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

+ **EX.F.A. 23/2024**

**IMRAN JAMALI**

**.....Appellant**

Through: Mr.Noushad Ahmed Khan,  
Mr.Syed Rehan and Ms.Ayesha  
Fatma, Advocates.

versus

**INSHA KHANAM**

**.....Respondent**

Through: Mr.Kapil Singhal, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV**

**ORDER**

**% 07.10.2024**

**CM APPL. 54603/2024 (For early hearing)**

1. This is an application filed on behalf of the appellant seeking an early hearing of the appeal.
2. For the reasons stated therein, the same stands allowed.
3. The application is disposed of accordingly

**EX.F.A. 23/2024**

4. The instant appeal is arising out of the impugned judgment and order dated 31.05.2024 in Execution No.153/2022 in Civil Suit No. 53 of 2020 passed by learned District Judge-2, Karkarduma Courts (East District) Delhi, whereby, the objection of the appellant/judgment-debtor under Section 47 read with Order 21 rules 97 to 105, read with Section



151 CPC came to be dismissed.

5. Learned counsel appearing on behalf of the appellant while pointing out through various documents, tried to indicate that the judgment and decree relates to 3<sup>rd</sup> Floor of the building in question, whereas, the possession of the 2<sup>nd</sup> Floor of the building is sought to be obtained. He, therefore, points out from the sale deed and other documents that if the suit relates of 2<sup>nd</sup> Floor, there was no reason to record the recital about the 3<sup>rd</sup> Floor of the building in question.

6. He further submits that the impugned order suffers with material illegality and the executing court has not considered the matter from the right perspective, therefore, the same deserves to be set aside.

7. Learned counsel appearing on behalf of the respondent on the other hand submits that the appellant has assailed the order of the regular first appeal before the Supreme Court *vide* SLP (Civil) No. 49867/2023 and the Supreme Court while dismissing the appeal granted two months time to the appellant to vacate the premises in question. He further submits that now after the expiry of two months, the appellant is conjuring up new objections just to delay the vacation of the premises in question.

8. I have considered the submissions made on behalf of the parties and perused the record.

9. The order dated 15.12.2023 passed by the Supreme Court clearly indicates that the appellant's SLP was dismissed and on the request of the appellant, two months time was granted to vacate the peaceful possession of the premises to the respondent.

10. The order dated 15.12.2023 reads as under:-



*“Having heard the learned counsel appearing for the petitioner, we are not inclined to interfere. with the impugned judgment and order. The Special Leave Petitions are dismissed.*

*However, we grant two months time to the petitioner to handover vacant and peaceful possession of the premises to the respondent subject to the filing of the usual undertaking.”*

11. If the appellant's contention at this stage is to be examined on the anvil of the order passed by the Supreme Court, the same would clearly indicate that the submission is clearly misconceived as the appellant has undertaken to vacate the premises in question before the Supreme Court.

12. If the appellant was of the view that the possession of the 2<sup>nd</sup> Floor is sought to be obtained under the guise of the judgment and decree which essentially relates to 3<sup>rd</sup> Floor, no such undertaking should have been given before the Supreme Court. At this stage in an execution first appeal, the agreement to sell dated 22.11.2017 and the legal notice dated 24.12.2019 cannot be gone into.

13. In view of aforesaid, this Court, therefore, finds that there is no substance in the instant appeal and the same is, therefore dismissed.

14. The next date i.e., 17.01.2025 stands cancelled.

**PURUSHAINDR KUMAR KAURAV, J**

**OCTOBER 7, 2024**

**nc**