

IN THE COURT OF SH. SOMITRA KUMAR,
DISTRICT JUDGE – 06 (EAST DISTRICT),
KARKARDOOMA COURTS, DELHI

Execution No.:- 117/2023

IN THE MATTER OF :-

Sh. Rakesh Seth

....Decree Holder

VERSUS

Sh. Raj Kumar

...Judgment Debtor

ORDER ON APPLICATIONS/ OBJECTIONS UNDER ORDER
XXI RULE 99 TO 101 READ WITH SECTION 144 AND 151
OF CPC
18.01.2025

1. Four applications have been filed on behalf of the applicants/objectors namely Sh. Subhash Dey, Sh. Radha Krishan, Sh. Sutantar Pal Handa and Sh. Arun Kumar under Order XXI Rule 99, 100, and 101 read with Sections 144 and 151 of Code of Civil Procedure, 1908 (hereinafter referred to as “CPC”) praying for the restoration of possession of shop no.1 to the applicant Sh. Subhash Dey, shop no.2 to the applicant Sh. Radha Krishan, shop no.3 to the applicant Sh. Sutantar Pal Handa and Shop no.4 and 5 to the applicant Sh. Arun Kumar. The said shops are situated on the ground floor of the property bearing no.

165, J & K, Block Laxmi Nagar, Delhi. Hereinafter the aforesaid shops situated at the ground floor of the property bearing no. 165, J & K, Block Laxmi Nagar, Delhi and forming part of the said property is referred to as “the suit shops” and the property bearing no. 165, J & K, Block Laxmi Nagar, Delhi is referred to as “the suit property”.

2. In the said application, the applicants/objectors also prayed for restoration of the possession of the aforesaid shops in the same condition as the said shops were which they were dispossessed. Applicants/Objectors also pray for damages against the decree holder from the date of dispossession from the shops i.e. on 06.04.2024. Applicants further prayed that decree holder and the bailiff may also be punished for making the false statement and misguiding the court.

3. Along with the aforesaid applications/objections, the applicants/objectors also moved applications under Section 151 of CPC praying for stay of the execution proceedings till the disposal of application/objection under Section 99, 100 and 101 r/w Section 144 and Section 151 CPC and also praying for that Decree Holder be restrained from creating third party interest or part with possession of the aforesaid suit shops on the ground floor of suit property.

4. Replies are filed on behalf of the decree holder to the applications under Order 99, 100 r/w Section 144 and 151 of CPC as well as to applications under Section 151 of CPC. Written submissions/additional written submissions are also filed on behalf of the Decree Holder and on behalf of the objector Sh. Arun Kumar.

5. The present execution petition relates to the execution of the judgment/decreed dated 20.05.2011 passed by Sh. Rajinder Kumar Shastri, then Additional District Judge-06, (Central), Tis Hazari Courts, Delhi in the matter of the suit bearing CS No. 20/2010 titled “Sh. Rakesh Seth vs. Mr. Raj Kumar@Raja Bhatnagar & Ors.”, whereby defendants, *inter alia*, were directed to handover the possession of the suit property to the plaintiff (now decree holder). The suit property in the said suit was described as the property bearing municipal no. 165, Block J & K, Laxmi Nagar, Delhi-92 measuring 246.6 sq. yds forming part of Rectangle No. 62, Kila No. 1, situated in abadi of Laxmi Nagar and area of village Khureji Khas.

6. In the present matter, an execution petition was first filed in February 2012 for the execution of said judgment/decreed dated 20.05.2011 in the Court of Ld. ADJ, Tis Hazari Courts. However, an appeal bearing RFA No. 208/2012 titled “Raj Kumar@Raja Bhatnagar vs Rakesh Seth & Ors” was filed against the judgment/decreed dated 20.05.2011 by the Judgement Debtors (JDs) and in the said appeal the operation of the impugned judgment/decreed was stayed. In view of said stay, the proceedings in the Execution petition was adjourned sine die by the concerned Court of Ld. ADJ, Tis Hazari Courts vide order dated 11.08.2017. The appeal RFA No. 208/2012 was dismissed on 14.11.2019 by the Hon’ble High Court of Delhi for non-prosecution on behalf of the JDs.

7. After the dismissal of the appeal, the Decree Holder filed an application for revival of the execution petition and vide order dated 29.04.2022 of concerned Ld. ADJ, Tis Hazari Courts,

Delhi, the said execution petition no. 124405/2016 was revived. Thereafter, Ld. Executing Court passed orders including notice to JDs, and issuance of warrant of possession against Judgement Debtors. However, the same could not be executed for one reason or other. In the meantime, as the suit property was situated within the jurisdiction of East District, Delhi, vide order dated 07.08.2023 the decree dated 20.05.2011 in the matter was transferred to the East District, Karkardooma Court, Delhi.

8. The Ld. Counsel for the DH submitted before the Court that the present execution petition is a continuation of the original execution petition filed in the year 2012 and the appeal filed by JDs against the judgment/decreed dated 20.05.2011 sought to be enforced by way of the present execution petition was dismissed in the year 2019 for non-prosuection and in case notice of the execution petition is issued to the JDs, it would result in unreasonable delay in the execution of the decree.

9. In view of fact that the decree was more than 12 years and appeal against the judgment/decreed was already dismissed by the Hon'ble High Court of Delhi, vide order dated 08.01.2024, warrant of possession in respect of property bearing municipal no. 165, J & K Block, Laxmi Nagar, Delhi-110092 were issued against the Judgement Debtors (JDs) on filing PF. The said warrant of possession remained unexecuted. As per the report dated 12.02.2024 of the Court Bailiff, when he went to execute the warrant of possession on the aforesaid property, three shops were found locked and three shops were found open and JDs were not available but two to three persons and one lady were present at the site, and said persons and lady refused to vacate the

aforesaid property and created resistance and obstruction in the entry of the Bailiff and Decree Holder to the aforesaid property and also created altercation. In view of this, the Court Bailiff requested for the police assistance along with the permission to break open the locks for the execution of the warrant of possession.

10. Thereafter, an application was moved on behalf of the Decree Holder on 27.02.2024 under section 151 of CPC supported with an affidavit for direction to the Bailiff to break open the locks at the suit property and provide police assistance to Bailiff to execute warrant of possession in respect of the suit property.

11. On 01.03.2024, a separate statement of the Bailiff was recorded qua proceedings in respect of warrant of possession issued vide order dated 08.01.2024 and obstruction and resistance posed by the people present and gathered at the suit property to the execution of the warrant of possession issued in respect of the aforesaid property and the requirement of break open of locks as well as of police assistance for execution of the warrant of possession.

12. In view of the submission made on behalf of the DH as well as statement of the Bailiff, the aforesaid application under section 151 of CPC of the DH was allowed vide order dated 01.03.2024 and a fresh warrant of possession were issued against the Judgement Debtors in respect of the suit property with police assistance and permission to the Bailiff to break open the locks of the suit property.

