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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**% **Date of decision: 18th March, 2024**+ **C.R.P. 110/2024****PRAVIN CHATTERJEE**

..... Petitioner

Through: **Mr. Ranjan N. and Ms. Raunika
Singh, Advs.**

versus

LAXMAN DASS BHATIA

..... Respondent

Through: **Mr. Adhirath Singh, Mr.
Raymon Singh, Mr. Aditya
Varunand Mr. Abhay Jadyun,
Advs.****CORAM:****HON'BLE MR. JUSTICE DHARMESH SHARMA****DHARMESH SHARMA, J.(ORAL)****CM APPL. 16490/2024 (Ex.)**

1. Allowed, subject to all just exceptions.
2. The application stands disposed of.

**CM APPL. 16491/2024 (Delay of 03 days in filing the present civil
revision petition)**

3. For the reasons stated in the application and in the interest of justice, the application is allowed and delay of 03 days in filing the present revision petition is condoned.

4. The application stands disposed of.

C.R.P. 110/2024 and CM APPL. 16489/2024 (Stay)

5. The petitioner/Judgment-Debtor has filed the present revision

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petition under Section 115 of the Code of Civil Procedure, 1908¹ assailing impugned order dated 11.12.2023 passed by the learned Civil Judge-01 (South) Saket Court, New Delhi², whereby the application under Order XXI Rule 29 of the CPC³ was dismissed.

6. Learned counsel for the respondent/Decree-Holder is present on advance notice.

7. Shorn of unnecessary details, evidently the petitioner/Judgment-Debtor has been vested with certain legal liabilities and adverse directions *vide* judgment and decree dated 18.03.2016 passed in Civil Suit No. 98/2007 that was instituted by the respondent/plaintiff-Decree Holder.

8. In essence, a suit for recovery of possession, use and occupation charges had been filed by the plaintiff/Decree-Holder in respect of the suit property, who is respondent in the present revision petition, against the petitioner/ Judgment Debtor, whereby it was held that the plaintiff was the owner of the suit property by virtue of Conveyance Deed dated 06.11.2006 executed by the DDA⁴ in his favour and the petitioner/Judgment-Debtor was held to be a tenant in respect of the premises in question under the plaintiff/Decree-Holder. The said judgment was assailed in RCA No. 8873/2016, which was dismissed

¹CPC

²Trial Court

³Order XXI Rule 29.

Stay of execution pending suit between decree-holder and judgment-debtor.—Where a suit is pending in any Court against the holder of a decree of such Court 492[or of a decree which is being executed by such Court], on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided:

493[Provided that if the decree is one for payment of money, the Court shall, if it grants stay without requiring security, record its reasons for so doing.]

⁴Delhi Development Authority



by the learned Appellate Court/ADJ-03, South District, Saket Courts, New Delhi *vide* judgment dated 06.08.2018.

9. Unrelenting, the petitioner then filed a fresh suit bearing CS No. 2827/2022 against the respondent/Decree-Holder for setting aside the judgment and decree dated 18.03.2016 *inter alia* agitating that copy of the passport that was filed by the respondent/plaintiff – Decree Holder, which facilitated execution of the Conveyance Deed dated 06.11.2006 in his favour was forged and fabricated. An application was filed under Order XXI Rule 29 of the CPC for stay of the pending proceedings for execution of the judgment and decree dated 18.03.2016. The same was dismissed by the learned Civil Judge/Executing Court *vide* impugned order dated 11.12.2023.

