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

+ EX.F.A. 14/2022

RAJBIR SINGH

.....Appellant

Through: Mr. Rakesh Nautiyal, Adv.

versus

NATIONAL INSURANCE COMPANY LTD & ANR.

.....Respondents

Through: Mr. Amit Kumar Singh, Ms. k Enatoli
Sema, Mr. Prang Newmai,
Ms.Chubalemla Chang, Mr. Z
Orenvungo Ezung, Adv.

CORAM:

HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

ORDER

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16.12.2024

1. Heard learned counsel appearing on behalf of the parties.
2. This appeal has arisen out of order dated 28.05.2022, passed by the Executing Court, rejecting two applications filed by the objectors.
3. The present appeal is confined to the application under Section 47 read with Order XXI Rule 58 read with Section 151 of the CPC, 1908, which has been filed by the present appellant for cancellation of warrant of attachment and de-sealing of the immovable property of the applicant.
4. The Court while entertaining the instant appeal *vide* order dated 05.08.2022, directed for issuance of notices and has also stayed the operation of the impugned order whereby *prima facie* finding was recorded that the reasoning tendered by the Executing Court with respect to belated filing of the application, appears to be incorrect.



5. Order dated 05.08.2022 reads as under:-

"CM APPL. 34579/2022 (exemption)"

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

EX.F.A. 14/2022 & CM APPL. 34577/2022. CM APPL. 34578/2022

3. Mr. Rakesh Nautiyal, learned Counsel for the appellant, points out that the impugned order has proceeded on the premise that the objections filed by the appellant under Order XXI Rule 58-1 (b) of the Code of Civil Procedure, 1908 (CPC) are belated. The impugned order records that, though attachment- of the residential house was effected consequent to order dated August 2019, the objections were filed more than two years thereafter on 28th October 2021. He submits that while this is correct qua JD-2, the objections filed by his client could not be treated as belated as they were first filed on 25th November 2019 and, after obtaining liberty from the learned MACT on 9th September 2021, were filed afresh.
4. A reading of the impugned order indicates that the learned MACT has, in fact, been persuaded by the fact that the objections were belated and has, therefore, proceeded under Order XXI Rule 58- 1(b) of the CPC.
5. As such, issue notice in petition and stay application as well as application for additional documents, returnable on 6th January 2023. Notice be served on the remaining respondents by all modes including dasti as well as through learned Counsel who appear on their behalf before the learned Trial Court.
6. Reply, if any, be filed within four weeks with advance copy to learned Counsel for the appellant who may file rejoinder thereto, if any, before the next date of hearing.
7. Till the next date of hearing, there shall be a stay of operation of the impugned order dated 28th May 2022, passed by the learned MACT."

6. It is thus seen that the proceedings before Executing Court remained stayed pursuant to the directions passed by this Court.

7. Today, when the matter is called out, learned counsel appearing on behalf of the appellant points out that the property in question is jointly held by the legal heirs of deceased, Mr.Sardar Singh. He, then, contends that the present objector/appellant is the brother of Judgment Debtor no.2 and was not aware about the impugned award and the execution proceedings. He



submits that there were seven legal heirs who were jointly holding the share in the property in question. According to him, even a civil suit with respect to partition was also filed by some of the co-sharers.

8. Learned counsel for the appellant then contends that the entire property ought not to have been directed to be attached pursuant to the award which was only against one of the co-sharers. Learned counsel further contends that in any case, the objections ought to have been decided by the Executing Court on merits instead of assessing the same only on the ground of delay.

9. I have considered the submissions made by learned counsel for the parties and perused the record.

10. The impugned order passed by the Executing Court, if considered in right perspective, would indicate that the Executing Court rejected the objection on ground of delay.

11. With respect to the possessory rights of the parties of the Lal Dora land, no findings have been rendered. There are other averments, necessarily requiring adjudication on merits. Accordingly, the aforesaid impugned order is set aside. The matter is remitted back to the Trial Court for adjudication of the application filed by the objector on merits. All rights and contentions are left open.

PURUSHAINDR KUMAR KAURAV, J

DECEMBER 16, 2024
MJ/MJO