



\$-

* **IN THE HIGH COURT OF DELHI AT NEW DELHI****BEFORE****HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**+ **EX.F.A. 14/2024 & CM APPL. 24933/2024**

Between: -

SHYAM SUNDERS/O LATE RAM DITTA MAL,
RJO- B-20/11, ANKUR VIHAR, LONI,
GHAZIABAD (U.P.)

....APPELLANT

*(Through: Mr. Varun Goswami, Mr. Naveen Grover, Mr. Hritiv
Chaudhary and Mr. Sahil Agarwal, Advs.)*

AND

RAKESH DHAWAN,S/O LATE. OM PRAKASH DHAWAN,
RJO- H. NO-D-18/ 1, OLD GOVIND PURA,
SOM BAZAR, DELHI-51

....RESPONDENT

(Through: None.)+ **EX.F.A. 15/2024 & CM APPL. 25062/2024**

Between: -

NETRA PRAKASH SHARMA,S/O LATE. SEWA RAM SHARMA,
R/O- H. NO-D-18/20, OLD GOVIND PURA,
SOM BAZAR, DELHI-51

....APPELLANT

*(Through: Mr. Varun Goswami, Mr. Naveen Grover, Mr. Hritiv
Chaudhary and Mr. Sahil Agarwal, Advs.)*

AND

RAKESH DHAWAN,S/O LATE. OM PRAKASH DHAWAN,
RJO- H. NO-D-18/ 1, OLD GOVIND PURA,

SOM BAZAR, DELHI-51

....RESPONDENT

(Through: None.)

+ **EX.F.A. 16/2024 & CM APPL. 25074/2024**

Between: -

NETRA PRAKASH SHARMA,
S/O LATE. SEWA RAM SHARMA,
RFO- H. NO-D-18/20, OLD GIOVIND PURA.
SOM BAZAR, DELHI-51

....APPELLANT

(Through: Mr. Varun Goswami, Mr. Naveen Grover, Mr. Hritiv
Chaudhary and Mr. Sahil Agarwal, Advs.)

AND

RAKESH DHAWAN,
S/O LATE. OM PRAKASH DHAWAN,
RJO- H. NO-D-18/ 1, OLD GOVIND PURA,
SOM BAZAR, DELHI-51

....RESPONDENT

(Through: None.)

%

Reserved on: 07.11.2024

Pronounced on: 27.11.2024

J U D G M E N T

Since the issue involved in these appeals revolves around the same controversy, therefore, the captioned appeals are being decided by this common order. For the sake of convenience, the facts are exposted from EX.F.A. 16/2024.

2. Shorn of the unnecessary details, there is a dispute going on *inter se* family members of the respondent/decreed-holder herein regarding the partition of property. The shop in question in the present *lis* is part of the said property. Admittedly, the appellant(s)/judgment-debtor(s) herein are the tenants of the shop in question.

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:28.11.2024
17:45:12

Signature Not Verified
Digitally Signed
By:PURUSHAINDRA
KUMAR RAURAV

3. The shop in question was in possession of the appellant/judgment-debtor since 1980 and on 12.02.1982, a rent deed was executed between the appellant/judgment-debtor and grandmother of the respondent/decreed-holder. On 22.11.2003, the respondent/decreed-holder sent a legal notice to the appellant/judgment-debtor to vacate the said premises and for payment of dues. Since, the appellant/judgment-debtor did not pay the dues, therefore, the respondent/decreed-holder filed a petition under Section 14 (1) (a) & (j) of the Delhi Rent Control Act, 1958 (hereinafter referred to as "DRC Act"). The said petition was allowed *vide* order dated 07.10.2011 and the Court ordered that the appellant/judgment-debtor shall pay rent @ Rs. 200/month alongwith interest @ 15% p.a w.e.f 01.08.2002 till 16.02.2004 and thereafter, rent @ Rs. 220/month along with interest @ 15% p.a.

4. Thereafter, the respondent/decreed-holder filed an eviction petition under Section 14(1) (e) read with Section 25-B of the DRC Act and the said petition was allowed *vide* order dated 06.01.2014. Moreover, the revision petition filed by the appellant/judgment-debtor was dismissed *vide* order dated 16.07.2014.

5. On 22.07.2014, the respondent/decreed-holder filed an execution petition for execution of the judgment and decree dated 06.01.2014. The first objection was filed by the father of the respondent/decreed-holder which was dismissed *vide* order dated 24.03.2017 and warrants of possession were issued on 31.03.2017. The appellant/judgment-debtor filed an appeal against the order dated 24.03.2017, which was also dismissed *vide* order dated 26.08.2017.

6. Thereafter, on 30.05.2017, the appellant/judgment-debtor filed their objections before the Executing Court and the Executing Court,

vide order dated 22.03.2024, dismissed the objections of the appellant/judgment-debtor. Aggrieved thereto, the appellant/judgment-debtor filed this appeal.