10. Suffice to state that having considered the decisions in **Shaukat Hussain v. Bhuneshwari Devi**⁵ and **Judhistir Jena v. Surendra Mohanty**⁶, learned Trial Court in its order dated 11.12.2023 held as under:-

“13. Given the peculiar facts and circumstances as discussed above, the court is of the opinion that application of the judgment debtor under Order XXI Rule 29 CPC deserves to be adjudicated on merits i.e. whether there exists any exceptional circumstances in favour of judgment debtor which entitles her to relief of stay of the present execution petition

14. Scrutiny of the record shows that Suit bearing no. 98/07 by the Decree Holder herein was filed in the year 2007 before Civil Judge-09, Central District, Tis Hazari Court which was eventually decreed on 18.03.2016 as follows:-

"It is ordered that the suit of the plaintiff is decreed. The plaintiff is held entitled to a decree of possession of property bearing no. J-36B, Ground Floor, Sheikh Sarai-II, New Delhi. The plaintiff is also held entitled to a decree

⁵(1972) 2 SCC 731

⁶AIR 1960 Ori 233



of recovery of arrears of rent for the month of December 2006 and January 2007. The plaintiff is also entitled to pendente lite and future damages as decided in issue no. 6. The plaintiff is held entitled to the costs of the suit.

15. The decree holder was thus held entitled to decree of possession, mesne profits on grounds that the defendant has failed to prove that he is the co-owner of the suit property and also failed to controvert the authenticity of lease deed dated 24.08.2006 Ex. PW1/6. Thereafter, the Judgment Debtor had preferred a RCA bearing no. 8873/16 against judgment and decree dated 18.03.2016 before Ld. ADJ, South-03, Saket and same was eventually dismissed.

16. After this, the Judgment Debtor had filed a subsequent suit bearing no. 84394116 before Ld. SCJ (South) Saket for relief of declaration that defendant no. 2/ Decree Holder herein has played fraud upon Delhi Development Authority and obtained forged conveyance deed dated 07.08.2007. However, same was dismissed by the Ld. Court on ground of Res-judicata. Eventually, the Judgment Debtor has filed another civil suit bearing no. 2827/22 before Ld. Civil Judge-04, Tis Hazari Court, Delhi seeking relief of setting aside of judgment and decree dated 18.03.2016 and 11.04.2016 passed by Ld. Civil Judge-09, Tis Hazari Court as passed in CS OS no. 98/2007 as being obtained by playing fraud upon the said court.

17. Now, the present application under Order XXI Rule 29 CPC is filed seeking stay on the present execution till the time civil suit bearing no. 2827/22 suit filed by the judgment debtor against the Decree Holder herein is decided. It is vehemently averred by the Ld. counsel for Judgment Debtor **that conveyance deed dated 07.08.2007 was obtained by the plaintiff / decree holder herein on basis of a forged passport wherein he showed his residence address as of suit property.** It is argued that Decree Holder has committed fraud on Delhi Development Authority (DDA) as he had placed a false and fabricated copy of passport bearing no. E6606188 with forged address of 36-B, Pocket J, Sheikh Sarai, Phase-II, New Delhi-110017. It is argued that as per Delhi Development Authority rules, the conveyance deed can be executed if proof of physical possession is shown by the applicant. It is argued that Decree Holder had relied upon the conveyance deed to prove exclusive right over the property. It is further argued that in a complaint case bearing no. 13178/18, Ld. MM Court has even issued summons upon decree holder herein on finding prima facie offence under Section 420/468/487 IPC against the Decree Holder.



18. It is a settled position of law that merely because another suit is filed, same is not per se a ground to stay the execution case. The Decree Holder cannot be deprived of fruits of litigations. In *Judhistir Jena vs Surendra Mohanty And Anr.* AIR 1960 Ori 233, Hon'ble High Court has held as under:-

*"The fundamental consideration is that the decree has been obtained by a party and he should not be deprived of the fruits of that decree except for good reasons. Until that decree is set aside, it stands good and it should not be lightly dealt with on the off-chance that another suit to set aside the decree might succeed. Such suits are also of a very precarious nature. The allegations therein ordinarily would be that the previous decree was obtained by fraud or collusion or that the decree was not binding on the present plaintiff as the transaction entered into by the judgment-debtor was tainted with immorality. These are all suits of uncertain and speculative character. Most of these cases are likely to fail the onus being very heavy on the plaintiff to establish fraud and similar charges. **That being the position, a person should not be deprived of the fruits of his decree merely because suits of frivolous character are instituted and litigants are out after further series of litigations. The decree must be allowed to be executed, and unless an extra-ordinary case is made out, no stay should be granted. Even if stay is granted, it must be on suitable terms so that the earlier decree is not stifled.**"*