13. The warrant of possession issued vide order dated 01.03.2024, were executed and the Court Bailiff with the assistance of police delivered possession of the property bearing no. 165, J & K Block, Laxmi Nagar, Delhi-110092 as pointed out by the DH.

14. Thereafter, the instant applications/objections were filed on behalf of four applicants/objectors.

15. Vide order dated 15.04.2024 and 20.05.2024, an interim order was passed by way of which the Decree Holder was directed not to create any third party interest as well as maintain status quo regarding possession of said property bearing no. 165, J & K Block, Laxmi Nagar till NDOH. The DH was further directed not to change/alter the construction of the property bearing no. 165, J & K Block, Laxmi Nagar, Delhi including the shop no(s).1, 2, 3, 4 and 5 of the said property till NDOH. The said interim order has been continued on the previous hearings.

CASE OF APPLICANTS/OBJECTORS:-

16. The case set up by the applicants/objectors is that:-

17. The applicants/objectors namely Sh. Subhsah Dey, Sh. Radha Krishan, Sh. Sutantar Pal Handa and Sh. Arun Kumar that they are in settled possession of suit shops bearing no. 1 to 5 on the ground floor of the property bearing no. 165, J & K Block, Laxmi Nagar for a long time.

18. The objectors/applicant Sh. Subhash Dey has been in settled possession of shop no. 1 on the ground floor of the

property bearing no. 165, J & K Block, Laxmi Nagar (shown in red colour in the site plan filed along with the instant application/objections) since 01.11.1987 and in the year 1987 he was inducted as a tenant in the said shop by the owner of the suit property Smt. Uma Devi. It is further averred that said Uma Devi, as landlady, also issued rent receipts in favour of applicant/Objector, as and when, she received rent from the applicant/objector, and after the death of said Uma Devi, her legal heirs namely Raj Kumar @ Raja Bhatnagar and Ms. Sada Thakur started receiving rent @ Rs. 300/- p.m. from the applicant/Objector and thereafter, they also started issuing rent-receipts in favour of the applicant/Objector. The applicant objector filed on record rent receipts dated 01.11.1987, 01.12.1987 and 01.02.1988 purportedly issued by Smt. Uma Devi, and rent receipts dated 01.01.2010, 26.09.2015 and 13.07.2016 purportedly issued by legal heirs of Smt. Uma Devi in favour of the applicant/objector. During arguments on the instant application, the applicant/ objector on the direction of the Court filed photocopies of rent receipts stated to be for the period from 01.12.1987 to 31.12.2013.

19. The applicant/objector Sh. Subhash Dey has been running his shop in the name and style of M/s Bengal Handloom House from the suit shop. In the year 2007, the applicant/ objector applied his suit shop for registration before the MCD Department under the shop and establishment and the MCD Department and the MCD Department, duly issued license in the name of the applicant/objector vide registration no. 1810015139, process dated 04.01.2007. Not only that the applicant/objector has also

paid conversion charges in respect of the said shop to the MCD Department. The Applicant/objector filed on record copy of the said license as well as conversion charges receipts in favour of the applicant/objector. It is further averred that the applicant/objector has also applied and installed an electricity meter connection in his name in the said suit shop no. 1. The Applicant/objector filed on record photo of electricity meter and the copies of the electricity bills for the months of February 2024, March 2024, and April 2024 with their respective payment proofs. It is further averred that the applicant/ objector that applicant/ objector also applied for registration of his said suit shop under the MSME vide registration no. UDYAM-DL-02-0052707 dated 27.07.2023, and copy of the same is filed on record. The applicant/ objector has also filed some latest purchase bills as well as copy of ITR for the financial year 2021-22, 2022-2023 and 2023-24. The Applicant/objector also filed photographs to show his physical possession of the suit shop no. 1.

20. The applicant/objector Sh. Radha Krishan has been in settled possession of shop no. 2 on the ground floor of the property bearing no. 165, J & K Block, Laxmi Nagar (shown in red colour in the site plan filed along with the instant application/objections) since 20.10.1990 and in the year 1990 he was inducted as a tenant in the said shop by the owner of the suit property Smt. Uma Devi. It is further averred that said Uma Devi, as landlady, also issued rent receipts in favour of applicant/Objector, as and when, she received rent from the applicant/objector, and after the death of said Uma Devi, her

legal heirs namely Raj Kumar @ Raja Bhatnagar and Ms. Sada Thakur started receiving rent @ Rs. 300/- p.m. from the applicant/Objector and thereafter, they also started issuing rent-receipts in favour of the applicant/Objector. The applicant objector filed on record rent receipts dated 20.10.1990, 01.12.1992 and 01.12.1993 purportedly issued by Smt. Uma Devi, and rent receipts dated 12.09.2014, 26.09.2015 and 13.07.2016 purportedly issued by legal heirs of Smt. Uma Devi in favour of the applicant/objector. During arguments on the instant application, the applicant objector on the direction of the Court filed rent receipts stated to be for the period from 20.10.1990 to 01.07.2016.

21. The applicant/objector Sh. Radha Krishan has been running his shop in the name and style of M/s R. K. Store from the suit shop no. 2. In the year, 2007, the applicant/objector applied his suit shop for registration before the MCD Department under the Shop and Establishment Act and the MCD Department, duly issued license in the name of the applicant/objector vide registration no. 1810015105, process dated 04.01.2007. Not only that the applicant/objector has also paid conversion charges in respect of the said shop to the MCD Department. The Applicant/objector filed on record copy of the said license as well as conversion charges receipts in favour of the applicant/objector. It is further averred that the applicant/objector has also got the license from the Delhi Milk Scheme in the said suit shop no. 2, and applicant filed on record acknowledgment receipt dated 20.10.2009 alongwith copy of office order dated 20.10.2009 from the Delhi Milk Scheme issued in favour of the

applicant/objector. It is further averred that the previous landlady Uma Devi also issued NOC in favour of the applicant/objector in respect of installation of electricity meter in the suit shop no. 2 in the name of applicant/objector and the applicant/objector filed on record copy of the same. It is further averred that the applicant/objector has also applied and installed an electricity meter connection in his name in the said suit shop. The Applicant/objector filed on record the copies of the electricity bills for the months of January 2024, February 2024, March 2024 and April 2024 with their respective payment proofs. It is further averred that the applicant/objector has also installed an UPI Machine from Bharat Pe under merchant ID 42427336 (Registered Mobile No.9911742060, and applicant filed on record statement for the period 02.04.2024 to 09.04.2024 in this regard. The applicant/objector has also filed purchase bills in connection with his business conducted from shop no. 2. The Applicant/objector also filed photographs to show his physical possession of the suit shop.