7. Learned counsel appearing on behalf of the appellant/judgment-debtor submits that the impugned decision passed by the Executing Court suffers with material illegality inasmuch as the same has been passed in blatant ignorance of the directions passed by this Court in an order dated 14.10.2009 in CS (OS) 1083/2008 titled as ***Smt. Jawala Devi v. O.P.Dhawan.***

8. He submits that there was already a pending dispute between Ms. Jawala Devi and Mr. O.P. Dhawan, wherein, the respondent/decreed-holder sought impleadment by way of an application bearing I.A. No.2524/2009 under Order I Rule 10 of the Civil Procedure Code, 1908 (CPC). The said application came to be allowed by this Court *vide* order dated 14.10.2009 and this Court had specifically restrained the present respondent/decreed-holder from altering the *status quo* with respect to either the possession or the title of the suit property. He, then, contends that the controversy involved in the said civil suit relates to five shops and some other properties. According to him, the shops in question which are the subject matter of the present *lis* are a part of the controversy of the said civil suit. He, then, contends that during the subsistence of the order dated 14.10.2009, which still remains in operation, no suit could have been filed by the respondent/decreed-holder which according to him was instituted in the year 2013 before the Rent Controlling Authority.

9. Learned counsel appearing on behalf of the appellant/judgment-debtor further submits that when the civil suit itself was not maintainable, there was no question of execution of the impugned

judgment and decree. He, then, contends that in view of the aforesaid background, the order passed by the Executing Court deserves to be set aside.

10. To substantiate his submissions, learned counsel for the appellant/judgment-debtor places reliance on the following decision namely *S.P. Chengalvaraya Naidu v. Jagannath*¹, *A.V. Papayya Sastry v. Govt. of A.P.*², *Naresh Kher v. S. Jagjit Singh & Ors.*³ and *Amit Kumar Das Joint Secretary v. Shrimati Hutheesingh Tagore Charitable Trust*⁴.

11. None appears on behalf of the respondents.

12. I have considered the submissions made by learned counsel for the appellant/judgment-debtor and perused the record.

13. Before proceeding further, at the outset, it is pertinent to reproduce the relevant extracts of the impugned order dated 22.03.2024, which read as under:-

“11. Again, it is pertinent to note that the main petition from which the present execution ensues was filed much later some time in 2014. The defendant/JD is not party to the suit pending before the Hon'ble High Court of Delhi and the said suit is inter se between the family members of the DH wherein the rights of the DH alongwith the rights of the parties of the said suit are to be decided. Now, once in the main petition (from which the present execution ensues), a decree has been granted in favour of the DH, an executing Court cannot go beyond that decree at all. 12. The inter se rights of the parties before the Hon'ble High Court/Successor Court shall be decided by the Hon'ble High Court of Delhi or the succeeding Court thereafter. It shall not mean that the JD shall have a right to object to execution of the present decree by relying on an order passed in a proceedings to which he is not a party.

15. As is evident from the judgment dated 06.01.2014, the Ld. Trial Court was well aware of the pendency of property dispute

¹ (1994) 1 SCC 1.

² (2007) 4 SCC 221.

³ 2022 SCC Online Del 363.

⁴ 2024 SCCOnline SC 83.

between the owners of the parties and still, it went ahead and passed the decree. The contention of the objector that the order dated 14.10.2009 should have been placed on record by the DH is misconceived. This is because, the said order operated inter se the owners of the property in question and in no way gave any special equity or right in favour of the JD. It was an order operating between the parties to the suit bearing no.1 083/2008 pending before the Hon'ble High Court of Delhi. JD was not a party to the said suit and in no manner were his rights affected by the said order. If that is a case, it is misconceived to say that the DH played any fraud with the Court by not filing the said order before the Ld. Trial Court.

17. It is pertinent to note that during the course of hearing, it transpired that the judgment dated 06.01.2014 (which is the subject matter of present execution) was assailed in RC Revision Petition no.134/2014 r/w RC Revision Petition no.135/20 14 r/w RC Revision Petition no.136/20 14 before the Hon'ble High Court of Delhi and the same were eventually dismissed vide common order dated 16.07.2014. Ld. Counsel for the objector does not dispute and eventually conceded that the said contention taken today in this objections were also taken in the said revision petition also. In other words, the plea of pendency of the suit no.1 083/2008 was also taken before the Hon'ble High Court when the present decree was challenged. The same was eventually dismissed on the ground of limitation. But, the fact of matter remains that the said plea was, by necessary inference, negated by the Hon'ble High Court of Delhi."

14. A bare perusal of the said order would indicate that the Executing Court in paragraph No. 10 of the impugned order took note of a similar objection raised by one of the objectors, namely, Sh. Om Prakash Dhawan, which was eventually dismissed *vide* order dated 24.03.2017. It has also been held in paragraph No.11 of the impugned order that *inter se* disputes between the family members with respect to the property in question may not have any relevance in the determination of the present controversy, which essentially is based on the landlord and tenant relationship.

