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

+ **EX.S.A. 4/2023**

Date of Decision: 14.11.2024

MRS. SUSHMITA BHOWMICK
R/O H. NO. 1856.THIRD FLOOR
GALI NO.12 GOVIND PURI EXTENSION
KALKAJI NEW DELHI 110019
.....APPELLANT

Through: (Mr. S.N. Khanna and Mr.
S.M.Khanna, Advs.)

versus

1. MRS.SONIA NAGAR
D/O LATE SHRI S.K.BHASIN
.....RESPONDENT NO.1

2. MS.SANGEETA BHASIN
D/O LATE SHRI S.K.BHASIN
.....RESPONDENT NO.2

3. SH. PUSHKAR RAJ NAGAR
.....RESPONDENT NO.3

ALL R/O.
A-106, SECOND FLOOR ,
DOUBLE STOREY,
KALKAJI, NEW DELHI 110019

Through: (Mr. B.P. Lathwal and Mr. Ishan
Lathwal, Advs. with with R-1 in
person.)

CORAM:
HON'BLE MR. JUSTICE PURUSHAINDRA KUMAR KAURAV

J U D G M E N T

PURUSHAINDRA KUMAR KAURAV, J. (Oral)

1. This appeal, under Order XXI Rule 58(4) of the Code of Civil Procedure, 1908 (CPC) read with Sections 100 and 151 of the CPC, seeks to challenge the impugned order dated 06.05.2023, whereby, the first Appellate Court dismissed the appeal preferred by the appellant/judgment-debtor against an order dated 16.12.2021 passed in EX No.5061/2016 by JSCC Cum ASCJ Cum GJ, South East District, Saket Courts, New Delhi, dismissing application of the appellant/judgment-debtor.

2. The facts germane in the instant appeal are that the respondents/decreed-holders instituted a suit for eviction against the appellant/judgment-debtor herein, which came to be decreed in their favour on 24.04.2017. Respondent No.1 then filed an execution petition in furtherance of the judgment and decree dated 24.04.2017, against the appellant/judgment-debtor. On 24.04.2017, the Executing Court issued warrants for possession and attachment, returnable on 26.05.2017 and on 01.05.2017 a bailiff was appointed with specific instructions that, should the suit premises be found locked, the bailiff was authorized to break open the locks. Additionally, the bailiff was empowered to obtain assistance from the local police to execute the warrants of possession and attachment of moveable properties of the appellant for recovery of the decretal amount, i.e., Rs.77,344/-.

3. On 26.05.2017, the Executing Court duly recorded the submission of respondent No.1/decreed-holder affirming that possession of the subject premises had been handed over to her on 09.05.2017.

4. On various occasions before the Courts below, the appellant/judgment-debtor, by way of objections, sought dismissal of the execution petition and requested for detachment of the goods and articles

purportedly seized. Additionally, the appellant/judgment-debtor sought criminal action against the respondents/decreed-holders and bailiff, alleging misappropriation of articles and abuse of the legal process. These objections were dismissed by the Executing Court, *vide* order dated 16.12.2021 by which it was observed that the appellant/judgment-debtor habitually made false statements and had removed most of her belongings during the execution of the warrants of possession.

5. It is this order that was challenged before the first Appellate Court and the appeal preferred by the appellant/judgment-debtor was dismissed. Consequently, the appellant/judgment-debtor has preferred the present appeal.

6. Learned counsel appearing on behalf of the appellant/judgment-debtor avers that the first Appellate Court failed to appreciate the documents placed on record including the recitals of the Local Commissioner's Report dated 12.07.2018 (LC report) and ignored the fact that the same clearly pointed out the discrepancies in the report of the bailiff. It is also contended by the learned counsel that the said LC report along with video photograph, depicted the actual facts regarding the belongings, furniture and other household goods along with the study materials, certificates etc. of appellant/judgment-debtor's son which were found in the suit property in a ransacked condition.

7. Learned counsel further contends that the Executing Court has not made any efforts to examine whether attachment by the bailiff was in consonance with the provisions of CPC under Order XXI Rule 43.

8. Learned counsel also submitted that the Executing Court overlooked the fact that the appellant/judgment-debtor had promptly filed an application

within seven days of the date of handing over the possession i.e, 09.05.2017, seeking release of the original educational certificates/documents of her son and basic usable items such as clothes and kitchen utensils, which should not have been attached according to the law. It is also submitted that there was an inordinate delay in receiving the report by the bailiff.

9. Learned counsel further submitted that the first Appellate Court and the Executing Court failed to recognize the illegal manner in which the bailiff conducted the procedure of attachment and prepared an unusual report without adhering to the established rules. He also submits that this resulted in manipulated inventory of the goods, as is evident from the LC report.

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

11. A perusal of the order of the Executing Court demonstrates that the Court was of the opinion that the appellant/judgment-debtor willfully abstained from retrieving the left-off items listed in the bailiff's list of goods, deeming them to be mere scrap, with the apparent intent of harassing the respondents/decreed-holders. Furthermore, the Court also observed that the appellant/judgment-debtor had failed to explain why no application was filed to collect her belongings which were taken over at the time of execution of warrants of possession on 09.05.2017. The pertinent observations by the Executing Court in paragraphs Nos. 9 to 13 of the order dated 16.12.2021, reads as follows:-

"9. Ld. Counsel for the decree holder argued that judgment debtors deliberately avoided taking away the remaining goods as mentioned in the report of the bailiff because those were mere scrap material and with the sole purpose just to harass the decree-holder. The judgment debtors failed to explain why they have not filed any application to collect their belongings which were taken over at the time of execution of warrants of

possession on 09.05.2017. In view of this discussion, the court finds in the merits of arguments of Ld. Counsel for decree holder.

