



2024:DHC:4279



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**+ **TR.P.(C.) 80/2024****BASANTI AND ORS**

..... Petitioner

Through: Mr. Harmeet Singh Gulati and
Mr. Gaurav Dalal, Advocate.

versus

PRABHU DAYAL

..... Respondent

Through: Mr. Jayveer Singh, Advocate.

CORAM:**HON'BLE MR. JUSTICE C.HARI SHANKAR****JUDGMENT (ORAL)**

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21.05.2024

1. This Transfer petition 80/2024 filed by the petitioner seeks transfer of Execution Petition 316/2021 (*Sh. Prabhu Dayal v. Basanti & Ors.*) pending before the learned Additional District Judge (ADJ), East District, Karkardooma Courts to the Court of the Learned ADJ, South District, Saket Court.

2. The ground for transfer is that Execution Petition 316/2021 seeks execution of an *ex parte* judgment dated 30 January 2021 passed against the petitioner by the learned ADJ, Saket in CS DJ/357/2018. It is sought to be contended by Mr. Harmeet Singh Gulati, that his client has moved an application MISC. DJ/142/2023 before the learned ADJ, Saket under Order IX Rule 13 of the CPC for setting aside the *ex parte* judgement and decree dated 30 January, 2021. Inasmuch as the Execution Petition 316/2021 seeks execution of the same judgment

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and decree, Mr. Gulati submits that the two proceedings should be heard by one court.

3. Transfer of proceeding from one court to the other is not a course of action to be resorted to at the drop of a hat. Ordinarily, the prevailing consideration with the court, while deciding a prayer for transfer, is whether there is a likelihood of conflict of decisions if the two proceedings are heard by two different courts. In cases where the two proceedings relate, for example, property disputes, the court keeps in mind the question of whether the same property forms subject matter of both proceedings and whether the proceedings are *inter se* the same persons.

4. In the present case, there is no question whatsoever of any conflict of decision in MISC. DJ/142/2023 filed by the petitioner under Order IX Rule 13 in Civil Suit 357/2018 before the Saket Court and in Execution Petition 316/2021 pending before the learned ADJ.

5. The Saket Court is concerned with whether the *ex parte* judgment and decree should, or should not, be set aside. The mere fact that execution proceedings relating to the said judgment and decree are pending before the Karkardooma Court is no ground for transfer of the execution proceedings to the Saket Courts.

6. In case the petitioner succeeds in his application under Order IX Rule 13 of the CPC, the petitioner would then be entitled to be heard in the suit, and the execution proceedings would not continue.

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7. There is, therefore, no justification for clubbing the two proceedings or for taking a view that they must be heard by one court.
8. The remedy with the petitioner lies, perhaps, elsewhere.
9. No case for transfer of Execution Petition 316/2021 (*Sh. Prabhu Dayal v. Basanti & Ors.*) from the Karkardooma Court to the Saket Court can, therefore, be said to have been made out.
10. The transfer petition is accordingly dismissed.

C.HARI SHANKAR, J

MAY 21, 2024/K

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