22. The applicant/objector Sh. Sutantar Pal Handa has been in settled possession of shop no. 3 on the ground floor of the suit property (shown in red colour in the site plan filed along with the instant application/objections) since 01.11.1988 and in the year 1987-1988 he was inducted as a tenant in the said shop by the owner of the suit property Smt. Uma Devi. It is further averred that said Uma Devi, as landlady, also issued rent receipts in favour of applicant/Objector, as and when, she received rent from the applicant/objector, and after the death of said Uma Devi, her legal heirs namely Raj Kumar @ Raja Bhatnagar and Ms. Sada

Thakur started receiving rent @ Rs. 300/- p.m. from the applicant/Objector and thereafter, they also started issuing rent-receipts in favour of the applicant/Objector. The applicant objector filed on record rent receipts dated 01.11.1988, 01.12.1989 and 01.02.1995 purportedly issued by Smt. Uma Devi, and rent receipts dated 01.06.2002, 01.07.2002 and 01.08.2005 and 01.11.2005 purportedly issued by legal heirs of Smt. Uma Devi in favour of the applicant/objector. During argument on the instant application, the applicant objector on the direction of the Court filed photocopies of rent receipts for the period from 01.10.1987 to 31.08.2002.

23. The applicant/objector Sh. Sutantar Pal Handa has been running his shop in the name and style of M/s Handa Wool Store from the suit shop no. 3. In the year 1995, the landlady Uma Devi issued an affidavit / NOC in favour of the applicant / objector for applying NOC and the applicant / Objector has applied for the same in the year 1995 as well as in the year 2007 applied for registration of his shop before the MCD Department under the shop and establishment and the MCD Department, duly issued license in the name of the applicant / objector vide registration no. 1810065674, process dated 12.01.2007. Not only that the applicant/ objector has also paid conversion charges in respect of the said shop to the MCD Department. The Applicant/objector filed on record copy of the affidavit/NOC, copy of ad hoc license as well as conversion charges receipts in favour of the applicant/objector. It is further averred that the applicant/objector has also applied and installed an electricity meter connection in his name in the said suit shop. The

Applicant/objector filed on record the copies of the electricity bills along with their payment proofs. It is further averred that the applicant/ objector that applicant/ objector applicant / objector was also using the MTNL landline telephone no. 22418018 at the suit shop and copy of bills issued filed on record. It is further averred that in the year 2004, the DH sent a legal notice dated 27.11.2004 to the applicant / objector and the applicant / objector duly replied the said legal notice through his counsel vide reply dated 07.12.2004. The applicant/objector filed copy of said legal notice and reply thereof on the record. The Applicant/objector has also filed photographs to show his physical possession of the suit shop no. 3.

24. The applicant/objector Sh. Arun Kumar has been in settled possession of shop no. 4 and 5 on the ground floor of the suit property. It is further averred that Smt Uma Devi sold shop no. 4 on the ground floor of the suit property bearing no. 165, J & K Block, Laxmi Nagar to him for a sum of Rs. 95,000/- on 11.08.1997 on the basis of General Power of Attorney, Will, affidavit, and Receipts etc. It is further averred that the said fact were deposed by the applicant/objector who had appeared in the Court of then Ld. ADJ-06, Sh. Rajinder Shastri on 04.01.2011 and had submitted the above mentioned documents.

25. As regards shop no. 5 on the ground floor of the suit property, the applicant/objector Sh. Arun Kumar was inducted as a tenant by the owner of the suit property Smt. Uma Devi. It is further averred that said Uma Devi, issued rent receipts in favour of applicant/Objector, and after the death of Uma Devi, her legal heirs namely Raj Kumar @ Raja Bhatnagar and Ms. Sada Thakur

received rent from the applicant/objector and regularly issued receipts towards rent. The applicant objector filed on record rent receipts dated 01.05.1999, 01.07.1999, 01.08.1999, 01.09.1999 and 01.03.2001 purportedly issued by Smt. Uma Devi, and rent receipts dated 01.06.2004, 01.07.2004, 01.03.2005 and 01.08.2005 and 01.02.2006 purportedly issued by legal heirs of Smt. Uma Devi in favour of the applicant/objector. During argument on the instant application, the applicant objector on the direction of the Court filed photocopies of rent receipts stated to be for the period from 01.03.1999 to 26.09.2015. It is further averred that the said rent receipt which are for a sum of Rs. 300/- per month, the applicant/objector is protected under the provisions of Delhi Rent Act.

26. The applicant/objector Sh. Arun Kumar has been engaged in the business as Cable Operator in said shops no. 4 & 5 in the name of King Dish Antenna having registration No. ICN/CTNW/132/96-97 and a registration certificate was issued by the Office of the Senior Post Master (G) Krishan, Nagar, H.O. Delhi on 15.02.1997. The Applicant/objector filed on record a copy of the said registration certificate and the latest certificate dated 06.06.2023. The said registration certificate are issued annually and is valid upto 26.05.2024. It is further averred that the Municipal Corporation of Delhi has issued a certificate of ADHOC Registration of Traders under Scheme of 2006 valid for shops/covered establishments on 31.12.2006. A copy of the said certificate is filed on record. It is further averred that the applicant/objector has also obtained electricity and telephone

connection in his name. The Applicant/objector filed on record the copies of the electricity and telephone bills

27. In the civil suit no. 20/2010, wherein the impugned judgment/order dated 20.05.2011 was passed, there were/are only four defendants, which are represented as Judgment Debtors, in the cause title of the present execution petition filed by the D.H., and the applicants/Objectors were neither parties in the said civil suit no. 20/2010 nor in the proceedings of the present execution proceedings till the filing of the present application/Objections.

28. The D.H. is guilty of suppression of material facts before this Court not only at the time of contesting said civil suit no. 20/2010, but also at the time of filing as well as pursuing of present execution petition, for which the D.H. is liable to be prosecuted for perjury. It is averred that the D.H. was/is well aware of the fact that the applicant/objector was in settled possession of the suit shops.

29. On 08.01.2024, the Decree Holder pressed before this Court for not issuing any notice to the J.D. on account of already unreasonable delay in executing the judgment/decreed dated 20.05.2011, but the DH concealed the actual fact from the Court that the J.Ds. are no more in the possession of the suit property, rather the DH was well aware that the said suit shops on the ground floor are in settled possession of the applicants/objectors wherein in shop no. 1, 2, 3, and 5 objectors are tenants and in shop no. 4 the objector Sh. Arun Kumar is the owner.