15. If the order dated 14.10.2009, on the anvil of which the entire case of the appellant/judgment-debtor rests, is considered in the right

perspective, the same would indicate that the fact with respect to the tenancy over five shops has been noted therein and having considered the aforesaid aspect, the Court restrained the respondent/decreree-holder from altering the *status quo* either as regards possession or as regards title. He was also directed not to encumber property in any manner whatsoever. The order dated 14.10.2009 passed by this Court in C. S. (OS) No. 1083/2008 titled **Smt. Jawala Devi v. O. P. Dhawan** reads as under:

“The applicant is the son of the defendant and claims to be impleaded in the suit stating that his interest are likely to be affected. The plaintiff seeks partition stating that the Defendant her brother has denied his share in the father's estate. The applicant contends that the grand father (the DF's Father) by some documents transferred substantial portions of the suit property, a building at D-18/1, old Govindpura, Saket Gali, Delhi in 1988.

Copies of the registered Will and the irrevocable attorney are relied upon for this purpose. A copy of the receipt for Rs.1,00,000 /- said to have been paid to the Grandfather is also been relied upon. Learned Counsel for the applicant submits that five shops purchased by him are presently occupied by the tenants who are depositing rent in the Court of the rent controller.

Having heard the counsel for the parties the Court is of opinion that without further examination as to the merits of the applicants claim to be entitled to the property or the validity of the documents being set up, he should be impleaded as a party/Defendant in the proceedings of substantial portion of the suit property. he is hereby restrained from altering the status quo either as regards possession or as regard title. He shall not encumber property in any manner whatsoever.

The applicant is also directed to file affidavit once every four months disclosing the amount receive by him towards rent which are being deposited by the tenant in the court with copies of the relevant documents in that regard.

It is open to the plaintiff to file or appropriate application in respect of the amount being received by the impleaded defendants later during the proceedings having regard to the affidavits filed pursuant to the direction made.

IA No. 2524/2009 is allowed in the above terms CS (OS) 1083/2008.

The impleaded defendant is permitted to file his Written Statement within 4 weeks. Replication to WS already on record shall be filed within 2 weeks thereafter.

List before Joint Registrar on 9th Dec 2009 for Admission/ Denial.

List in court on 12th May 2010 for framing of issues”

16. Admittedly, the controversy involved in the civil suit, which relates to family members *inter se* of the respondent/decreed-holder, has no direct bearing on the controversy involved in the present execution proceedings, which essentially emanates from the tenancy. If the respondent/decreed-holder violates the interim order, at best, the parties *inter se*, will have a grievance. The purport of the order passed in the civil suit is not to protect any interest of the appellant/judgment-debtor and the execution being sought by the decreed-holder is not to affect any rights of the family members *inter se* or the parties in the civil suit. The claim of the appellant/judgment-debtor, or lack thereof, is on a completely different footing and it could not be stretched to the extent prayed by the judgment-debtor. Nevertheless, any order passed in the civil suit, where the present appellant/judgment-debtor is not the party, cannot be *ipso facto* the reason to stall the execution of the judgment and decree validly passed by the competent Court.

17. At this juncture, it is pertinent to note that the judgment and decree dated 06.01.2014, which was sought to be executed, was also assailed in RC. REV. 134/2014 read with RC. REV. 135/2014 and RC. REV. 136/2014 before this Court. Those revision petitions came to be dismissed *vide* order dated 16.07.2014.

18. The objection which has been made in the present execution proceedings was also taken before this Court in those revision petitions. Though the revision petitions were eventually dismissed on the ground of limitation, however, the Executing Court has rightly drawn the inference that the objection stood negated by this Court.

19. In any case, what has been contended by way of the present appeal, is that fraud has been played by the respondent/decreed-holder

by obtaining the decree in question without disclosing the factum of pendency of the civil suit.

20. The aforesaid contention of the appellant/judgment-debtor also does not hold feet, inasmuch, as the dispute between the family members had no significance in the proceedings instituted by the respondent/decreed-holder against the appellant/judgment-debtor for eviction from the shops in question. More so, the factum of tenancy has already been taken note of by the Court in the order dated 06.01.2014 passed in Eviction Petition No. 18/13.

21. The Executing Court at present is bound by the contours of the judgment and decree sought to be executed unless the same is set aside or modified. When the challenge remains unsuccessful, the appellant/judgment-debtor cannot be allowed to stall the execution proceedings on one pretext or the other. The endeavour of the appellant/judgment-debtor appears to halt the proceedings and to reap the benefit of being in possession of the suit property.

22. The facts further indicate that the final order of eviction was passed on 06.01.2014 and till date, despite a lapse of 10 years, the respondent/decreed-holder has yet to reap the benefits of the said order.

23. It may be also noted that none of the cases relied upon by the appellant/judgment-debtor have a remote semblance of the facts involved in the instant appeals. The cited decisions, therefore, will not be of any assistance to the appellant/judgment-debtor.

24. Accordingly, the appeals fail and are hereby dismissed.

25. All pending applications are also disposed of.

(PURUSHAINDR KUMAR KAURAV)
JUDGE

NOVEMBER 27, 2024/MJ/aks

Signature Not Verified
Digitally Signed
By:MAANAS JAJORIA
Signing Date:28.11.2024
17:45:12

Signature Not Verified
Digitally Signed
By:PURUSHAINDR KUMAR KAURAV