10. The Ld. Counsel for JD has argued that decree holder has not filed the video recorded during the execution of warrants of possession. Therefore, adverse inference should be drawn against the decree holder. This court never ordered to videograph the proceedings of warrants of possessions. The decree holder has specifically mentioned in his reply that he had kept the said video in pen drive for several years but now it has been misplaced. However, the decree holder has filed the photographs taken during the execution of warrants of possession which clearly shows that the judgment debtors had taken away their belongings in an Auto Rickshaw..

11. Warrants of possession and attachment could not be executed due to callous conduct of judgment debtors. Only Judgment Debtor No.I was appearing in the court before execution of warrants of possession and attachment because they were legally informed that warrants of arrest cannot be executed against a female in civil case for recovery of money. Judgment Debtor No.2 never appeared in the court. Even vide-order dated 10.12.2021, this court has specifically directed both the judgment debtors to appear in person. But they have failed to appear in the court because a guilty conscience always pricks mind.

12. In view of above discussion, I find no merits in the application. The application is dismissed. This execution is a fit case for imposing exemplary cost on the judgment debtors for deliberately delaying the proceedings and abusing the process of law. But the court is of opinion that it may further linger on the case because the court has to waste its precious time for recovery of cost from the judgment debtors while issuing warrants of attachment against the judgment debtors again and again; Therefore, no cost is imposed on the judgment debtors.

13. Ld. Counsel for Decree Holder submits that Decree Hodler is unable to enjoy his property because the scrap material of the Judgment Debtors is still lying in the suit property. The Judgment Debtors are directed to remove all the scrap material belongings from the suit property within the two weeks otherwise it shall deemed that they have waived off their right to collect their belongings as mentioned in bailiff's report dated 09.05.2017."

12. On an appeal preferred by the appellant/judgment-debtor, the first Appellate Court *vide* impugned order dated 06.05.2023 held that the order passed by the Executing Court does not suffer from any irregularity or infirmity. The first Appellate Court carefully perused the documents on record including the bailiff report and the LC report to hold that the Executing Court had correctly appreciated all the material placed on record. With respect to the averment of the appellant/judgment-debtor that there are discrepancies between the report filed by the bailiff and the LC report, and that the attached goods were found in a ransacked condition, the following findings have been rendered in paragraph no. 6 of the impugned judgment which reads as under:-

"6. The JD challenged the order dated 16.12.2021 firstly on the ground that the attached goods were not restored in the same condition as they were attached and relied on report of Ld. Local Commissioner appointed vide order dated 07.06.2018. The claim of the JD is that the attached goods were found in ransack condition whereas the Local Commissioner report specifically observes at para no. 7 (ii) as under:-

"ii. Further that on entering the suit premises it was found that the said premises were in a good condition and well maintained it is believed that it had been recently cleaned as there was no dust found or the articles table, almirah, etc. which were found inside the premises."

13. The appellant/judgment-debtor has also claimed that several attached items were missing and some of her belongings were misappropriated. Regarding the aforesaid averment, the Court has rendered the following findings :-

"6.1 Secondly, JD has claimed that the certain attached items were found to be missing however the report filed by the Local Commissioner does not utter anything about the missing items i.e. gold ornaments, educational certificates, property documents, laptop, computer etc. Thirdly, the warrants of attachment of movable property of JD were issued on 24.04.2017 however JD did not take their possession till 12.07.2018 and put the blame of their bad condition on the custodian

which is not at all acceptable in any situation since the attached goods should got released by the JD within seven days. The Ld. Trial Court has rightly held that "... The judgment debtors failed to explain why they have not filed any application to collect their belongings which were taken over at the time of execution of warrants of possession on 09.05.2017.....". Fourthly, JD has alleged theft and misappropriation against the decree holder but there is nothing on record to presume so. The Ld. Trial Court came to the conclusion that the ID took away their maximum belongings in an autorickshaw on the basis of photographs filed by decree holder and JD has nothing to rebut the same assumption. In view of above said reasons, it is hereby held that Ld. Trial Court has rightly appreciated the material placed on record."

14. The first Appellate Court observed that the respondents/ decree-holders were unable to enjoy their property due to the scrap material deliberately left by the appellate/judgment-debtor in the suit property. It was also observed that the Executing Court granted ample opportunity to the appellant/judgment-debtor to comply with its directives, however, due to the failure on her part to adhere with the orders passed in the execution petition, the Executing Court directed bailiff to take appropriate measures in accordance with the law.

15. Having considered the overall conduct of the appellant/judgment-debtor, recorded by both the Executing Court and the first Appellate Court, it is clear that the instant appeal is vexatious and a mere afterthought. The appellant/judgment-debtor, having consistently failed throughout the suit, seems to have tried every possible means to frustrate and obstruct the lawful execution of the decree, disregarding Court orders.

16. The Supreme Court in the case of **Bool Chand v. Rabia¹**, while setting aside an order of interference by the High Court and upholding the order of the Executing Court, held that any attempt to deprive the decree-holder of

accruing the benefits of a decree in their favour, should be discouraged whenever such frivolous objections are raised.

17. In light of the aforesaid, the Court, does not find any material illegality or perversity in both the impugned orders passed by the first appellate Court and the Executing Court.

18. Consequently, the Court does not find any substance in the instant appeal, the same is hereby, dismissed.

PURUSHAINDRA KUMAR KAURAV, J

NOVEMBER 14, 2024
MJ/mjo

¹(2016) 14 SCC 270