30. On 08.01.2024, only on the persuasion of the D.H., this Court pleased to issue a warrant of possession against the J.Ds. only (and not against the applicant/Objector) and this Court also appointed the bailiff for the assistance of D.H. On 01.03.2024, the D.H. made false statement that the order dated 08.01.2024 of the court could not be complied (possession of the property could not be taken) just because of the resistance/obstruction raised by the occupiers of the property bearing no. 165, J & K Block, Laxmi Nagar, Delhi-110092, and the bailiff appointed by this Court, also did not place the true and correct facts before this Court that the ground floor portion of the property, wherein five shops are at present in the physical possession of applicants/objectors, not in the possession of the J.Ds. It is also averred that the true fact is that after passing the order dated. 08.01.2024, neither the D.H. nor the bailiff had visited the suit shop and gave a manipulated statement before this Court on 01.03.2024.

31. On the basis of false statements of the bailiff, so recorded on 01.03.2024 and on an application under section 151 CPC moved by the D.H. for assistance of police aid as well as break open locks for the satisfaction of execution proceedings, this Court again issued warrant of possession in respect of property bearing no. 165, J & K Block, Laxmi Nagar, Delhi-110092 with the assistance of police aid as well as to break open the locks and under the grab of said order dated 01.03.2024, the Decree Holder along with the bailiff and police officials took possession of the suit shop from the applicant/objector on 06.04.2024. It is further

averred that the bailiff visited the suit shop on the day of illegal dispossession i.e. 06.04.2024 only and not prior to that.

32. In case of the resistance/obstruction made by the applicant/objector, as claimed by the D.H. and as per the statement of bailiff, so recorded on 01.03.2024, the bailiff as well as the D.H. had to strictly follow the law. Neither the bailiff in the first visit has affixed or pasted any notice of this Court on the conspicuous place of the suit shop (as required under order XXI rule 36 of CPC) nor the D.H. followed the procedure laid down under order XXI rule 97 read with section 151 CPC to take possession of the suit shop. The D.H. deliberately and intentionally concealed the material fact from this Court that actual possession of the ground floor of the said property is with the tenants including the applicant/objector and not with the J.D.'s, as falsely claimed by the D.H.

33. The D.H. intentionally as well as with dishonest intention, has also not filed the site-plan of the property bearing no. 165, J & K Block, Laxmi Nagar, Delhi-110092. The judgment and decree dated 20.05.2011, passed by Sh. Rajender Kumar Shastri, the then Ld. ADJ, Tis-Hazari Courts, Delhi, whereby the JDs were directed to handover the possession of the property bearing no. 165, admeasuring 246.6 Sq. Yards, Dimensions 30' X 74', situated in J & K Block, Laxmi Nagar, Delhi-110092. However, on 06.04.2024, the D.H. took possession of a part (half portion i.e. about 123.3 Sq. yards) of the aforesaid property i.e. five shops on the ground floor and built up first floor and second portion on the said shops. The D.H. in Civil Suit no. 20/2010 describes/claimed, total area of the property bearing no. 165 is

246.6 Sq. Yards, but on 06.04.2024, during the course of execution proceedings took the possession of the 120-125 Sq. Yards only and the D.H. has not even tried to take the possession of the rest of the property. i.e. 123.3 Sq. Yards. In the said portion there is a built up four story building and the same was constructed about 7-8 years back. The applicants has filed site-plan of complete property of 246.6 Sq. yards and the remaining portion of the said property is shown in yellow.

34. The DH under the garb of order dated 01.03.2024, illegally and unlawfully dispossessed the applicants/objectors from the said shops on 06.04.2024, and it is settled law that a person in well established possession cannot be dispossessed except by following due process of law. Therefore, DH is liable to restore the status quo ante.

35. The applicants/objectors apprehends that the D.H. can transfer/alienate the possession of the suit shop to third person to defeat the legitimate claim of the applicant/objector and also to eliminate the evidence of possession of the applicant/objector.

36. In respect of shop no. 1, 2, 3, and 5 applicants were in the settled possession of the said shops and were using the same without any hindrances from any corner and has been paying rent @ 300/- p.m. Therefore, the applicants/objectors were holding special protection under the Delhi Rent Control Act, however, the D.H. in order to fulfill his illegal desire and dishonest intention, dispossessed the applicants/objectors. Thus, in view of the submissions made above, the D.H. cannot be allowed to reap the advantage of his invalid and illegal acts regarding the dispossession of the applicants/objectors.

37. The applicants/objectors have strong prime-facie case in their favour. The balance of convenience also lies in his favour and against the D.H. and if the D. H. is not directed to restore status quo ante in terms of prayer made hereinafter, the applicants/ objectors shall suffer irreparable loss and injury which cannot be compensated in terms of money, hence present application/objections.

38. The Ld. Counsel for the applicants/objectors Sh. Subhash Dey, Sh. Radha Krishan, and Sh. Sutantar Pal Handa advanced his oral submission in line with the averment in the instant applications/objections.

**WRITTEN SUBMISSION ON BEHALF OF THE OBJECTOR
SH. ARUN KUMAR**

39. The applicant/objector Sh. Arun Kumar has been the owner of shop no. 4 and tenant in shop no.5 for over twenty-five years. In both the cases i.e. Revocation Petition no. 01/2010 and Civil Suit no. 20/2010 which were tried before the court of then Ld. ADJ-06, Sh. Rajender Kumar Shastri (Central), Tis Hazari Courts cases, the objector Arun Kumar was not a party to the suit except that he appeared as a witness which is evident from para no. 7 of the judgment in the application for Revocation bearing no. 01/2010, and para no. 8 of the judgment in the matter of civil suit bearing no. CS 20/2010.

40. In the revocation petition bearing no. 01/2010, Sh. Rakesh Seth, the Decree Holder herein, deposed in para 6 of evidence by way of affidavit in April, 2006 that “*the property was occupied by tenant at the time of its purchase, therefore, on 09.05.2002 the*

deponent/applicant had pasted a notice at the property calling upon the tenants to pay the rent to him, therefore, the petitioners were fully aware that the applicant is the lawful owner of the property no. 165, Block J & K, Laxmi Nagar, Delhi and is in possession of all the original documents of the property and is therefore a necessary party. The copy of the notice is exhibited as Annexure 3 (AWI/11)”. However, in the cross-examination, he confirmed that he did not file any legal notice sent to the tenants by him.

41. In the affidavit of Sada Thakur in the probate case, it is deposed in para 10(E) that “*shop no.4 was sold to Mr. Arun by late Smt. Uma Bhatnagar during her life time. There is no mention regarding the sale of shop by late Mrs. Uma Bhatnagar to Mr. Arun Kumar in the document of Zahida Begum*”. The objector Arun Kumar also concurred with the abovementioned statement as a witness that he was the owner of shop no. 4 and tenant in shop no. 5. From the above discussion, it is evident that the decree holder was aware that the objector was in possession of shop no. 4 as owner and shop no.5 as tenant. Despite knowledge of this fact, the decree holder did not take any legal steps for eviction of the shops.