{bold portions emphasized}

19. Upon scrutiny of record before this court, it is abundantly clear that suit bearing no. 98/07 was filed by the Decree Holder on premises that he is the landlord and owner of suit property bearing no. J-36B, Ground Floor, Sheikh Sarai, Phase-II, New Delhi-110017. **That suit property was let out to defendants vide lease deed dated 24.08.2006 and since defendant failed to put the rent of premises for two months, therefore, legal notice dated 16.01.2007 was issued to terminate the tenancy.** The defendants took the defence that he is the co-owner of the suit property and that plaintiff got the lease deed executed by him under fraud. It is a matter of fact that defendant has failed to prove not only his co-ownership in the property but also that lease deed was executed by him under fraud. In a suit for possession and mesne profits filed upon termination of tenancy, **all that the court has to look into is whether there was a jural relation of landlord and tenant relationship between the parties or not and whether the same was terminated as per applicable law.**



20. On sincere perusal of judgment of Ld. Trial Court and Ld. Appellate Court, it is evident that suit was decreed in favour of the plaintiff as **the Judgment Debtor could not controvert the authenticity of lease deed.** Now, even if it is held that conveyance deed is forged, same shall only raise cloud over the ownership of plaintiff and not upon his title as landlord. The Judgment Debtor himself has admitted his signatures upon the 24.08.2006 Ex. **PWI/6** during the trial of Civil Suit bearing no. 98/07. Thus, forgery of a conveyance would effect the ownership of the plaintiff and will have other ramification i.e. criminal proceedings against him. If the Decree Holder has committed the forgery, he shall definitely face the consequences of his criminal Act. However, since the conveyance deed was never the subject matter of the Civil Suit bearing no. 98/07, therefore, there exist no exceptional or extraordinary circumstances in favour of Judgment Debtor which entitles him for grant of any relief under Order XXI Rule 29 CPC. Depriving the Decree Holder of fruits of his decree would be travesty of justice. **Hence, the application u/o XXI Rule 29 CPC stands dismissed."**

11. At the outset, the aforesaid observations are unassailable. Learned counsel for the petitioner failed to address any issue that would warrant interference of this Court. Additionally, Learned counsel for the petitioner vehemently urged that on a criminal complaint filed by him, the learned Metropolitan Magistrate-02, South District, Sake Courts, New Delhi *vide* order dated 18.01.2023 has taken cognizance of the offence against Laxman Das Bhatia and summons have been issued on commission of *prima facie* offence under Section 420/468/471 of the Indian Penal Code, 1860⁷ for the proposed accused relying upon fake and fabricated copy of the passport, that eventually led to the execution of the Lease Deed.

12. Be that as it may, whatever be the outcome of the criminal prosecution against respondent Laxman Das Bhatia, the findings that

⁷IPC



would be rendered by the Court exercising criminal jurisdiction shall not be binding on any matters in issue in the civil proceedings. Further, learned counsel for the respondent referred to the decision in the earlier suit bearing No. 84397/2016 instituted by the petitioner/Judgment-Debtor against his client and the DDA for declaration of the Conveyance Deed as null and void, which came to be disposed of *vide* order dated 17.02.2020, whereby the following observations were made:

“11. The aforementioned pleadings specifically show that the plaintiff herein had in fact taken a plea with regard to fraud played by the defendant no. 2 herein with respect to execution of conveyance deed. The grounds on the basis of which said conveyance deed was asserted to be result of fraud were not specified in the written statement. In the said suit, during the course of cross-examination of defendant no.2 herein, certain questions were put to him regarding the basis on which the said conveyance deed was sought to be vitiated.

