



2023:DHC:8358



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

% **Date of order : 18th October, 2023**

+ **C.R.P. 299/2023 & CM APPL. 54355/2023**

VIJENDRA SINGH

..... Petitioner

Through: **Mr. Bhagwan Jha, Advocate.**

versus

BUDDHA VIHAR PRABANDHAK SANGH (REGD) AND ANR

..... Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE CHANDRA DHARI SINGH

ORDER

CHANDRA DHARI SINGH, J (Oral)

1. The present petition has been filed under Section 115 read with Section 151 of the Code of Civil Procedure, 1908 (hereinafter "CPC"), praying as follows:

"a. An order or direction calling for Trial court the records of the case and peruse the same;

b. Allow the present civil revision and set aside the impugned order dated 21.08.2023 passed by MS Dipti Divesh Ld. SCJ & RC (SE) Saket Court New Delhi, in Ex No- 38/2020 in suit no. E5176/2016 titled as Buddha Vihar Prabandhak Sangh(regd) vs Manoj Kumar whereby Hon'ble court was dismissed the application for stay the execution petition on the ground that suit property was taken into possession from the (JD) by the (DH) on dated 19.03.2023 and the fresh lease



agreement was issued by the (dh) in the favour of the appellant on dated 20. 03. 2023.

c. Stay the proceeding in the Ex No- 38/2020 in suit no. E5176/2016 titled as Buddha Vihar Prabandhak Sangh(regd) vs Manoj Kumar pending before the court of MS Dipti Divesh , Ld. SCJ & RC (SE) Saket Court New Delhi,

d. Any other relief, order or directions which this Hon'ble Court considers just and fit in the circumstances of the case.”

2. The relevant facts have been briefly recapitulated below for the disposal of the present petition: -

- a) The respondent no. 1 is the decree holder in execution petition bearing EX no. 38/2020 in suit bearing no. E5176/2016, and the respondent no. 2 is the judgment debtor in the aforementioned execution petition.
- b) The respondent no.1, vide agreement dated 30th November 2012, leased out property bearing no. 586-D/7, Govindpuri, Kalkaji, New Delhi, shop no. 9, first floor (hereinafter “suit property”), in favour of respondent no. 2.
- c) The terms of the lease agreement were binding on the parties for a period of three years and the respondent no. 2 had deposited a sum of Rs. 3,00,000/- as an interest free security deposit, refundable at the time of handing over possession on expiry of the tenancy period.
- d) Due to certain disputes that had arisen between the parties, the respondent no.1 filed an application for eviction under Section 14 (1) (A) and (E) of Delhi Rent Control Act, 1958, thereby,



claiming that the respondent no.2 had failed to pay the rent and arrears with 10% increment thereof. The respondent no. 2 contested the said eviction petition while stating that the respondent no.1 was not entitled to get any order of eviction without a trial.

- e) Consequently, suit bearing no. E5176/2016, was instituted and an execution petition bearing no. Ex. No. 38/2020, in suit no. E5176/2016, titled as ***Buddha Vihar Prabandhak Sangh (regd.) v. Manoj Kumar***, was filed.
- f) Further, the parties to the suit bearing no. E5176/2016, reached a settlement and entered into a compromise. The learned trial court vide consent decree dated 30th July 2019, recorded the terms of the settlement, thereby disposing of the petition, while issuing the following directions:

“In view of the settlement separately recorded, the petition is disposed of with the following directions: -

1)That the petitioner shall deposit sum of Rs. 3,00,000/- (Rupees ThreeLakhs Only) along with simple interest @6% per annum for the period from December 2012 to July 2019, in the bank account of the respondent. The details of the bank account as provided by the respondent in court today is under:-

Account bearing No. 33070338996, State Bank of India, branch Kalkaji, New Delhi 110019. IFSC Code SBIN0001578.

2)Within 4 months of the day the amount is so deposited in the respondent's account, the respondent shall vacate the tenanted premises, i.e.Siddharth Studio & Decoration, Shop



No. 9, First Floor, 586 D/7, Budh Vihar, Govindpuri, New Delhi 110019.

3) In case the premises is not so vacated despite the amount having been received, the petitioner shall be entitled to immediate refund of the entire amount so deposited.

4) If the tenanted premises is not vacated within agreed four months of the payment received in the account of the respondent, the petitioner shall be at liberty to also proceed ahead with the execution of this order besides seeking refund of the amount so deposited.