42. The Court vide order dated 08.01.2024 issued warrant of possession immovable property bearing Municipal no.165, J and K Block, Laxmi Nagar, Delhi-110092 against the JDs. The Decree Holder did not clarify that the property was not in possession of the JDs but in settled possession of Arun Kumar in respect of shop no. 4 and 5. It is further submitted that even on 01.03.2024, when this court under a mistaken belief that the

occupiers were the judgment debtors, who had offered resistance and obstruction, passed fresh warrant of possession with police aid, the decree holder even at this stage did not clarify that Arun Kumar was not the judgment debtor and in settled possession managed to obtain police assistance for seeking possession of the suit property including suit shops.

43. The intent of decree holder was malafide at the very outset and therefore, it is prayed that the possession of the decree holder may be restored in the interest of justice.

REPLY AND SUBMISSIONS OF THE DH TO APPLICATIONS/ OBJECTIONS OF THE APPLICANTS/ OBJECTORS

44. In response to the applications/objections filed by applicants/objectors, detailed replies are filed on behalf of the Decree Holder and Ld. Counsel for the Decree Holder made the following submissions:

45. The applicants/objectors herein are proxy litigants of the Judgment debtor, acting on the instructions of the judgment debtor with the view to obstruct the decree holder from enjoying the fruits of litigation. They are sponsored by the judgment debtor so that they can extort some money by raising frivolous claims before the court. The claim of tenancy which being raised by the present objector was already raised by the Judgment Debtors during course of trial before the Ld. Trial Court in their written statement which has been already dealt by the Ld. Trial Court in the final judgment dated 20.05.2011. One of the objectors also appeared as a Witness from the side of Judgment Debtors before the Ld. Trial Court. However, all such defence/

claims were rejected by the Ld. Trial Court and passed judgment and decree dated 20.05.2011 in favour of the Decree Holder. Therefore, in such circumstances, the decree having been passed by the Ld. Trial Court, the executing court cannot go behind the decree passed. Therefore, the objections raised by the alleged tenants are false, wrong, and therefore liable to be dismissed with heavy cost.

46. The Judgment Debtors not only contested before the Trial Court the suit of declaration, possession, and injunction filed by Decree Holder herein but also contested the other petition of revocation of probate petition wherein also they put the same claim that the judgment Debtors are the owner of the 123 Sq. yards only and rest of the property was occupied by alleged tenants, the same is reflected in the judgment dated 20.05.2011 passed in revocation petition of probate and the same was also discussed in the judgment of civil suit. In the civil suit, the case was finally decided by the Trial Court and a decree of the entire property 246.6 Sq. Yard was passed after adjudicating with the said defense of the Judgment Debtor that the part of the property is sold or tenanted. Now entertaining the same plea/claim/defense of the alleged applicant tenant is barred by the principle of res judicata and constructive res judicata. Hence the present objection is liable to dismissed as per law.

47. The Decree Holder has filed the present suit in 2004 for seeking decree of declaration and possession against the Judgment Debtors who are the adopted son and daughter of Late Smt. Uma Devi. The Judgment Debtor who had without notice to the decree holder had obtained probate of their WILL dated

15.02.2002. Therefore, the Ld. Trial Court through its judgment dated 20.05.2011 upheld the title of the Decree Holder and also ordered revocation of the probate to the Judgment Debtors. The Ld. Trial Court after considering the entire case of the decree holder, defence of the judgment debtors and documents filed along with the suit held that the decree holder has a better title than the Judgment Debtor. The associate of one of the objectors/Jaidev Dey was examined as a witness on behalf of the Judgment debtor. The applicant/ objector/Arun Kumar was also examined as witness on behalf of the judgment debtor in this regard and his alleged documents. However, despite specific knowledge about the proceedings, standing as Witness and producing his documents, the applicant never came with any application for seeking impleadment or any sort of application during the pendency of the suit. Hence, after examining the testimonies of all the witnesses including applicant Sh. Arun Kumar, the Ld. Trial court had passed a Decree of possession of 246.6 Sq. Yards in favour of the Decree Holder. It clearly means that the Ld. Trial Court disregarding the entire defence of Judgment Debtor including the testimony of the applicant herein passed the Decree. Therefore, the execution Court cannot go behind the decree. The pleas already adjudicated are not maintainable as its amount to res judicata and barred as per section 11 of CPC.

48. The objectors are claiming the tenancy alleging protection under Delhi Rent Control Act and they are seeking eviction through Court of Ld. Rent Controller only. However, it is pertinent to mention that the said right can only be claimed by

objector qua their alleged landlord and such alleged claim is not maintainable qua the Decree Holder. There is no question of landlord-tenant relationship. Further, once the title of judgment debtor is held to be imperfect and the title of decree holder is upheld and the decree holder is adjudged as the lawful owner of the suit property by the judgement and decree dated 20.05.2011, the claim of the tenancy also perishes with the title of Judgment debtor. Even, otherwise the alleged claim of bonafide tenancy is frivolous and malafide. As per their claim, the objector occupied the property from last 34 years and out of which admittedly he has not paid rent for period of around 31-32 years which shows that he occupies the property with the collusion of Judgment-Debtor. Therefore, the present objection is abuse of process of law. For seeking protection of rent control legislation, the tenant has to comply with the of Section 26 and Sec 27 of Delhi Rent Control Act by tendering rent to landlord or by depositing the same with the rent controller which is never complied by the applicants-tenant therefore, they did not deserve any protection.

49. Even if their claim of alleged tenancy is seen then as per their own alleged claim the objectors are not having any registered agreement. The provisions of the Transfer of Property Act envisage that in the absence of any registered agreement the tenancy (if any) would be considered to be oral and as per section 106 of the Transfer of Property Act tenancy is month to month basis wherein a new and separate tenancy is created every month. Thus for the sake of argument if averments are believed to be true then the moment the suit is filed by the Decree Holder against the judgment debtor and the judgment debtor by

accepting the rent of the applicant/ objector then the new and separate tenancy is created which would be deemed to be covered by the doctrine of *lis-pendens* as per the provision of Section 52 of the Transfer of Property Act and would be subject to the decision of the Trial Court. Therefore, the present applicant alleged tenant has admittedly not paid any monthly rent upon expiry of one month time their alleged tenancy, if any got determined due to non-payment of rent by efflux of time as per section 111 of Transfer of Property Act.

50. In very clear terms it is proved that objectors are not the actual tenant but the associate/agents of the Judgment Debtor who occupied the property on behalf of the Judgment Debtors and at their instance only with the view of obstruct the execution proceedings.

