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

+ **CM(M) 113/2025**

IFTIKHAR HASAN

.....Petitioner

Through: Mr. Amiet Andlay, Mr. Arun K. Sharma and Mr. Anis Ur Rehman, Advs.

versus

**MR. RIAZUDDING (SINCE DECEASED)
THROUGH LEGAL HEIRS.**

.....Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAVINDER DUDEJA

ORDER

20.01.2025

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CM APPL. 3358/2025 (Exemption)

Allowed, subject to all just exceptions.

The application stands disposed of.

CM(M) 113/2025 & CM APPL. 3356/2025 (Dispense with the summons/notice to respondents) & CM APPL. 3357/2025 (Stay)

1. This is a petition under Article 227 of the Constitution of India for setting-aside the order dated 20.12.2024, passed by the learned Civil Judge-06, Tis Hazari in Execution Petition No.2511/2024 titled as “Mr. Iftikhar Hasan vs. Mr. Riazuddin (since deceased through legal heirs)”.

2. Petitioner filed a suit for specific performance of agreement to sell dated 25.06.2003 with respect to the property measuring 1 bigha 19 biswas out of Khasra No.88/02, Village Wazirabad, Delhi.



3. Vide judgement dated 30.05.2015, the suit was decreed in favour of the petitioner with directions to the respondent to execute the sale deed in favour of the petitioner.
4. Respondent preferred an appeal against the judgment and decree of the Trial Court, which came to be dismissed in default for non-prosecution vide order dated 07.01.2023.
5. The learned counsel submits that petitioner/decreed holder filed an execution application in July 2024. However, vide impugned order dated 20.12.2024, the Trial Court issued notice of the execution to the Judgment Debtor.
6. As per order XXI Rule 22 CPC, the court need not issue notice of the execution petition if the same is filed within two years of the passing of the decree.
7. The Trial Court in the previous order dated 18.10.2024 observed that the decree was passed in the year 2015 and, therefore, deemed it fit to issue notice of the execution petition vide order dated 18.10.2024 as also the impugned order dated 20.12.2024
8. The learned counsel submits that appeal is continuation of the suit and the original decree merges in the appellate decree.
9. In support of his submission, the learned counsel relies on the decision of this Court in the case *Ravinder Prakash Punj Vs. Punj Sons Pvt. Ltd and Ors 192(2012) DLT 661 (DE)*.
10. The learned counsel thus submits that execution application was filed within two years from the dismissal of the appeal and, therefore, in view of order XXI Rule 22 CPC, notice should not have been ordered to be issued.
11. After part submissions, the learned counsel seeks permission of this



Court to urge all contentions before the Trial Court in the light of the judgment cited above.

12. In view of the aforesaid, the petition is disposed of granting liberty to the petitioner to urge his submissions before the Trial Court in the light of the above cited judgment.

13. The Trial Court shall pass a reasoned order in the light of the judgment cited.

14. However it is made clear that this order has not been passed on the merits of the case and the Trial Court shall pass the order notwithstanding any observation made in this Court.

RAVINDER DUDEJA, J

JANUARY 20, 2025/sky/FS