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

% ***Date of Decision: 18th October, 2024***

+ CM(M) 3633/2024 & CM APPL. 61154/2024

LT. SMT. LALITA THR. LRS. & ANR.Petitioners

Through: Mr. Prashant Gupta, Advocate.

versus

LT. SMT. LAXMI THR LRS

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. Present petition has been filed under Article 227 of Constitution of India challenging order dated 6th September, 2024 whereby the learned Executing Court has directed auction of the suit property.
2. When asked, learned counsel for the petitioner/judgment-debtor has informed that a suit for partition had been filed in which there was, initially, a preliminary decree. Such decree was, initially, challenged but this Court had observed that the challenge may be made to the final decree. The final decree was passed way back on 11th December, 2017 and it is apprised that the same judgment-debtor has challenged the above by filing RFA 248/2024.
3. It seems that in terms of the final decree, the Court has put the immovable property in question i.e. suit property situated at Mangolpuri, Delhi to auction and such auction is scheduled for 18th December, 2024.
4. Mr. Gupta, learned counsel for the petitioner/judgment-debtor, very fairly, admits that above said Regular First Appeal is pending and so far there is no stay of execution.
5. Such aspect is also duly recorded by the learned Executing Court in impugned order dated 6th September, 2024.



6. There is no independent objection filed by the above said judgment-debtor and since the judgment-debtor has not been able to obtain any stay, so far, from this Court where her Regular First Appeal is pending adjudication, it is not permissible for her to challenge the auction by filing a separate petition under Article 227 of Constitution of India.
7. The petitioner seems to apprehend that the auction is being conducted merely on the basis of Execution Petition which is signed by only one of the decree-holders and, therefore, such auction is not legally permissible.
8. The above said contention is fallacious.
9. The Executing Court has permitted the Court auction and once the auction take place, all the parties, shall be entitled to receive share from the sale proceeds in terms of final decree and it cannot be assumed that such sale consideration would be pocketed solely by the decree-holder who has signed the Execution Petition.
10. Be that as it may, this Court does not find any reason to interfere with the order of auction, particularly in view of the fact that there is no stay of execution.
11. The petition stands dismissed.
12. Needless to say, petitioner is always at liberty to approach the learned RFA Court seeking stay of the execution proceedings.

(MANOJ JAIN)
JUDGE

OCTOBER 18, 2024/ss