51. The objectors are in no manner in the settled possession of the shops in questions. Even as per the admitted case of the objectors Sh. Subhash Dey, Sh. Radha Kishan, Sh. Sutar Pal Handa, and Sh. Arun Kumar do not have any rent receipt for a period of around 34, 31, 34 and 24 years respectively and admittedly their alleged tenancy is oral from month-to-month basis and his alleged tenancy is determined due to efflux of time. The said alleged receipts nowhere prove the factum of rent amount payment made and received by anyone as it neither bears the endorsement with regard to property address as claimed by the objectors. Thus, the interest of the objector is nothing more than the unauthorized Occupants known as Tenant at Sufferance which is akin to trespasser. In such circumstances, as per the provision of section 108 (q) of the Transfer of Property Act on

the determination of lease, the lessee was bound to put the lessor into the possession of property. Therefore, the possession of the objector cannot in any circumstances be said to be lawful and settled possession and the objector was holding possession only on behalf of the judgment debtors.

52. As per provisions of Order 21 Rule 99 of the Code of Civil Procedure, 1908 the objection of the objectors is not maintainable as it is maintainable only in case of the objector having independent title to property. As, it is admitted case of the objector that they are not having any independent title to the property rather claiming tenancy under the judgement debtor only. Hence the objection is not maintainable.

53. In the civil suit bearing no. 20/2010, there were four defendants which are the judgment debtors in the present execution proceedings. That the present objector/ applicants are claiming their alleged admitted tenancy under the Judgment Debtors. The present objector/ applicant herein are merely the representative of the Judgment Debtor and provisions of Section 146 CPC are applicable to them and the objectors are equally bound by the Decree so as the Judgment Debtor.

54. The reliance of the objector to the provisions of Order 21 Rule 36 CPC is also misconceived, baseless and frivolous. Even as per the admitted case of applicant/ objectors herein they are at best the alleged tenants of the judgment debtors having no privity of contract with the decree holder. Since the objector is claiming through the judgment debtors they are bound by the decree. The objector is not a necessary party to the suit.

55. The judgment debtor are not entitled to any protection under the provision of Order 21 Rule 36 CPC nor any protection under Delhi Rent Control Act as the judgment debtor in their written statement made the same plea as that of the present applicant / objector in the objections /application and claimed that the certain person occupying as tenant in the ground floor and also led evidence In this regarding by producing the witness Jaidev Dey from the side of judgment debtor. Despite knowledge of proceedings and participating in the proceedings as witness, the applicant/ objector to the reasons best known to them did not institute any proceeding to establish their alleged rights. The judgment debtor who to the fullest represented the alleged claim of the objector after which the decree came to be passed. Therefore, the applicants/ objectors were not required to impleaded Eo-Nominee party to the proceedings but were bound by the decree and not required to be impleaded as a party to the suit. The tenant who claims title, right or interest in the property through the judgment debtor or under the colour of interest through him he is bound by the decree and not required to be impleaded as party. Thus, the objectors are not entitled to any protection neither under Order 21 Rule 36 CPC nor under the Rent Legislation. The tenant at sufferance is not entitled to any protection under the Rent Control legislation.

56. The decree holder has taken possession of 123.3 Sq. Yards of the property as per the orders of the Hon'ble Court; and the other portion of 123.3 Sq. Yards also belongs to the Decree Holder as per Decree. The Decree Holder is in process to obtain the further possession of the part of the property as the suit has

been decreed with the suit property address i.e. 165, J and K Block, Laxmi Nagar, Delhi and during the litigation the part of the property unauthorizedly constructed by some unauthorized persons by adding alphabet A in the municipal number of the property which the court bailiff identified as such in the order dated 1.03.2024 there is no mentioning of dimension of the property. Therefore, the court bailiff proceeded to obtain the possession of identified part of the property. The decree holder would take appropriate steps as per law for satisfaction of the decree and for the purposes of the same getting the assistance of the approved municipal Architect who has carried out the inspection of the property and found that the part of the property possessed in the execution is of area 123.3 Sq. Yards and the remaining balance part is 123.3 Sq. Yards. The Decree Holder has moved the appropriate application to proceed for the same.

57. After passing the judgment 20.05.2011 in both of the matters, the Judgment Debtor filed appeal against the civil suit judgment before Hon'ble High Court of Delhi through RFA No. 208/2012 wherein the Judgement Debtor obtained a stay of execution of decree on conditional order. In the said appeal also, the Judgment Debtor put the same claim as claimed by the present objector which was ultimately dismissed by the Hon'ble High Court of Delhi. The proceeding of the matter was dismissed vide order dated 14.11.2019. Thereafter, no steps could be taken for execution of the decree due to the imposition of covid-19 and finally in April 2019, the execution petition was revived and warrants of possession were issued by the predecessor court and after a long- drawn process the execution was transferred by the

predecessor court. In such circumstances, neither there was any use nor any fruitful purpose in issuing any notice to the judgment debtors as the matter was already contested by the Judgment Debtors for a number of years.

58. As per the provisions of law there is no legal mandate of issuing of notice to judgment debtor before issuing the Warrants of Possession and accordingly the Court directed the issuance of Warrants of Possession. That by raising this objection of not issuing the notice to the Judgment debtor manifestly clears the intention of the objector that they are acting on behalf of the judgment debtors. This proves the nexus of the objector with the judgment debtors.

59. On 12.02.2024, the decree holder alongwith court bailiff went to the suit property. On the site, it was found that 3 shops were locked and 3 shops were found to be open. On the spot, the judgment debtors were not present but there were 2-3 persons, and one lady was at the main gate of the suit property. The Court bailiff informed those people about the Warrant and asked those persons to vacate the suit property, but those people refused to vacate the suit property and obstructed from entering into the suit property and started gathering people and asked the bailiff to leave the place. Therefore, the bailiff alongwith Decree Holder returned and thus the warrant of possession could not be executed. Therefore, the Decree Holder moved appropriate application for seeking police assistance. It further submitted that on 06.04.2024 neither of the occupant made any resistance in delivering the possession of the property and neither produced any document claiming any right/title or interest. All the

occupants including the objector handed over the possession peacefully to the court bailiff.

60. Qua applicant/objector Sh. Subhash Dey, it is submitted that the alleged receipts which allegedly pertain to the period of November 1987, December 1987, February 1988, January 2010, October 2014 to September 2015, October 2015 to July 2016 also do not substantiate the claim of the objector of 37 years old tenancy as it only merely covers the period of 4 years. It proves that the objector was collusively and illegally occupying the part of the decreed property at the instance of the judgment debtor.

61. The applicant/objector Sh. Subash Dey claims to be running a shop in the name and style of M/s Bengal Handloom House from part of the decree property, however, the documents of shop registration before the MCD Department and under the shop and establishment vide registration No. 1810015139 are denied and further the same does not confer any right /title and interest in favour of the objectors. Furthermore, the payment of conversion payment is also denied. It is submitted that anyone can obtain such receipt on payment of the self assessed taxation as the authorities are only concerned with the collection of tax, it nowhere confers any right, title or interest. The registration of MSME and ITR are denied for want of knowledge. Furthermore, such document does not confer any right, title or interest in favour of the objector.

