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

+ **CM(M) 1840/2024**

UMA DEVI & ORS.

..... Petitioners

Through: Mr. Sanjeev Sagar, Mr. Tarun
Khanna and Ms. Nazia, Advs.

versus

SRI RAM ALIAS SIRI CHAND THROUGH L.R.S..... Respondent

Through: Mr. Vishal Singh, Mr. Sandeep
Lamba and Mr. Kripal Singh, Advs.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

06.03.2024

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CM APPL. 12880/2024—stay

1. The learned counsel for the applicant submits that he has filed CM(M) 1840/2024 impugning the order dated 22.12.2023 passed by the learned Additional District Judge-07, South East, Saket Courts, New Delhi (hereinafter referred to as 'Appellate Court'), "in RCA No. 82/2023 titled as "Uma Devi vs. Sri Ram @ Siri Chand through his LRs" whereby, the learned Appellate Court dismissed the application under Order XLI Rule 5 read with Section 151 of Code of Civil Procedure, 1908, (in short 'CPC') for stay of execution petition No. 1414/2023. The petition is listed for hearing on 25.09.2024, however considering the emergent circumstances, present application is instituted.

2. It is submitted that on 06.09.2016, the respondents herein filed suit for possession, recovery of electricity arrears, damages and permanent



injunction against the petitioners herein alleging himself as owner of suit property and petitioner as their tenants. The said suit for possession was decreed in favour of respondents vide judgment dated 11.09.2023. Subsequently, in November 2023, petitioners filed appeal RCA No. 82/2023 under Section 96 CPC before first Appellate Court along with an application under Order XLI Rule 5 CPC for stay. Vide the impugned order, the learned Appellate Court dismissed the said application.

3. It is submitted that the appeal RCA No. 82/2023 is pending adjudication before the learned Appellate Court. It is further submitted that in the meanwhile as there was no stay granted by the learned Appellate Court, the respondents herein preferred an execution petition in which the bailiff has been appointed vide order dated 01.03.2024 and the warrants of possession are returnable for 29.04.2024. It is submitted that in these circumstances, the possession of the petitioner needs to be protected.

4. Learned counsel submits that the petitioners have claimed himself to be the owner of the suit property by way of adverse possession which fact was erroneously ignored by the learned Civil Judge. It is further submitted that the stand of the respondents herein is that the petitioners had not paid the alleged rent of the premises since 2016 which amounts to Rs. 4,32,000/-.

5. The learned counsel for the respondents rebuts the submissions of the petitioners and contends that the stay application moved before the learned Appellate Court was dismissed as the petitioners have been misleading the Court by taking different stands. At some place, the petitioners have stated that he has absolute ownership of the suit property whereas contrary to the same, he has also claimed adverse possession.

6. It is submitted on behalf of the respondents that in these



circumstances, the present application should be dismissed. It is further submitted that at present, the market rate of the rent is around Rs. 10,000/- per month and the petitioner in fact has not paid the rent since the date he became the tenant in suit property. However, the learned Trial Court has mentioned in the judgment that the *mesne profit* has not been paid since the year 2016.

7. Having considered the above submissions made on behalf of both the parties, as the parties have jointly submitted that since 2016, the rate of rent which has been fixed by the Civil Judge i.e. Rs. 4,500/- per month, the total amount which is to be alleged paid is Rs. 4,32,000/-. The petitioners undertake to deposit the said amount before the learned Executing Court within 10 days from today.

8. Learned counsel for the respondent has not placed any document on record to establish that the market rent of the vicinity where the suit property is located is around Rs. 10,000/- per month. Accordingly, the petitioner herein is directed to pay Rs. 5,000/- per month with effect from October, 2023 onwards as occupational charges by depositing it before the learned Executing Court on or before 10th of every month till the disposal of the appeal pending before the learned Appellate Court and the execution proceedings shall remain stayed, till the disposal of the appeal subject to making of deposit of Rs. 4,32,000/- before the learned Executing Court, which shall be kept in FDR, however, the same shall be without prejudice to the rights and contentions of the parties to be raised in the appeal.

9. Observations made by this Court shall not tantamount on the observation on merits of the appeal to be decided by the learned Appellate Court.



CM(M) 1840/2024

1. Issue notice.
2. Learned counsel for the respondents put in appearance on advance notice and accepts notice.
3. In view of the order passed in CM APPL. 12880/2024, the present petition does not survive.
4. The present petition stands disposed of.
5. The date already fixed i.e. 25.09.2024 in the petition stands cancelled.

SHALINDER KAUR, J

MARCH 6, 2024

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