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

+ RFA 219/2011

UNITY FINCAP PVT LTD

.....Appellant

Through:

versus

VIJAY KUMAR SAWHNEY

.....Respondent

Through: Mr. M. Salim and Mr. Sadaat Salim,
Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT SHARMA

ORDER

% **06.02.2026**

1. This hearing has been done through hybrid mode.

CM APPL. 8356/2026 (Release of 50 % decretal amount)

2. The present application under Section 151 of the CPC filed on behalf of the respondent/applicant seeks the following prayers:-

“It is, therefore, most respectfully prayed that this Hon'ble Court may be pleased to allow the present application in the interest of justice and direct the release of 50% of the decretal amount deposited by the Appellant/Judgment Debtor in terms of the order of this Hon'ble Court dated 21.04.2011, along with accrued interest, in favour of the Respondent.

Any other or further orders as this Hon'ble Court may deem fit and proper be also passed in favour of the respondent, to which the respondent is found entitled in the circumstances of the case.”

3. *Vide* order dated 21.04.2011, learned Predecessor Bench of this Court had admitted the captioned appeal in the following terms: -



“21.04.2011

CM No.7675/2011(Stay)

Learned counsel for the appellant argues that the provision of Section 74 of the Contract Act read with the judgments of the Supreme Court in the cases of *Fateh Chand Vs. Balkishan Das AIR 1963 SC 1405* and *Maula Bux Vs. Union of India 1969 (2) SCC 554* provide that in a case where damages can be calculated, then evidence is required to be given and automatically the penalty clause cannot be said to operate. He argues that mesne profits are granted on the basis of prevailing rate of rent which can very much proved. This position is however disputed by learned counsel for the respondent.

Notice. Learned counsel for respondent accepts notice.

Till further orders unless varied by the court, the operation of the impugned judgment and decree is stayed, subject to the appellant depositing 50% of the decretal amount in this court within a period of four weeks from today. The amount on being deposited can be withdrawn by the respondent on furnishing security to the satisfaction of the Registrar General of this court. Counsel for the parties state that the 50% of the principal amount claimed has been deposited by the appellant in the trial court in the form of fixed deposit and which amount can be withdrawn by the appellant, but, 50% of the decretal amount will be deposited in terms of today's order by the appellant in this court.”

4. Thereafter, the captioned appeal was dismissed for want of prosecution *vide* order dated 04.11.2024 by learned Predecessor Bench by observing as under: -

“1. Learned counsel appearing on behalf of the appellant submits that despite his best efforts, the appellants are not responding.

2. In view of the above, the instant petition along with pending application stand dismissed for the want of prosecution.

3. The respondent shall be at liberty to execute the decree. Let the



amount deposited by the appellant be remitted to the concerned Executing Court.”

5. It is the case of the respondent/applicant (decree holder) that in terms of the aforesaid order dated 04.11.2024, execution petition, Ex.154/2025, was instituted for enforcement of judgment and decree dated 16.09.2010. In the said execution proceedings, notice was issued to the appellant/judgment debtor; however, the same were returned unserved with endorsement that the appellant has left the premises without leaving any forward address, and subsequently, *vide* order dated 14.10.2025, the execution petition was disposed of and the respondent was granted liberty to file fresh execution.

6. It is further the case of the respondent that despite his best efforts he is unable to locate the current address of the appellant/judgment debtor. It is submitted that as the respondent is old aged and is not keeping good health and suffering from ailments, he seeks the release of 50% decretal amount deposited by the appellant in terms of order dated 21.04.2011 with the Registry of this Court. It is further submitted that the respondent being a senior citizen is in urgent need of the funds.

7. Relevant order sheets passed by learned Executing Court in the aforesaid execution petition have been placed on record. *Vide* order dated 14.10.2025, the learned Executing Court/DJ-07, Central, Tis Hazari Courts, Delhi, had disposed of the execution petition filed by the respondent by observing as under: -

“14.10.2025

Present: Ld. Counsel for the DH.

None for the JD.

It is stated that fresh address of the JD is not traceable.



As per the direction of Hon'ble Supreme Court of India passed in the case of '*Periyammal (Dead) through Lrs & Ors. Vs V. Rajamani & Anr. Etc.*' Civil Appeal Nos. 3640-3642 Of 2025, dated 06.03.2025, the execution petitions are required to be disposed of within 06 months from the date of its filing. Accordingly, case is disposed off and a liberty is given to the DH to file fresh execution within the period of law. File be consigned to **record room**."

8. Present appeal was dismissed *vide* order dated 04.11.2024 for want of prosecution as the appellant was not responding. No challenge so far to the same on behalf of the appellant, has been made with respect to the dismissal of the appeal filed on their behalf. In the execution proceedings filed by respondent, repeated attempts were made to serve the appellant on several addresses; however, appellant is not traceable.
9. Perusal of the record shows that 50% of the decretal amount deposited by the appellant with the Registry of this Court in terms of order dated 21.04.2011 is still with the Registry and has not been remitted to the learned Executing Court in terms of order dated 04.11.2024.
10. In view of these circumstances, the present application is allowed and disposed of accordingly.
11. The Registry is directed to release the 50% of the decretal amount deposited by the appellant with the Registry of this Court in terms of order dated 21.04.2011 to the respondent/applicant along with interest, if any, accrued thereon.
12. Order be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA, J

FEBRUARY 6, 2026/nk