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* IN THE HIGH COURT OF DELHI AT NEW DELHI

Date of Decision: 15.05.2025

+ C.R.P. 51/2025, CM APPL. 9287/2025, CM APPL. 9286/2025

FAIZAL KHAN

.....Petitioner

Through: Mr. Lakshay Sharma, Adv.

versus

MOHD NADEEM & ANR.

.....Respondents

Through: Mr. Pulkit Dandona, Ms. Kiran, Ms. Tanishka Patel, Advs. for R-1
Mr. Karan Pal Singh, Adv. for R-2
Mr. Kameshwar Nath Mishra, SPC with Ms. Vidya Mishra, Ms. Manisha, Advs. for UOI with SI Sweety Singh, PS Chandni Mahal

CORAM:

HON'BLE MS. JUSTICE TARA VITASTA GANJU

TARA VITASTA GANJU, J.: (Oral)

1. The present Petition has been filed under Section 115 of the Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] seeking to challenge the Order dated 04.07.2023 passed by the learned ADJ-10, Central, Tis Hazari Courts, Delhi in Execution No. 149/2020 captioned ***Sushma Choudhary v. Mohd Nadeem*** [hereinafter referred to as "Impugned Order"]. By the Impugned Order, the learned Executing Court has dismissed an Application under Section 151 read with Section 47 of the CPC filed by Petitioner/Objector seeking to set aside a mediation settlement dated 01.09.2022.

2. It is the case of the Petitioner/Objector that he is the tenant in the



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property bearing house no. 2110 and 2111, Third Floor, Ward No. X, Fasil Road, Turkman Gate, Delhi-110006 [hereinafter referred to as “suit property”] consisting of three room set along with all fixtures and fittings. The Petitioner/Objector executed a rent agreement dated 18.09.2021 for a period of 11 months from 28.09.2021 till 28.08.2022 and that he had, at the time of execution of the said rent agreement paid Rs. 15,00,000/- as security deposit to Respondent No.1/Judgment Debtor. It was stated by the Petitioner/Objector before the learned Executing Court that he was willing to vacate and handover the possession of the suit property if the security amounts in the sum of Rs.15,00,000/- are returned to him.

2.1 The Respondent No. 1/Judgment Debtor, on the other hand, has contended that neither he has taken any money nor has entered into any agreement with the Petitioner/Objector.

3. The learned Executing Court has examined the objections and held that the Petitioner/Objector is a tenant in the suit property in terms of the rent agreement. Relying on Order XXI Rule 36 of the CPC, the learned Executing Court has found that the Petitioner/Objector is bound to abide by the warrants in the execution of decree and deliver the possession of the suit property to the Decree Holder and has dismissed the objections filed by the Petitioner/Objector. It is this order that is subject to challenge in the present Petition.

4. The brief facts are that the Respondent No.2/Decree Holder had filed a suit for recovery of Rs.44,02,546/- against the Respondent No.1/Judgment Debtor being Civil Suit No.2828/2017 captioned ***Smt. Sushma Choudhary v. Sh. Mohd Nadeem***. During the course of proceedings, the suit was



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amicably settled. The Respondent No.1 (Defendant before the learned Trial Court) had agreed to make payment in the sum of Rs.44,02,546/- to Respondent No.2 on or before 25.05.2018. The settlement also provided for a penal interest at the rate of 24% per annum in case of any breach.

4.1 The statements of both the Respondent No.1/Judgment Debtor and Respondent No.2/Decree Holder were recorded before the learned Trial Court and the suit was disposed of in view of the settlement arrived at between the parties on 22.01.2018 and a decree in terms thereof was passed [hereinafter referred to as the Impugned Decree].

4.2 Since there was a breach of the terms of the settlement, execution proceedings were filed by the Respondent No.2/Decree Holder against the Respondent No.1/Judgment Debtor being Execution Petition No. 149/2020 captioned ***Sushma Choudhary v. Mohd Nadeem***. By an order dated 12.05.2022 [hereinafter referred to as the "Attachment Order"], the learned Executing Court allowed an Application filed by the Respondent No.2 under Order XXI Rules 12 and 13 of the CPC seeking attachment of properties of Respondent No.1 and warrants of attachment against the suit property were issued.

