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

Date of decision: 23.11.2023

+ **CM(M) 1931/2023, CM APPL. 60548/2023 & CM APPL. 60549/2023**

RADHEYSHYAM

..... Petitioner

Through: Mr. Deepak Agarwal, Advocate
alongwith Petitioner in person

versus

MANGE LAL @ MANGE RAM

..... 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):

1. This petition filed under Article 227 of Constitution of India impugns the order dated 10.11.2023 passed by the ADJ-01, Patiala House Courts, New Delhi ('Appellate Court') in RCA DJ No. 52/2023, titled as '**Radhey Shyam and Ors. v. Mange lal @Mange Ram**' whereby the appeal was renotified to 25.11.2023, without passing any order on the application seeking interim stay of the impugned order.

2. The Petitioner herein is aggrieved by the non-grant of stay of impugned order dated 20.10.2023 passed by the JSCC/ASCJ/GJ, Patiala House Courts, New Delhi in Misc SCJ No. 26/2023, dismissing the



Petitioner's application filed under Order IX Rule 13 of Code of Civil Procedure, 1908, seeking setting aside of the ex-parte decree dated 08.05.2023.

3. This Petitioner herein is the defendant and the Respondent is the plaintiff in the civil suit bearing no. 805/2021. The said suit has been filed seeking permanent and mandatory injunction, recovery of damages and use and occupation charges with respect to ground floor and second floor of property bearing H. No.73, Khasra No. 224, Min., Village Araakpur, Bagh Mochi, Moti Bagh, Delhi – 110021 ('suit property').

4. Learned counsel for the Petitioner states that the said suit was decreed by the Additional Senior Civil Judge, Patiala House Courts, New Delhi ('Trial Court') vide ex-parte judgment dated 08.05.2023; and the application filed under Order IX Rule 13 of CPC for seeking setting aside the said ex-parte judgment, has been dismissed by Trial Court vide order dated 20.10.2023.

4.1. He states that the Trial Court's order dated 20.10.2023 has been challenged by way of a statutory appeal in RCA DJ No. 53/2023, wherein the Appellate Court passed the impugned order dated 10.11.2023.

4.2. He states that the separate appeal has also been filed against the ex-parte judgment dated 08.05.2023 and the same is numbered as RCA DJ No. 49/2023.

4.3. He states that as recorded in the impugned order dated 10.11.2023, both the appeals are now listed before the Appellate Court on 25.11.2023.

4.4. He states however in the meantime, the matter is listed before the Executing Court on 24.11.2023 for adjudication of the objections filed by the Petitioner to the execution proceedings.



4.5. He states that the Petitioner seeks protection against dispossession until the application seeking interim stay, filed in RCA DJ No. 52/2023 is decided by the Appellate Court.

4.6. He states on instructions from the Petitioner, who is present in Court that the Petitioner undertakes to pay the Respondent use and occupation charges at the rate of Rs. 7,500/- per month starting with the month of November, 2023, until the final adjudication of the stay applications by the Appellate Court.

4.7. He states that the payment of Rs. 7,500/- per month for the month of November, 2023 shall be deposited before the Executing Court tomorrow itself i.e., on 24.11.2023.

5. None appears on behalf of the Respondents, despite advance service.

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

7. The undertaking of the Petitioner as regards payment of use and occupation charges Rs. 7,500/- per month is accepted and taken on record. The Petitioner is bound down to the same. The Petitioner is directed to pay to the Respondent the said charges each month starting November, 2023 and continue to pay for each calendar month, on or before 10th of each month. The payments will be made preferably through banking channels to avoid any dispute to payment and receipt.

8. Accordingly, subject to the Petitioner depositing a sum of Rs. 7,500/- with the Executing Court on 24.11.2023 and continuing to pay use and occupation charges on or before 10th day of each English calendar month, the execution proceedings shall remain stayed, until the application for stay filed by the Petitioner in the appeal is adjudicated by the Appellate Court.



9. It is made clear that if the Petitioner fails to deposit the amount of Rs. 7,500/- on 24.11.2023 and/or subsequently, on 10th of each English calendar month, the stay granted by this Court shall stand automatically vacated without seeking any clarification from this Court.
10. The learned Executing Court is requested to release the said amount of Rs. 7,500/- to the Respondent.
11. The Petitioner undertakes to remain present before the Appellate Court to address arguments and not seek any adjournments.
12. With the aforesaid directions, the present petition is disposed of. Pending applications stand disposed of.
13. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 23, 2023/rhc/aa

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