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14. Since it has already been held that plaintiff is not the co-owner of suit property, therefore, the plaintiff does not have locus standi to challenge the said conveyance deed with respect to same property.

15. As regards the point of limitation, as per Article 59 of Limitation Act, the period of limitation for setting aside an instrument or decree or for the rescission of a contract is three years from the time when the facts entitling the plaintiff to have the instrument or decree cancelled or set aside or the contract rescinded first become known to him.

16. It has also been mentioned above that the plaintiff herein had specifically pleaded in the written statement of earlier suit that freehold obtained by defendant no. 2 herein is a result of fraud. Though, the ground of said fraud was not pleaded, but it shows that the plaintiff herein was well aware about the alleged fraud even at the time of filing written statement. In the present suit the plaintiff has taken the ground that the plaintiff had discovered the fraud that defendant no. 2 had filed forged passport to show his possession for getting the conveyance deed. It is necessary to note that grounds of execution of conveyance deed are governed by the



statutory rules/ bye-laws. The said grounds are presumed to be in the knowledge of plaintiff as the ignorance of law is no excuse. The plaintiff cannot be allowed to take a plea that he was not aware of the rules earlier.

17. It is further necessary to mention that in the previous suit, the defence of plaintiff herein was categorically to the effect that she was in possession of suit property ever since it was purchased by Smt. Surjeet Kaur. Therefore, the plaintiff herein ought to have taken a specific plea about conveyance deed being result of fraud as she was always aware that defendant no. 2 was never in possession and therefore, defendant no. 2 could not have filed proof of physical possession.

18. Explanation IV of Section 11 of CPC provides that if the defendant fails to take a ground as defence, it shall be deemed to have been matter directly and substantially in issue in such suit. It is reproduced below:

"Explanation IV of Section 11 of CPC- Any matter which might and ought to have been made ground of defence or attack in such former suit shall be deemed to have been a matter directly and substantially in issue in such suit."

19. Since plaintiff had not taken the said ground in the earlier suit, he is barred from taking the said plea by filing the subsequent suit as it operates as res-judicata. Even otherwise the aforementioned facts show that the plaintiff was aware about the alleged fraud played by defendant no. 2 in getting the conveyance deed executed in his favour even earlier i.e. at the time of filing the written statement in earlier suit."

13. The aforesaid decision clinches the issues raised by the petitioner in this civil revision. The long and short of the aforesaid discussion is that the suit bearing No. 98/2007 was instituted by the respondent/plaintiff-Decree Holder on 22.02.2007. Thereafter, the pleadings and the documents that were put forth by the respondent/plaintiff-Decree Holder that were within the knowledge of the present petitioner/Judgment-Debtor, particularly with regard to execution of the Conveyance Deed dated 06.11.2006. there was no



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challenge to the conveyance deed in the said suit. At the cost of repetition, even the relief against the DDA sought in CS No. 84397/2016 was declined and the suit was held to be barred by the principles of *res judicata*, or so to say by virtue of *issue estoppel*.

14. The impugned order dated 11.12.2023 does not suffer from illegality, perversity or incorrect approach in law. The learned Trial has passed a balanced order that does not suffer from any jurisdictional error. In the backdrop of the aforesaid facts and circumstances, the petitioner/Judgment-Debtor has evidently been indulged in a phishing expedition, filing one suit/objections after the other, manifestly in order to protract the litigation, which by all means entails heavy costs and time, putting enormous strain on an already choked justice delivery system. Such unsavoury disposition on the part of unscrupulous litigation should not be allowed to be encouraged and must be visited with exemplary costs.

15. Hence, the present revision petition is dismissed with costs of Rs. 25,000/- to be deposited with the learned Trial Court/ Executing Court within four weeks from today, failing which, the learned Trial Court shall be at liberty to pass appropriate coercive orders for recovery of the amount of costs.

16. The pending application also stands disposed of.

17. A copy of this Court order be sent to the learned Trial Court for information and necessary compliance.

DHARMESH SHARMA, J.

MARCH 18, 2024

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