5) If for any technical reason (including incorrect account no. having been provided, any error in receiving the amount in the bank account of the respondent etc.) the petitioner is not able to deposit the amount in the bank account of the respondent, he shall only in that eventuality make the payment by way of cheque after intimating the same to the other side in writing.

Petition is disposed off accordingly. Originals, if any, be returned, as per Rules."

- g) Subsequently, the decree holder filed an application praying for execution of the order dated 30th July 2019, thereby, stating that the amount of Rs. 4,20,000/-, had been deposited in the bank account of the judgment debtor, despite which the judgment debtor had failed to vacate the suit property. In light of the failure to vacate, the decree holder sought the Courts assistance to issue warrants of possession of the suit property.
- h) On 19th March 2023, a bailiff was appointed by the learned Trial Court, who subsequently broke the lock of the suit property, thereby, handing over the possession of the suit



property to the respondent no. 1, and accordingly a report of the same was submitted before the learned Trial Court.

- i) It has been stated by the present petitioner that vide lease deed dated 20th March 2023, the suit property was rented out by the decree holder, in favour of the revisionist and subsequently, the revisionist moved an application, thereby, praying for stay of the execution petition on the ground that he is in possession of the suit property.
 - j) The above mentioned application was dismissed by the learned Trial Court vide order dated 21st August 2023 on the ground that there is no merit in the document dated 20th March 2023, which is alleged to be a lease deed even though it has not been executed and signed by both the parties, and an agreement is required to be executed by two parties, for it to be, termed as an agreement.
 - k) Aggrieved by the dismissal of the stay application, the petitioner has preferred the instant civil revision petition challenging the impugned order dated 21st August, 2023.
3. Learned counsel appearing on behalf of the petitioner submitted that the impugned order has been passed by the learned Trial Court without taking into consideration the entire facts and circumstance.
4. It is submitted that there is material irregularity and illegality in the impugned order since the learned Trial Court has failed to exercise the jurisdiction vested in it in accordance with the law.



5. It is submitted that the learned Trial Court failed to appreciate the fact that after taking possession from the respondent no. 2, the respondent no.1 issued a fresh lease agreement/license of the said property in favor of the revisionist vide letter dated 20th March 2023.

6. It is submitted that the decree holder/respondent no. 1 has already taken possession of the suit property from the judgment debtor/respondent no. 2 on 19th March 2023, and thereafter, executed a fresh lease in the favor of the revisionist, as a result of which the revisionist was compelled to move an application for stay of the execution proceedings, however, the same was erroneously dismissed by the learned Trial Court.

7. It is submitted that the judgment debtor had submitted before the learned Court below that a fresh lease deed has been executed by the decree holder but since he had failed to produce the said document, the learned Trial Court rejected the submission of the judgment debtor and accordingly appointed a bailiff.

8. It is further submitted that the petitioner was unable to produce a copy of the above said lease deed before the learned Trial Court since he is not in possession of the original lease deed due to the reason that the copy of the same was received by way of speed post from the office of the decree holder.

9. In view of the foregoing submissions, it is prayed that the instant petition is allowed, thereby, setting aside impugned order dated 21st August 2023.

10. Heard the learned counsel appearing on behalf of the petitioner and



perused the material on record.

11. Before delving into the merits of the instant petition, this Court would briefly revisit the scope of Section 115 of the CPC, which has been invoked by the petitioner in the present petition, thereby, asking this Court to exercise its revisional powers by deciding whether the learned Court below had exercised its jurisdiction illegally or irregularly.

12. It is a settled principle of law that if the erroneous decision by a subordinate Court result in exercising a jurisdiction not vested in it by law, or failing to exercise a jurisdiction so vested, a case for revision arises and, in such circumstances, the Court must exercise its revisional powers, but not otherwise. The same has been enunciated by the Hon'ble Supreme Court in the judgment of *Manindra Land and Building Corpn. v. Bhutnath Banerjee*, (1964) 3 SCR 495.

13. Further, the Hon'ble Supreme Court has reiterated the scope of Section 115 of the CPC, in *Baldevdas Shivil v. Filmistan Distributors (India) (P) Ltd.*, (1969) 2 SCC 201, which was followed by the Hon'ble Court in *Frost (International) Ltd. v. Milan Developers & Builders (P) Ltd.*, (2022) 8 SCC 633. It held that the said provision includes jurisdiction alone, the irregular exercise, or non-exercise of it, or the illegal assumption of it. The mere fact that the decision of the Trial Court is erroneous due to a question of fact or of law does not amount to illegality or material irregularity. It embarks a peculiar kind of limitation that needs to be followed in its true letter and spirit.