62. Qua applicant/objector Sh. Radha Krishan, it is submitted that the alleged receipts dated 20.10.1990, 01.12.1992 and 01.12.1993, 12.09.2014, 26.09.2015, 13.07.2016 also do not substantiate the claim of the objector of 34 years old tenancy as it

only merely covers the period of 2 Year and 10 Months. The alleged receipts are bogus and fabricated and nowhere establish the payment of rent. It proves that the objector was collusively and illegally occupying the part of the decreed property at the instance of the judgment debtor. The documents of shop registration before the MCD Department and under the shop and establishment vide registration No. 1810015105 are denied and further the same does not confer any right /title and interest in favour of the objectors. Furthermore, the document of conversion payment is also denied. It is submitted that anyone can obtain such receipt on payment of the self assessed taxation as the authorities are only concerned with the collection of tax, it nowhere confers any right, title or interest. As regards the electricity connection, it is submitted that the objector could have collusively got applied and installed an electricity meter connection. The same does not confer any right, title or interest. The UPI machine from Bharatpe under merchant ID 42427336 and statement, the document of License under Delhi Milk Scheme and the Document alleged NOC issued by Uma Devi are also denied. Furthermore, it is well settled that any such document does not confer any right / title or interest in favour of the objector.

63. Qua applicant/objector Sh. Sutantar Pal Handa, it is submitted that the alleged receipts which allegedly pertain to the period of November 1988, 1st December 1989, 1st December 1995, 01.06.1998, 01.07.2022, 01.06.2002, 01.11.2005, 01.08.2005 also does not substantiate the claim of the objector of 37 years old tenancy as it only merely covers period of 8 months.

It proves that the objector was collusively and illegally occupying the part of the decreed property at the instance of the judgment debtor.

64. The Late Smt. Uma Devi expired in the year 2002, therefore, it is inexplicable that how the rent receipts filed by the applicant/objector Sh. Sutantar Pal Handa were issued by Mrs. Uma Devi dated 01.08.2005 and 1.11.2005. This clearly shows that the said receipts are merely forged and fabricated by the objector/applicant for which the objectors are liable to be prosecuted for the offense of perjury and forgery.

65. The applicant/objector Sh. Sutantar Pal Handa claims to be running a shop in the name and style of M/s Handa Wool Store from part of the decree property. The alleged documents of NOC/affidavit allegedly issued by Smt. Uma Devi and in the year 2007 with regard to registration of shop before MCD department are false, wrong and denied. The documents of the shop registration before the MCD Department and under the shop and establishment vide registration no. 1810065674 are denied and further the same does not confer any right title and interest in favour of the Objectors. Furthermore, the document of conversion payment is also denied. It is submitted that anyone can obtain such receipt on payment of the self assessed taxation as the authorities are only concerned with the collection of tax, it nowhere confers any right, title or interest. As regards the electricity connection, it is submitted that the objector could have collusively got applied and installed an electricity meter connection. The same does not confer any right, title or interest.

66. As regards the landline telephone no. 22418018 and bill of MTNL, the same are also denied. Furthermore, it is well settled that any such document does not confer any right, title or interest in favour of the objector.

67. Qua applicant/objector Sh. Arun Kumar, it is submitted that the alleged receipts which allegedly pertain to the period of May 1999, July 1999, August 1999, September 1999 and 01.03.2001, 01.06.2004, 01.07.2004, 01.03.2005, 01.02.2006 are merely for the period of 9 months and also does not substantiate the claim of the objector of 25 years old tenancy as it only merely covers the period of 8 months. It proves that the objector was collusively and illegally occupying the part of the decreed property at the instance of the judgment debtor.

68. The applicant/objector Sh. Arun Kumar claims to be running a shop in the name of King Dish Antenna from part of the decree property. The alleged documents of registration certificate, document of traders, electricity and telephone are denied and further the same does not confer any right title and interest in favour of the Objectors.

69. The applicants/objectors were aware of all proceedings going on between the Decree Holder and the Judgement Debtors, despite of that the objectors/applicant took no steps to substantiate their alleged claim/right. These alleged claims were raised by the Judgement Debtor in their Written Statement and also led evidence in this regard by producing some evidence.

70. As regards shop no. 4 of the property in question, it is submitted on behalf of the Decree Holder that the

applicant/objector Sh. Arun Kumar claims ownership over shop no. 4 by way of alleged documents such as General Power of Attorney, Agreement to Sell, Will, Affidavit and receipt, however, it is settled law that General Power of Attorney is only the document of creation of Agency authorizing the said person to act on the behalf of principal as per the provisions of Chapter X of Indian Contract Act, 1872. However, the said agency was terminated with the death of the principal as per the provisions of section 201 of the Indian Contract Act, 1872. Therefore, the said General Power Attorney does not confer any ownership title to the applicant/ objector at the best created only an Agency which got terminated with the death of Late Smt. Uma Devi.

71. The document of receipt as alleged by the applicant/objector Sh. Arun Kumar is of no use as it does not mention "Sale of Property" etc. details. Further, receipt and agreement to sell which are unregistered documents and not claimed by the applicant anywhere before any court including the Ld. Trial Court where he appeared as an witness raises doubts on his claim. As per Indian Stamp Act also the said unstamped documents cannot be looked into as the same is not having any evidential value. Therefore, the alleged claim of purchasing the said shop no. 4 for a sum of Rs. 95,000/- is frivolous and baseless plea.

72. So far as the alleged WILL dated 11.08.1997 is concerned, the alleged Will also does not confer any ownership title over the said Shop No.4 as it is known that only the final and last WILL comes into force after the death of the testator and the entire property of 246.6 Sq. Yards were sold to the decree Holder by

the testator before her death. Therefore, the applicant has no claim over Shop No.4 and further all these claims were already got adjudicated by the Ld. Trial Court when these claims were raised by the Judgment Debtors.

73. As per the settled law, the documents relied upon by him, such as the GPA, Agreement to sell, GPA etc, do not entitle him to any ownership. The decree holder has better title than the objector because the agreement to sell etc. sales does not constitute any valid transfer as per Section 54/55 of the Transfer of Property Act.

74. Applicants/objectors willfully made wrong submission that the decree holder concealed the actual fact from the court whereas in para no.3 and 6 of the execution petition, the decree holder explained and mentioned all relevant facts and para no. 7, 8 and 9 explain about the claim of tenancy by the objectors. Further from para no. 16 of execution petition, the decree holder explains the each and every step of the execution petition.

75. The defense of non-joinder of necessary parties was not raised at the time the decree was passed, therefore it cannot be raised in the execution petition. Further, if the objectors participate in the trial of the suit then they are not strangers to the suit as like in the present matter Arun Kumar, Subhash Dey and Jay Dev Dey had participated in the proceeding and supporting the case of the JD appeared as witness and depositing before the court and they have knowledge about the case proceedings.

