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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of decision: 07.12.2023

+ CM(M) 2005/2023, CM APPL. 63168/2023 & CM APPL. 63169/2023

BHIKHU MALI & ANR.

..... Petitioners

Through: Mr. B.S. Chauhan, Advocate with
Petitioner No.1 in person

versus

VED PRAKASH

..... 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 the Constitution of India impugns the order dated 30.11.2023 passed by the Additional District Judge – 03, Rohini Courts, North District, Delhi in Execution No.530/2023, titled as **Ved Prakash vs. Bhikhu & Ors** ('Executing Court') whereby the Executing Court dismissed the application of the Petitioner filed under Order 21 Rule 26 of Code of Civil Procedure, 1908 ('CPC') for stay of the execution of the *ex-parte* decree dated 06.03.2023.

1.1. The Petitioners are the original Judgment Debtors and Respondent is the original Decree Holder before the Executing Court.

1.2. The Execution petition is in pursuance of the *ex-parte* judgment and



decree dated 06.03.2023 passed in the civil suit bearing no. 531/21 ('Trial Court'). The civil suit before the Trial Court was filed by the Respondent seeking a recovery of possession of the property admeasuring 400 sq. yards under the occupation and possession of the Petitioners falling in Khasra No. 46//24 min (1-06) of the erstwhile Village-Sahibabad Daulatpur, Delhi, adjoining Firni Road ('suit property') and recovery of money of Rs. 1,74,400/- and mesne profit of Rs. 1,36,000/- with pendetelitelite interest at 18% per annum.

1.3. The said civil suit was decreed in favour of Respondent vide *exparte* judgment and decree dated 06.03.2023 by the Trial Court and it was further directed that Respondent are entitled for a decree of sum of Rs. 4000/- per month from the Petitioners as *mesne profits* from March 2020 until the actual possession of the suit property has been handed over to the Respondent. Thereafter, on 23.09.2023 Respondent filed execution petition before the Executing Court against the Petitioners for execution of the aforesaid decree.

2. Petitioner No.1 is present in person. The learned counsel for the Petitioners states that the Petitioners herein were not aware about the pendency of civil suit bearing no. 531/2021 and therefore, *the exparte* decree dated 06.03.2023 has been passed against them by the Trial Court.

2.1. He states that an application under Order 9 Rule 13 of CPC for setting aside the *exparte* judgment and decree dated 06.03.2023 has been filed by the Petitioners herein before the Trial Court and the said application is listed for hearing on 16.02.2024.

2.2. He states that along with this application, the Petitioners had also filed an application under Order 21 Rule 26 read with Section 151 of CPC for



stay of the execution proceedings pending herein of the application under Order 9 Rule 13 of CPC, however, the same has been dismissed by the Executing Court vide impugned order dated 30.11.2023.

2.3. He states that in this case, both the presiding judge of the Trial Court and the Executing Court are same; and therefore, the applications are pending in the same Court.

2.4. He states that to show his bona fide, the Petitioners herein will pay the *mesne profits* determined by the Trial Court at Rs. 4,000/- per month with effect from 01.11.2023. He states that the mesne profits for the month of November and December, 2023 i.e., Rs. 8,000/- will be deposited before the Executing Court on or before 12.12.2023.

2.5. He states that the Petitioners will continue to make deposit of the *mesne profits* before the Executing Court on or before 10th of each English calendar month commencing from 10.01.2024 and so on until the disposal of the application under Order 9 Rule 13 of CPC.

2.6. He states that the Petitioners will also file an undertaking to this effect before the Executing Court.

3. None appears on behalf of the Respondent despite advance service.

4. In the facts of this case, the Trial Court and the Executing Court are presided over by the same learned Judge. The application under Order 9 Rule 13 of CPC has been posted for hearing on 16.02.2024.

5. This Court is of the opinion that subject to the Petitioner complying with the undertaking of payment of mesne profits as recorded hereinabove, it would be in the interest of justice that the warrants of possession are stayed until the hearing and adjudication of the application under Order 9 Rule 13 of CPC.



6. It is, therefore, directed that subject to the Petitioners making payments of the *mesne profits* for the month of November and December, 2023 and for future mesne profit, on the dates specified hereinabove, the proceedings before the Executing Court shall remain deferred until the hearing of the application filed under Order 9 Rule 13 of CPC has been done by the Executing Court.
7. It is clarified that if the Petitioners make a single default in making the payment for the *mesne profits*, the stay granted by this Court shall stand automatically vacated.
8. With the aforesaid directions, the present petition stands disposed of.
9. Pending applications, if any, stands disposed of.

MANMEET PRITAM SINGH ARORA, J

DECEMBER 07, 2023/msh/ms

Click here to check corrigendum, if any