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IN THE HIGH COURT OF DELHI AT NEW DELHI

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Date of Decision: 16.07.2025

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C.R.P. 199/2025, CM APPLs. 41693-94/2025**LEELAWATI**

.....Petitioner

Through: Mr. K.C. Dubey, Mr. Abhishek Agarwal, Mr. Rupesh Kumar, Ms. Vina Tarafdar and Mr. R.K. Dagur, Advocates

versus

RAJIV KUMAR

.....Respondent

Through: Mr. Akil Rataeeya, Mr. Ramit Sehrawat, Mr. Harsh Gulia, Mr. Aaditya Vats and Mr. Sunny Dagar, Advocates.

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 04.07.2025 passed by the learned Civil Judge-02, South-West, Dwarka Courts, New Delhi in Ex. Petition Civil No. 988/22 [hereinafter referred to as "Impugned Order"]. By the Impugned Order, an Application under Order XXI Rule 99 of the CPC has been dismissed by the learned Executing Court.

2. Learned Counsel appearing on behalf of the Respondent, at the outset, submits that the Petitioner has not disclosed the true and correct facts before this Court. He submits that the execution proceedings emanate from a decree in a suit for eviction that has been obtained by the Respondent on 07.10.2022 whereby the learned Trial Court granted the Respondent the



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relief of recovery of possession of the suit property.

2.1 Learned Counsel appearing on behalf of the Respondent further submits that the challenge to the decree was filed by the Petitioner being RCA Civil DJ ADJ No. 5/21 captioned **Munshi Lal v. Rajiv Kumar** and by Order dated 23.08.2024, the Appellate Court dismissed the Appeal filed by the Petitioner. The relevant extract is below:

“14. Ergo, in view of the aforesaid discussion, no infirmity found in the impugned order passed by Ld. Trial Court and accordingly, present appeal of the Appellants/defendants is hereby dismissed. Trial Court Record be sent back along with copy of this judgment.”

3. Learned Counsel further submits that against this dismissal, a Regular Second Appeal has also been filed by the Petitioner, which is pending disposal before a Coordinate Bench of this Court being RSA 14/2025 captioned **Munshi Lal v. Rajiv Kumar** and is next listed for hearing on 17.07.2025. It is further contended that no interim relief against the decree or against the dispossession, has been granted to the Petitioner.

3.1 Learned Counsel, thus, submits that the Petitioner is not entitled to any relief having not disclosed the true and correct facts in this Petition.

3.2 It is further contended that the Petitioner had earlier filed a suit regarding the suit property and challenged the title documents in favour of the Respondent/Decree Holder praying for a decree of declaration and permanent and mandatory injunction against the Respondent which is pending before the learned Trial Court being 10 CS DJ ADJ 1008/23 captioned **Leelawati Devi v. Rajiv Kumar & Anr.** [hereinafter referred to as "2nd Suit"]. Learned Counsel for the Respondent submits that the Application for interim relief that was filed by the Petitioner under Order



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XXXIX Rules 1 and 2, CPC has also been dismissed by the learned Trial Court by an order dated 23.08.2024 finding that there is no *prima facie* case in favour of the Petitioner. The relevant extract of this order dated 23.08.2024 passed in these proceedings is reproduced below:

*“... At this stage, this Court is only concerned to see the prima facie case only. On perusal of documents at page No.65 to 90 of the plaint, it is clear that several cases of the recovery of money pending against the husband of the plaintiff. It seems that the husband of plaintiff is a habitual borrower. To support her contention, the plaintiff has failed to append any document as to how the signatures of her husband on blank papers were obtained. **There seems to be no prima facie case in favour of the plaintiff.**”*

[Emphasis supplied]

4. Learned Counsel for the Respondent further avers that in any event this Petition is not maintainable in view of proviso to Section 115 of the CPC.

5. Thus, it is the contention of the learned Counsel for the Respondent that the Petitioner should not be entitled to any relief, given the fact that the Petition conceals all these averments.

6. Learned Counsel for the Petitioner submits that learned Executing Court erred in law by rejecting the objections filed under Order XXI Rule 99 CPC on the ground that these objections were premature. Learned Counsel further contends that Petitioner is in settled possession of the property in her own right and is not bound by the decree which has allegedly been obtained through fraud. It is contended that when a third party claims independent possession and ownership, the Executing Court is duty-bound to adjudicate the objections before proceeding with the execution.

7. A review of the Petition filed shows that all the orders that have been referred to by the Respondent and set out above, have not been placed on



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record by the Petitioner.

8. Learned Counsel for the Respondent has handed across the copies of the decree as well as the orders mentioned above, which he has sought to rely upon. Registry is directed to scan and upload the same so that they remain embedded in the case file.

