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

% ***Date of decision: 29th July, 2024***

+ **CM(M) 3040/2024 & CM APPL. 42485/2024
RAJIV SHARMA**

.....Petitioner

Through: Mr. Atul Patni, Advocate.

versus

AJAY KUMAR

.....Respondent

Through: Mr. Sunil Gupta, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

CM APPL. 42486/2024 (Exemption)

Exemption allowed, subject to all just exceptions.

CM(M) 3040/2024

1. The Petitioner herein is judgment debtor before the learned Trial Court and is aggrieved by order dated 6th July, 2024, whereby the learned Executing Court has directed issuance of warrant of possession and has also directed the decree holder (respondent herein) to appear before the Court of learned Administrative Civil Judge concerned for appointment of bailiff.

2. The said order dated 6th July, 2024, reads as under:

"It is submitted by counsel for DH that the stay granted by Ld Appellate court has already been vacated and the appeal is listed for maintainability.

The order vacating the stay has already been filed by DH along with affidavit.

Since there is no stay, let warrant of possession be issued qua the suit property in favor of DH returnable for 24.08.2024 on filing of PF by the DH.



Bailiff is granted liberty to break open the lock on the suit property, if any with the assistance of the Lock Smith, if required at the expense of the DH. Again, the proceedings be also photographed/video graphed at the expense of DH. Again, SHO concerned is directed to provide the necessary police aid including the lady police officials for the execution of warrants.

DH is also directed to appear before the court of Ld. ACJ, Shd. On 30.07.2024 for appointment of Bailiff.

Copy of this order be sent along with warrants.”

3. Admittedly, the decree has been challenged by petitioner herein by filing first appeal which has been registered as RCA No.07/204. Initially, the first Appellate Court had stayed the operation of the impugned judgment but later on, noticing that there was deficiency in the Court fee, by a specific order, the stay was vacated.
4. Reference in this regard be made to order dated 1st April, 2024 passed by such First Appellate Court in said Regular Civil Appeal.
5. It is thus noticed that the Executing Court has merely followed the directions given by the First Appellate Court and, therefore, there is evidently, no impropriety or illegality in the impugned order which may necessitate any kind of interference by this Court under Article 227 of Constitution of India.
6. The appropriate course for the petitioner would have been to make up the deficiency in the Court fee and to pray for stay before the First Appellate Court.
7. During the course of the arguments, Mr. Patni, learned counsel for the petitioner states that the deficiency in the Court fee has already been made up but said Court has yet not stayed the impugned judgment dated 13th December, 2024.
8. Be that as it may, keeping in mind the overall facts and circumstances



of the case, there is no reason whatsoever to interfere with the impugned judgment as it has been passed while adhering to the principle of judicial discipline and by taking note of the observation made by the First Appellate Court whereby the stay was vacated. The appropriate course for the petitioner herein is to pray before First Appellate Court to grant stay.

9. Viewed thus, there is no merit as such in the present petition and the same is dismissed.

10. Needless to say, the petitioner is at liberty to move appropriate application seeking early hearing or seeking stay before First Appellate Court.

11. Order *dasti* under the signature of the Court Master.

(MANOJ JAIN)
JUDGE

JULY 29, 2024/ss