



\$~43

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **C.R.P. 58/2025 & CM APPL. 11203/2025, CM APPL. 11204/2025**

SURENDER SHEKHAWAT
AND ANR

.....Petitioners

Through: Mr. D.P.S. Gulani, Adv.

versus

VIPIN KUMAR AND TYAGI

.....Respondent

Through:

CORAM:
HON'BLE MR. JUSTICE AMIT MAHAJAN

ORDER
24.02.2025

%

1. By the present petition, the petitioner challenges the order dated 29.01.2025 (hereafter '**impugned order**') whereby the learned District Judge ('**DJ**'), Central, Tis Hazari Court, Delhi issued warrant of recovery of possession of the suit property, and permitted the bailiff to break open the lock/door of the property to ensure the delivery of possession in EX 753/2017.
2. The brief facts of the case are that a judgment was passed in favour of the decree holder in respect of the property bearing No. 6 FF, Balaji Apartment, Upkar Colony, Sant Nagar, Burari and against the petitioner *vide* order dated 25.01.2017. The appeal filed by the petitioner against the decree dated 25.01.2017 was dismissed by this Court. Thereafter, the petitioner filed an application under Order 21 Rule 29 of the Code of Civil Procedure, 1908 ('**CPC**') seeking stay of the execution of the decree which was also dismissed by the learned Executing Court on 14.12.2023. Additionally, the petitioner also filed an application under Section 44 of the Indian Evidence Act, 1872



(‘IEA’) read with Section 151 of the CPC for recalling/cancellation of the decree dated 25.01.2017 alleging that the same was obtained by the decree holder on the basis of forged and fabricated documents. The same was also dismissed by the learned Executing Court by the order dated 05.10.2023. Subsequently, a review petition under Order 47 Rule 1 of the CPC was filed by the petitioner seeking review of the order dated 05.10.2023.

3. The petitioner is essentially aggrieved that the learned Executing Court without disposing of the application filed by the petitioner under Order 47 Rule 1 of the CPC seeking review of the order dated 05.10.2023, issued warrant of recovery of possession. It is the petitioner’s case that another application dated 01.06.2023 is also pending disposal.

4. From a bare perusal of the impugned order, it is evident that part arguments were heard on the application filed by the petitioner under Order 47 Rule 1 of the CPC. Further, a query was raised by the learned Executing Court in relation to the maintainability of the present application when a similar application filed by the petitioner pertaining to the same issue had been dismissed by the learned Executing Court. The learned Executing Court also noted that in terms of Order 47 Rule 1(1) of the CPC a review application can only be filed when no appeal has been filed. Consequently, the learned Executing Court questioned the maintainability of the application under Order 47 Rule 1 of the CPC when the petitioner had already availed the opportunity to file an appeal. Since the petitioner failed to raise any ground in regard to the maintainability of the application, the learned Executing Court issued warrant of recovery of possession.



5. It is pertinent to mention that the decree was passed way back on 25.01.2017, and the appeal against the said decree had also been dismissed by this Court. The petitioner subsequently preferred an application under Section 44 of the IEA read with Section 151 of the CPC before the learned Executing Court claiming that the decree dated 25.01.2017 was obtained by fraud. When the appeal filed by the petitioner against the decree dated 25.01.2017 was dismissed by this Court, it was not open to the petitioner to challenge the findings of the Trial Court before the Executing Court.

6. The learned Executing Court rightly questioned the maintainability of the application under Order 47 Rule 1 of the CPC when the petitioner had already availed the opportunity to file an appeal.

7. Since no worthy grounds had been pleaded on the maintainability of the application under Order 47 Rule 1 of the CPC, the learned Executing Court rightly issued the warrant of recovery of possession of the suit property.

8. It is pertinent to mention that the execution is pending since the year 2017. From a perusal of the material on record, it seems that the petitioner has consistently been filing multiple application only in an attempt to stall the execution proceedings.

9. In view of the aforesaid, this Court does not find any infirmity in the impugned order.

10. The present petition is accordingly dismissed.

AMIT MAHAJAN, J

FEBRUARY 24, 2025