9. This Court agrees with the learned Counsel for the Respondent that clearly the Petition has been filed concealing the true and correct facts in the present case. It is settled law that one who does approach the Court with clean hands is not entitled to any relief from the Court. Given the chequered history of pending and decided legal proceedings, *inter se* the parties, it was incumbent on the Petitioner to have filed the proceedings referred to in paragraphs hereinabove which has not been done.

10. As stated above, the challenge in the present Petition is to an order passed by the learned Executing Court on 04.07.2025. The record reflects that the Application was filed under Order XXI Rules 99 of the CPC by the Petitioner/Applicant, which was dismissed by the learned Executing Court by an order dated 04.07.2025 and warrants of possession with police aid were issued by the learned Trial Court.

10.1 The documents that have been placed on record by the Respondent reflect that a decree in the original suit (CS No. 102/2022) for eviction, recovery of possession, damages, and permanent injunction was passed ex parte on 07.10.2022 against the Petitioner/Judgement Debtor. This dismissal was challenged by the Petitioner/Judgement Debtor in an Appeal and the learned Appellate Court found that no *prima facie* case was made out in



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favour of the Petitioner/Judgement Debtor and thus has dismissed the Appeal.

11. As discussed above, the Impugned Order has dismissed the application filed by the Petitioner/Objector on the ground that the same was premature under Order XXI Rule 99 CPC, as the said provision becomes applicable only upon dispossession, and the Petitioner admittedly remains in possession of the suit property. The learned Executing Court also observed that the Petitioner had earlier filed the 2nd Suit before the Court of learned Trial Court being 10 CS DJ ADJ 1008/23 captioned ***Leelawati Devi v. Rajiv Kumar & Anr.***, along with an application under Order XXXIX Rules 1 and 2 CPC, which was dismissed due to lack of *a prima facie* case. Given the delay of two years and the pendency of related proceedings before the High Court and learned Trial Court held that the Petitioner ought to have pursued remedies before the appropriate forum and accordingly dismissed the application.

12. In any event, the Petition is not maintainable in view of the proviso to Section 115 of the CPC. It is no longer *res integra* that the provisions of Section 115 of the CPC cannot be invoked except where an order, if made in favour of the revisionist, would have finally disposed of the suit or proceedings. This is set out in the proviso to Section 115 of the CPC below:

“Section 115 – Revision

The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity,



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the High Court may make such order in the case as it thinks fit:

Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

[Emphasis Supplied]

12.1 The Supreme Court in ***Shiv Shakti Coop. Housing Society, Nagpur v. Swaraj Developers & Ors.***¹ has held that unless the order is given in favour of the party applying for the revision would have given finality to the suit or other proceeding, a revision is not maintainable. The relevant extract of the ***Shiv Shakti*** case is set out below:

“32. A plain reading of Section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is “yes” then the revision is maintainable. But on the contrary, if the answer is “no” then the revision is not maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the lis, the revision will not be maintainable. The legislative intent is crystal clear. Those orders, which are interim in nature, cannot be the subject-matter of revision under Section 115. There is marked distinction in the language of Section 97(3) of the Old Amendment Act and Section 32(2)(i) of the Amendment Act. While in the former, there was a clear legislative intent to save applications admitted or pending before the amendment came into force. Such an intent is significantly absent in Section 32(2)(i). The amendment relates to procedures. No person has a vested right in a course of procedure. He has only the right of proceeding in the manner prescribed. If by a statutory change the mode of procedure is altered, the parties are to proceed according to the altered mode, without exception, unless there is a different stipulation.”

[Emphasis Supplied]

12.2 In the case of ***Gayatri Devi v. Shashi Pal Singh***², the Supreme Court while relying on the ***Shiv Shakti Coop. Housing Society*** case has held that

¹ (2003) 6 SCC 659

² (2005) 5 SCC 527



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an order interim in nature or which does not finally decide the lis, cannot be challenged by way of a revision under Section 115 CPC.

“14. In the first place, it appears to us that the revision petition before the High Court was wholly incompetent in view of the amended provision of Section 115 CPC. The revision petition was entertained at the stage of interlocutory proceedings. As laid down by this Court in Shiv Shakti Coop. Housing Society v. Swaraj Developers [(2003) 6 SCC 659] an order interim in nature or which does not finally decide the lis, cannot be challenged by way of a revision under Section 115 CPC.”

[Emphasis Supplied]

13. Concededly, the Impugned Order does not give a finality to the proceedings at hand. Thus, the Impugned Order is not an order which is amenable to challenge under Section 115 of the CPC.

14. The Petition is accordingly dismissed with costs. All pending Applications stand closed.

14.1 However, and in view of the concealment by the Petitioner, which is discussed above, this Court deems it apposite to impose costs upon the Petitioner in the sum of Rs.25,000/- to be paid to the Respondent within a period of four weeks from today.

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

TARA VITASTA GANJU, J

JULY 16, 2025/pa/r