14. This Court is of the view that the plea of the revisionist can only be



held to be maintainable where it is found that if the impugned order is allowed to stand, it would occasion a failure of justice or cause irreparable injury to the party against whom it was made.

15. In view of the judgments mentioned above, it becomes evident that this Court has limited powers which can be exercised under Section 115 of the CPC. It is also prudent to apply the ratio observed in the judgments of the Hon'ble Supreme Court, by way of which, this Court finds that not every order of the learned Trial Court can be regarded as an order that can be put under the ambit of revisional jurisdiction of the High Court.

16. Adverting to the facts of the instant petition.

17. It is the case of the petitioner that the learned Trial Court has erred in dismissing his application for stay of the execution proceedings. It has been contended that the petitioner came into possession of the suit property vide lease deed dated 20th March, 2023. It is contended that the learned Trial Court failed to take into consideration the validity of the aforesaid lease agreement for granting stay in the execution proceedings. In the application seeking stay of the execution proceedings, the revisionist, it is averred by the revisionist that on 19th March 2023 the decree holder had taken possession of the suit property from the judgment debtor, and hence the execution proceedings stand satisfied. It has been averred that the decree holder had issued a fresh lease deed in favour of the revisionist, thereby, making the revisionist the lessee of the suit property. The revisionist has further averred that the judgment debtor had informed the learned Trial Court about the said lease deed, however, had failed to produce it before the Court, pursuant to



which a bailiff was appointed in the case.

18. The revisionist has further averred that the bailiff along with some police officials and discarded all articles belonging to the revisionist. It has also been averred that the decree holder failed to inform the learned Trial Court that the suit property had been leased out to the revisionist. It has been further submitted by the petitioner that as per the fresh lease deed the suit property was rented out at a rent of Rs. 3,000/- p.m. and at a security deposit of Rs. 3,00,000/- was also paid as per the terms of the deed. However, the present petition could not produce the original lease deed before the learned Court below due to the reason that a copy of the same was sent to the petitioner vide speed post from the office of the decree holder.

19. The petitioner has pleaded before this Court that the learned Trial Court failed to exercise the jurisdiction vested in it by law whilst dismissing the application for stay of the execution proceedings filed by the petitioner.

20. At this juncture, it becomes prudent to analyze the impugned order dated 21st August 2023, whereby, the learned Trial Court dismissed the stay application of the revisionist. The relevant extracts of the same are reproduced herein:

“An application has been filed on behalf of the applicant seeking stay in the present execution proceedings on the ground that the applicant has conic into possession of the suit property after execution of the lease agreement for the suit property with DH. It is claimed that the copy of the said lease agreement is letter dated 20.03.2023, signed by the president of the DH society in the favour of the applicant. It is further stated that the applicant is not possession of the original documents i.e. letter



dated 20.03.2023 as the copy was received by way or speed post from the office of the DH.

Arguments on the present application heard. Record perused.

Perusal of record shows that the applicant is the father of the JD in the present proceeding. Therefore, the applicant is well aware of the present execution proceedings since its inception. Perusal of record further shows that earlier, JD had filed objections to the present execution petition which were dismissed vide order dated 09.11.2022, in which one of the objections taken by the JD was that he was suffering from mental illness when his statement was recorded before the court on 30.07.2019. In view of the said objection of mental illness on part of JD, it is clear that the applicant, who. is father of the JD, must have been aware of the entire execution proceedings, objections taken therein and subsequent dismissal of the objections of JD. Furthermore, if it is the claim of the applicant that the lease agreement has been executed in his favour by the DH on 20.03.2023, then why this fact of a fresh lease agreement for the suit property was not brought to the notice of Hon'ble High Court of Delhi wherein JD had challenged the order dated 10.11.2022. There is also no explanation as to why this fact fresh lease agreement for the suit property has not been intimated to this court on last two dates of hearing despite the fact that the JD has appeared on last two dates of hearing before the Court. Therefore, it appears that when coercive processes are in the process of being executed for handing over possession of the suit property to the DH the present application has been filed with a view to delay the present execution proceedings. Document (dated 20.03.2023 cannot in any manner said to be a lease agreement between DII and applicant as the same is not even signed by the applicant herein. An agreement cannot exist between two parties without the said agreement being duly executed by both the parties. Thus, the document relied upon by the applicant to show existence of lease agreement in his favour for the suit property



in itself is faulty as the same cannot be said to be lease agreement at all. As the present application is predicated only on a single document i.e. letter dated 20.03.2023 and the said document not being a lease agreement in the eyes of law, there is no merit in the present application seeking stay of the present execution proceedings and accordingly, the present application is hereby dismissed...”

