA

JUDGMENT

TUSHAR RAO GEDELA, J. (ORAL)

[The proceeding has been conducted through Hybrid mode]

CM APPL. 27342/2023 (for exemption)

1. Exemption is allowed, subject to all just exceptions.
2. The application stands disposed of.

CM(M) 865/2023 & CM APPL. 27341/2023 (for stay)

3. Petitioner challenges the order dated 12.05.2023, whereby the learned First Appellate Court in RCA No. 22/2023 titled as "*Bhawani Fher vs. Vinod Kumar Sharma*" had refused to pass any interim orders on the application under Order 41 Rule 5 of the Code of Civil

Procedure, 1908 seeking stay of the execution proceedings.

4. Learned counsel appearing for the petitioner submits by referring to the order dated 01.03.2023, whereby while issuing notice on the appeal filed by the petitioner, the learned First Appellate Court did not pass any orders of the *ex parte ad interim* relief or stay of the operation of the judgment and decree dated 03.02.2023 on the ground that no execution had been filed by then and, therefore, there arose no requirement to grant any *ex parte interim* relief to the petitioner, who was the appellant before the learned First Appellate Court.

5. Learned counsel brings the attention of this Court to the order dated 28.03.2023 passed by the learned Executing Court in Execution No. 408/2023, whereby the Executing Court had, on the mere statement of the decree holder, that as per his information, the petitioner/ judgment debtor had vacated and left the suit property and the Executing Court had, without carrying out the requisite enquiry, directed that the warrants of possession be issued in respect of the room situated on the ground of the property bearing No. 1822-1827, 1137-B and 1150 (new) and 336 (B) (Old), Chatta Madan Gopal, Maliwara, Chandni Chowk, Delhi-110006.

6. Learned counsel submits that the First Appellate Court did not grant any interim order on the basis that no execution was filed, however, as per the order dated 28.03.2023, the Executing Court had already passed orders granting warrants of possession.

7. Learned counsel submits that despite the petitioner's protest, the bailiff had forcibly dispossessed the petitioner and the keys thereof have been deposited with the learned Executing Court.

8. Petitioner submits that the objections under Order XXI Rule 99 of the CPC, 1908 have also been filed by the petitioner before the Executing Court, which are yet to be decided and even before such consideration and decision in pursuance thereto, the dispossession of the petitioner has occurred.

9. According to learned counsel, the dispossession in such facts of the case is, illegal and contrary to the procedure known to law.

10. Learned counsel submits that the petitioner ought to be put back in possession since the dispossession itself is irregular and illegal.

11. This Court has considered the submissions made by the learned counsel for the petitioner, as also perused all the relevant orders. From the submissions as also from the record, it appears that the petitioner has dispossessed by virtue of the bailiff's action and the keys of such subject suit property is already with the learned Executing Court.

12. The learned Executing Court is also *in seisen* of the objections under Order XXI Rule 99 CPC, 1908 filed by the petitioner which are yet to be disposed of.

13. It would suffice the interests of justice, in case the learned Executing Court is directed to first take up the objections under Order XXI Rule 99 of the CPC, 1908 filed by the petitioner and dispose of the same in accordance with law before proceeding to handing over the keys to the respondent under the execution proceedings.

14. Learned counsel also submits that the decree itself appears to be ambiguous because the judgment debtor in the particular case is one Bhawani Shankar Sharma, who is in possession of property No 1827 and the petitioner is in possession of property No. 1825 and it is

inexplicable as to how, the learned Trial Court has passed orders in respect of property Nos. 1822-1827.

15. This issue needs to be also considered by the learned Executing Court while deciding the objections of the petitioner.

16. The matter is stated to be listed before the learned Executing Court on 25.05.2023. The learned Executing Court is directed to take up the objections of the petitioner under Order XXI Rule 99 of the CPC, 1908 for consideration, if possible, on 25.05.2023 itself.

17. In view of the aforesaid, the petition is disposed of in the above terms with no order as to costs.

18. Order *Dasti* under the signatures of Court Master.

TUSHAR RAO GEDELA, J.

MAY 22, 2023/nd