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

% ***Date of Decision: 20th March, 2025***

+ **CM(M) 524/2025 & CM APPL. 16348-16349/2025**

JAYA DEVI

.....Petitioner

Through: **Mr. Suraj Yadav, Advocate.**

versus

BHUPESH KUMAR & ANR.

.....Respondents

Through: **None.**

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT (oral)

1. This Court is conscious of the limited scope and ambit of appreciation, while dealing with an application filed under Section 47 CPC.

2. It is settled position of law that the Executing Court can allow objection under Section 47 CPC only if it is found that the decree is *void ab initio* or nullity or if it is not capable of execution under the law.

3. Reference in this regard be made to one recent judgment of Hon'ble Supreme Court of India in *Pradeep Mehra vs. Harijivan J. Jethwa (Since deceased Thr. LRs) & Ors*, 2023 SCC OnLine SC 1395.

Para 10, 11 and 12 of said judgment read as under:-

“10. A bare perusal of the aforesaid provision shows that all questions between the parties can be decided by the executing court. But the important aspect to remember is that these questions are limited to the “execution of the decree”. The executing court can never go behind the decree. Under Section 47, CPC the executing



court cannot examine the validity of the order of the court which had allowed the execution of the decree in 2013, unless the court's order is itself without jurisdiction. More importantly this order (the order dated 12.02.2013), was never challenged by the tenants/judgment debtors before any forum.

11. The multiple stages a civil suit invariably has to go through before it reaches finality, is to ensure that any error in law is cured by the higher court. The appellate court, the second appellate court and the revisional court do not have the same powers, as the powers of the executing court, which are extremely limited. This was explained by this Court in Dhurandhar Prasad Singh v. Jai Prakash University, (2001) 6 SCC 534, in para 24, it had stated thus:

“24. The exercise of powers under Section 47 of the Code is microscopic and lies in a very narrow inspection hole. Thus, it is plain that executing court can allow objection under Section 47 of the Code to the executability of the decree if it is found that the same is void ab initio and a nullity, apart from the ground that the decree is not capable of execution under law either because the same was passed in ignorance of such a provision of law or the law was promulgated making a decree inexecutable after its passing.”

12. This Court noted further:

“..... The validity or otherwise of a decree may be challenged by filing a properly constituted suit or taking any other remedy available under law on the ground that the original defendant absented himself from the proceeding of the suit after appearance as he had no longer any interest in the subject of dispute or did not purposely take interest in the proceeding or colluded with the adversary or any other ground permissible under law.”

4. Petitioner herein suffered a decree.
5. The suit was filed by Sh. Bhupesh Kumar and Sh. Pawan Kumar and they sought for permanent injunction and specific performance of *Agreement to Sell*.
6. Since defendant therein neither appeared despite summons nor did she file any written statement, she was proceeded against ex-parte vide order dated 02.12.2021.



7. The decree was, eventually, passed against her on 12.09.2022.
8. She, subsequently, filed applications under Order IX Rule 13 read with Section 151 CPC and Section 5 of Limitation Act and her such applications were considered by learned Trial Court on 06.02.2024. Learned Trial Court, while observing that she has not been able to show sufficient cause for her non-appearance despite receiving summons as well as Court notice, was constrained to dismiss her abovesaid applications.
9. Admittedly, such order has not been assailed by her, so far.
10. Instead, she filed an application under Section 47 CPC, wherein, it seems that she has reiterated the fact that she was never served with any summons. It was also attempted to be argued by her that though plaintiff had relied upon one agreement but he did not prove the same by examining the witness, related to execution of such agreement.
11. Learned Trial Court observed that the plea taken by her in her abovesaid application under Section 47 CPC “*did not relate to the execution, discharge or satisfaction of the decree*” and, therefore, while relying upon *Pradeep Mehra (supra)*, it dismissed the abovesaid application.
12. It is settled position of law that the question raised under Section 47 CPC is limited to “*execution of the decree*” and the Executing Court cannot even go beyond the decree. It cannot even examine the validity of the order, unless the order is without jurisdiction or, for that matter, the decree is *void ab initio* and nullity. No such fact has been put forth, either before the learned Trial Court or before this Court. Mere allegation that the witnesses of the agreement in question were not



examined, would not mean that the decree has to be taken as nullity. Moreover, for the reasons best known to the petitioner, she has not even challenged the order dated 06.02.2024 whereby her application under Order IX Rule 13 CPC was dismissed by learned Trial Court.

13. This Court, therefore, does not find any merit or substance in the present petition.

14. The petition, along with pending applications, is accordingly dismissed.

(MANOJ JAIN)
JUDGE

MARCH 20, 2025/st/pb