21. By way of the aforesaid order, the learned Trial Court observed that the revisionist is the father of the judgment debtor, therefore, must be well aware of the execution proceedings since its inception. The learned Trial Court observed that the judgment debtor failed to provide an explanation as to why the Court had not been apprised of the lease deed dated 20th March 2023, despite entering appearances on the past dates of hearing. The learned Trial Court further observed that the stay application had been filed with the intention to delay the execution proceedings and that the stay is being sought only on the basis of the lease agreement dated 20th March, 2023, which evidently does not suffice to be a lease agreement, since the same has not been signed by the revisionist, making it faulty. In conclusion, it was observed that the application seeking stay of the execution proceedings appears to be a mere tactic to delay the execution proceedings and a coercive measure to hand over the property to the decree holder, and on the basis of the said observations, it dismissed the petitioner's application.

22. A bare perusal of the documents on record reveals that the document being relied upon in order to stay the execution proceedings, evidently does not take the colour of a lease agreement and appears to be a letter issued in



favour of the revisionist and the same has not been signed by the revisionist.

23. It is a well settled principle of law that in order for a lessor-lessee relationship to exist, the terms of such relationship should be explicitly written out on a document signed by both parties i.e., a lease deed, however, the same has not been produced by the revisionist to substantiate his claim, and in the absence of such jural relationship among the parties, the existence of any agreement of lease cannot be established.

24. The legal principles surrounding the validity of a lease deed have been discussed by the Hon'ble Supreme Court in a catena of cases. In case titled ***Union of India v. Ibrahim Uddin, (2012) 8 SCC 148***, the Hon'ble Supreme Court observed the following:

“85.4. The rent note produced by the appellant-Defendant 1 before the court below does not prove anything in favour of the respondent-plaintiff. The same being a vague document is incapable of furnishing any information and, thus, is liable to be rejected. The said document does not make it clear as to who has executed it and in whose favour the same stood executed. It does not bear any date as it cannot be ascertained when it was executed. The lease deed cannot be executed without the signature/thumb impression of the lessee. The said lease does not contain any signature/thumb impression of any lessee and also the tenure of the lease has not been mentioned therein. The rent has been mentioned as Rs 22 without giving any detail as to whether it was per day, fortnightly, monthly, quarterly or yearly or forever. More so, there is no reference to the said rent note in the pleadings contained in the plaint, therefore, it is just to be ignored.”

25. By way of the aforesaid judgment, it is evident that a lease deed cannot be executed without the signature or thumb impression of the lessee.



In the instant petition, the lease deed dated 20th March, 2023 does not contain the signature of the lessee, moreover, the lease deed is the primary document being relied upon by the revisionist seeking stay of the execution proceedings. The learned Trial Court has rightly observed that the lease agreement that has been produced before Court is faulty in nature and the same does not contain the signature of the lessee i.e., the revisionist herein. The said document cannot be termed as a lease agreement. Moreover, the conduct of the revisionist and the respondent no.1 appear to be coercive measures in order to get the judgment debtor to vacate the suit property.

26. Furthermore, in pursuance of the directions issued by the learned Trial Court, whereby, it was directed that in the event the judgment debtor failed to vacate the suit property, he would be entitled to refund the amount deposited by the decree holder. It is imperative to highlight that the judgment debtor refunded the amount of Rs. 4,20,000/- and the same was accepted by the Decree Holder. Since the decree holder has accepted the aforesaid amount as refunded by the judgment debtor, there can be no stay which may be granted in the execution proceedings and the parties to the suit may pursue the remedy available as per law, in order to seek eviction of the judgment debtor from the suit property.

27. In light of the above discussion of facts and law, it is held that there is no force in the contentions put forth by the petitioner and the arguments so advanced here are hereby rejected, being bereft of any merits.

28. In view of the foregoing submissions, this Court is of the opinion that there is no infirmity within the impugned order dated 21st August 2023,



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passed by the learned Trial Court in execution petition bearing EX no. 38/2020 in suit bearing no. E5176/2016.

29. Accordingly, the instant petition stands dismissed, along with pending applications, if any.

30. The order be uploaded on the website forthwith.

CHANDRA DHARI SINGH, J

OCTOBER 18, 2023

pa/ ds/ryp