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

Date of decision: 16.10.2023

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+ RSA 148/2023 & CM APPLs. 41239/2023, 41241/2023
SMT.RADHA Appellant

Through: None

versus

MS. RENU ARORA Respondent

Through: Mr. Nirmal Jeet Singh and Mr. Ankit Kumar, Proxy Counsels
Mr. Amit Peswani, Advocate for Ms. Nandita Rao, ASC (Crl.) for GNCTD, Delhi Police

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+ CONT.CAS(C) 1515/2023
COURT ON ITS OWN MOTION Petitioner

Through: None

versus

RADHA Respondent

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):

RSA 148/2023 & CM APPLs. 41239/2023, 41241/2023

1. Learned counsel for the Respondent states that the possession of the



property bearing no. C-89, Second Floor, Tagore Garden Extension, Rajouri Garden, New Delhi ('subject property') has been handed over by the bailiff to the Respondent on 06.10.2023 in terms of the directions issued by this Court vide order dated 04.10.2023.

2. Vide order dated 19.04.2022, the Civil Judge, West-03 Tis Hazari Courts, Delhi in Ex no. 611011/2016 ('Executing Court') had directed the Respondent to pay Rs. 1,27,000/- to the Appellant by way of demand draft after the subject property stands vacated by the Appellant.

2.1. He states that the Respondent has complied with the aforementioned order dated 19.04.2022 of the Executing Court and Fixed Deposit Receipt ('FDR') of Rs. 1,27,000 deposited by the Respondent has been released by Executing Court in favour of the Appellant herein.

2.2. He states that in fact the Respondent herein had raised an objection with regard to release of the interest accrued on the FDR, however, the Executing Court has notwithstanding the said objection released the interest amount accrued to the Appellant as well.

3. None appears on behalf of the Appellant. The Appellant is not present despite specific orders passed by this Court for her personal presence *vide* order dated 04.10.2023 in view of her wilful contempt.

4. In view of the submissions made by the counsel for the Respondent and considering the fact that the Appellant has already accepted the payment of Rs. 1,27,000 plus interest, it is apparent to this Court that she does not wish to pursue this appeal.

5. This Court is even otherwise of the opinion that this appeal is without any merits as the arguments raised by the Appellant do not raise any question of law much less a substantial question of law and the grounds



merely challenge the finding of facts.

6. In this regard, it would be appropriate to refer to the case of ***Nazir Mohamed v. J. Kamal and others (2020) 19 SCC 57*** wherein the Supreme Court observed that second appeal only lies on a substantial question of law and the party cannot agitate facts or call upon the High Court to re-appreciate the evidence in a second appeal. The operative portion to this aspect reads as under:

*“22. A second appeal, or for that matter, any appeal is not a matter of right. the right of appeal is conferred by statute. A second appeal only lies on a substantial question of law. If statute confers a limited right of appeal, the court cannot expand the scope of the appeal. **It was not open to the respondent-plaintiff to reagitate facts or to call upon the High Court to reanalyse or reappreciate evidence in a second appeal.**”*

23. Section 100 CPC, as amended, restricts the right of second appeal, to Only those cases, where a substantial question of law is involved. The existence of a "substantial question of law" is the sine qua non for the exercise of jurisdiction under Section 100 Cr.

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xxx

28. To be “substantial”, a question of law must be debatable, not previously settled by the law of the land or any binding precedent, and must have a material bearing on the decision of the case and/or the rights of the parties before it, if answered either way.

29. To be a question of law "involved in the case, there must be first, a foundation for it laid in the pleadings, and the question should emerge from the sustainable findings of fact, arrived at by courts of facts, and it must be necessary to decide that question of law for a just and proper decision of the case.”

7. This second appeal is accordingly dismissed and the order of the First Appellate Court is upheld.

8. Pending applications, if any, stands disposed of.

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9. In view of the orders passed in RSA 148/2023, this Court deems it appropriate to dispose of the present contempt petition and not proceed any



further against the Appellant.

10. Accordingly, the present petition is disposed of.

OCTOBER 16, 2023/msh/ms

MANMEET PRITAM SINGH ARORA, J

Click here to check corrigendum, if any