4.3 On 10.06.2022, the Respondent No.1/Judgment Debtor appeared before the learned Executing Court and submitted that he is willing to handover the suit property to the decree holder/Respondent No.2 and would also execute the sale deed with respect to the suit property on or before 30.07.2022. In addition, it was averred by the Respondent No.1/Judgment Debtor that he would also buy one commercial shop in the name of Respondent No.2/Decree Holder or pay an amount of Rs 23,00,000/- on or



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before 31.12.2022 to the Respondent No.2/Decree Holder.

4.4 Although the sale deed of the suit property was executed by the Respondent No.1/Judgment Debtor in favour of the Respondent No.2/Decree Holder on 04.08.2022, the delivery and possession of the suit property could not be handed over since the Respondent No.1/Judgment Debtor had concealed the fact that the physical possession of the suit property was not with him but with the Petitioner/Objector as a tenant.

5. The Petitioner/Objector then filed the Objections under Section 151 read with Section 47 of the CPC against the execution of Impugned Decree as well as the Attachment Order.

5.1 It is the case of the Petitioner/Objector that he had paid Rs.15 lacs to the Respondent No.1/Judgment Debtor and that he would vacate the suit property upon getting the refund of the security amount of Rs.15 lacs from the Respondent No.1/Judgment Debtor.

5.2 The Application filed by the Petitioner/Objector was dismissed by the Impugned Order dated 04.07.2023. Although the Application for review of the Impugned Order was also filed by the Petitioner/Objector, which was dismissed by an order dated 16.12.2024 passed by the learned Executing Court. The challenge in the present Petition is only to the Impugned Order.

6. The learned Trial Court, based on the admission of the Petitioner/Objector that he is a tenant in the suit property and relying on the provisions of Order XXI Rule 36 of the CPC has held that, in view of the fact that the Petitioner/Objector is claiming rights through Respondent No.1/Judgment Debtor and in terms of the provisions of Order XXI Rule 36 of the CPC, the property in the possession of a tenant is bound to be



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delivered to the Decree Holder, and thus, dismissed the Objections filed.

7. A Coordinate Bench of this Court by its order dated 17.02.2025 had directed the SHO, PS Chandni Mahal to give a Status Report on the action taken by the SHO of PS Chandani Mahal on the complaint filed by the Petitioner/Objector.

7.1 Pursuant thereto, the SHO, PS Chandni Mahal has filed a Status Report dated 13.04.2025. It is stated therein that during the enquiry, Respondent No.1/Judgement Debtor in his statement stated that although Petitioner/Objector agreed to pay Rs. 15 lakhs as security but has paid only Rs. 3 lakhs and failed to deposit the remaining amount. Also, that the Petitioner/Objector has not paid the monthly rent of Rs 500/- but still continues to reside in the suit property. The Respondent No.1/Judgment Debtor has further informed the police officer that he was the owner of the suit property at the time of entering into the rent agreement with the Petitioner/Objector. However, later he had sold the suit property to Respondent No.2/Decree Holder through a sale deed dated 04.08.2022.

8. A review of the Objections filed by the Petitioner/Objector shows that the only ground of objection that is raised is that the Respondent No.1 has not refunded the security deposit of Rs.15 lacs to the Petitioner/Objector and that the Petitioner/Objector will hand over the possession when the amount is refunded by Respondent No.1. The Objections further state that the Petitioner/Objector was not aware of the pendency of the present proceedings and that since he is in physical possession of the suit property, he is entitled to raise objections and get the refund of Rs.15 lacs from the Respondent No.1 prior to vacating the suit property.



9. Concededly, the Petitioner/Objector is seeking to challenge a decree passed against a third party by filing Objections before the learned Executing Court. It is settled law that the learned Executing Court cannot go beyond the decree. The Supreme Court in ***Rafique Bibi (Dead) by LRs v. Sayed Waliuddin (Dead) by LRs & Ors.***¹, has held that a decree passed by a court of competent jurisdiction cannot be denied by any collateral attack or incidental proceedings. The remedy of a person aggrieved by such a decree is to have it set aside in duly constituted legal proceedings or by a superior court failing which such person must obey the command of the decree. The relevant extract of ***Rafique Bibi*** is reproduced herein below:

*“7. Two things must be clearly borne in mind. **Firstly, “the court will invalidate an order only if the right remedy is sought by the right person in the right proceedings and circumstances. The order may be ‘a nullity’ and ‘void’ but these terms have no absolute sense: their meaning is relative, depending upon the court’s willingness to grant relief in any particular situation.** If this principle of illegal relativity is borne in mind, the law can be made to operate justly and reasonably in cases where the doctrine of ultra vires, rigidly applied, would produce unacceptable results.” (Administrative Law, Wade and Forsyth, 8th Edn., 2000, p. 308.) Secondly, there is a distinction between mere administrative orders and the decrees of courts, especially a superior court. “The order of a superior court such as the High Court, must always be obeyed no matter what flaws it may be thought to contain. Thus a party who disobeys a High Court injunction is punishable for contempt of court even though it was granted in proceedings deemed to have been irrevocably abandoned owing to the expiry of a time-limit.” (ibid., p. 312)*

*8. A distinction exists between a decree passed by a court having no jurisdiction and consequently being a nullity and not executable and a decree of the court which is merely illegal or not passed in accordance with the procedure laid down by law. **A decree suffering from illegality or irregularity of procedure, cannot be termed inexecutable by the executing court; the remedy of a person aggrieved by such a decree is to have it set aside in a duly constituted legal proceedings or by a superior court failing which he must obey the command of the decree.***

¹ (2004) 1 SCC 287



A decree passed by a court of competent jurisdiction cannot be denuded of its efficacy by any collateral attack or in incidental proceedings.

9. In *Vasudev Dhanjibhai Modi v. Rajabhai Abdul Rehman* [(1970) 1 SCC 670] it has been held: (SCC pp. 672-73, para 7)

“..When the decree is made by a court which has no inherent jurisdiction to make it, objection as to its validity may be raised in an execution proceeding if the objection appears on the face of the record. But where the objection as to jurisdiction of the court to pass the decree does not appear on the face of the record and requires examination of the questions raised and decided at the trial or which could have been but have not been raised, the executing court will have no jurisdiction to entertain an objection as to the validity of the decree even on the ground of absence of jurisdiction...”

10. **It is not the plea of the appellant judgment-debtors that the court which passed the decree did not have the jurisdiction to do so.** It is also not their case that a ground for eviction of the tenants on the ground of default in payment of arrears of rent was not available to the respondent landlords within the meaning of the Delhi and Ajmer Act or the successor Rajasthan Act. The only submission made is that before passing the decree the Court should have afforded the tenant an opportunity of depositing the rent in arrears, which was not done. Firstly, we find merit in the submission of the learned counsel for the respondents that it was for the tenants to have invited the attention of the Court by making an application in that regard so as to avail an opportunity of wiping out the effect of their default, which gave rise to cause of action to the respondents, by depositing the rent during the pendency of the suit. That having not been done, the appellant tenants cannot be heard to urge any infirmity in the decree. **Secondly, accepting it at its face value, in the eyes of law, the challenge seeks to expose a procedural irregularity which may, at best, result in the decree being termed as an “illegal decree”, but that in itself would not amount to branding the decree as “without jurisdiction” or “a nullity”. The plea which is sought to be urged in the execution proceedings was available to be raised by the tenants before the High Court in an appeal against the decree. Such a plea was not taken before the passing of the decree and cannot now be allowed to be urged during the execution proceedings.** It is unfortunate that a decree of eviction passed in a suit commenced in the year 1956 and culminating in a final decree in the year 1986 is still starving for its execution.”

[Emphasis Supplied]

10. Admittedly, it is not the case of the Petitioner/Objector that the court



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which passed the decree did not have the jurisdiction to pass the decree. The only submission of the Petitioner/Objector is that the security amount of Rs.15 lacs paid to the Respondent No. 1 should be refunded. This plea raised by the Petitioner/Objector ought to be raised before a court of competent jurisdiction and cannot be raised before the Executing Court. Hence, the plea of the petitioner urging infirmity in Executing Court's order is without any merit.

11. In view of the foregoing, the remedy of the Petitioner/Objector does not lie before the learned Executing Court. Thus, the objections as filed by the Petitioner/Objector were rightly dismissed by the learned Executing Court.

12. The Petition is accordingly dismissed. All Pending Applications stand closed.

13. This order however shall not preclude the Petitioner/Objector from taking appropriate remedies in accordance with law before the appropriate forum. The rights and contentions of the parties are left open in this behalf.

14. The parties shall act based on digitally signed copy of the order.

TARA VITASTA GANJU, J

MAY 15, 2025/r/ha

Click here to check corrigendum, if any