76. The judgments relied upon by the objector are not relevant in present matter as its mainly concerns with adverse possession

and with regard to suits filed under Section 6 Specific Relief Act. Further, the Judgment of the Hon'ble Delhi High Court in Sarvinder Singh & Anr. vs. Vipul Tandon is also not relevant as its case of sale of property by the JD to objector and the decree was passed partially by Ld. Courts. The aforesaid citation is of no help to the case of the objector as the facts in the said case are different from the facts of the present case.

77. That there neither exists prima facie nor balance of convenience lies in favour of the objectors. It is however decree holder who shall suffer irreparable loss after litigating for more than 2 decades and contesting the suit before the trial court and appellate court as the Decree Holder would be put to a lot of harassment at the behest of objector who are nothing but proxy litigants of the Judgment Debtors and who are bound by the decree. Therefore, it is prayed that the present applications under Order XXI Rule 99 to 101 read with sections 144 and 151 of CPC as well as application under section 151 for the stay of the execution proceedings and restraining the Decree Holder from creating third party interest or part with the possession of the shops in question be dismissed with exemplary cost.

**WRITTEN SUBMISSIONS ON BEHALF OF DECREE
HOLDER TO ADDITIONAL RENT RECEIPTS FILED BY
APPLICANTS/OBJECTORS**

78. The decree holder also filed written submission on additional rent receipts filed by the applicants/objectors. It is submitted on behalf of the Decree Holder that said receipts have been filed by the objectors when DH raised the objection with

regard to claim of long tenure of tenancy merely on the basis of a few alleged receipts. It is further submitted that the alleged receipts are bogus and fabricated which have been prepared by objectors/applicants in conspiracy with the judgment debtor and said rent receipts are without any proof of payment i.e. money order or bank transfer, therefore, the said receipts do not have any legal validity.

79. Qua the said rent receipt filed by the applicant/objector Sh. Subhash Dey, it is submitted by the DH that page no.1 to page no.82, receipt no. 32 allegedly issued by Smt. Uma Devi, however, there is a difference of signatures on the receipts as the said receipts somewhere bear signature in the Hindi vernacular as “Uma” and somewhere as “Uma Devi” and there is no revenue receipt. Thereafter, receipt no. 55 at page no.86 to receipt no. 151 at page no. 145 were alleged to be issued by the JD to the objector, however, the lease for a year or more can only be created by registered instrument as per Section 107 of the Transfer of the Property Act. It is further submitted that alleged signatures of Uma Devi are different in receipts issued to objector Mr. Subhash Dey from those issued to Objector/Mr. Arun Kumar. It is further submitted that the alleged rent receipts are only upto 31.12.2013 and even the same is not regular and complete and there are no rent receipts for any period for last 11 years. The said alleged rent receipts, even if believed to be true do not establish any right, title or interest of the objector over the said shop no.1.

80. Qua said receipts filed by the applicant/objector Sh. Radha Krishan, DH made similar submissions regarding difference in

signature in Hindi vernacular as Uma and Uma Devi in receipts from page no. 1 to 67 allegedly issued by Uma Devi. Citing receipt no. 180 at page no. 114 to receipt at page no. 177, DH submitted that the lease of one year or more can be created by registered instrument under Section 107 of the Transfer of Property Act. It is further submitted that the alleged receipts are only upto 01.07.2016 and even the same are not regular and complete and there is no rent receipt for the last 8 years. It is submitted that alleged rent receipts, even if believed to be true do not establish any right, title or interest of the objector over the said shop no. 2.

81. Qua said receipts filed by the applicant/objector Sh. Sutantar Pal Handa, DH made similar submissions regarding difference in signature in Hindi vernacular as Uma and Uma Devi in receipts from page no. 44 to 81 allegedly issued by Uma Devi. It is further submitted that receipt dated 1.10.1987, 1.12.1987, 1.11.1987, 1.1.1988, 1.2.1988, 1.3.1988 does not bear the name of the objector, therefore, it does not hold any relevance. It is also submitted that alleged receipts from page no. 5 to page no. 43 bears revenue stamps but there is no revenue stamp thereafter. It is further submitted that the alleged receipts are only upto 31.08.2002 and even the same is not regular and complete and there is no rent receipt for the last 8 years. It is submitted that alleged rent receipts, even if believed to be true do not establish any right, title or interest of the objector over the said shop no.3.

82. Qua said receipts filed by the applicant/objector Sh. Arun Kumar, it is submitted on behalf of the DH that the rent receipt

dated 1.3.1999 does not bear the name of the objector nor does it bear any signature and therefore said receipt holds no relevance. It is further submitted that the 12th receipt is illegible and on receipt no. 31 date is illegible. It is further submitted that after receipt of 1.4.2001, there is no further receipt prior to 1.5.2004. It is finally submitted that the said rent receipts are only upto 31.07.2015 and even the same are not regular and complete and there is no rent receipt for the last 9 years. It is submitted that the alleged rent receipts, even if believed to be true do not establish any right, title or interest of the objector over the said shop no.3.

83. The arguments on the aforesaid application were advanced by the Ld. Counsel for the DH and LD. Counsel for three objectors Sh. Subhash Dey, Sh. Sutantar Pal Hand, and Sh. Radha Krishan as well as Ld. Counsel for the objector Sh. Arun Kumar. In the present matter, the Trial Court Record of civil suit bearing CS no. 20/2010 titled “Rakesh Seth vs. Raj Kumar & Ors” and Revocation Petition No. 01/2010 titled “Raj Kumar@ Raja Bhatnagar & Ors vs State & Ors” have also been summoned from the record room, Tis Hazari Courts.

84. Ld. Counsel for the Decree Holder relied upon the following judgements of Hon’ble Supreme Court of India and of Hon’ble High Court of different jurisdictions in support of their contentions:

- i. **Rahul S. Shah vs. Jitender Kumar Gandhi & Ors.** ((2021) 6 SCC 418) [guidelines were issued by the Hon’ble Supreme Court during the course of execution petition. Objection U/o 21 R 97 CPC leads to retrial].

- ii. **Pradeep Mehra vs. Harjivan J. Jethwa (Since Deceased Thr. Lrs.) & Ors.** (2023 SCC Online SC 1395), [execution court cannot go behind the decree].
- iii. **H. Seshadri vs. K. R. Natarajan and Anr.** ((2003) 10 SCC 449) [Order 21 Rule 99 CPC allows only claims independent of the judgment debtors. Persons claiming under JD cannot maintain that application].
- iv. **Raj Kumar vs. Sardari Lal and Ors.** ((2004) 2 SCC 601), [Transferee *pendente lite* is representative in interest of the judgment debtor].
- v. **R. V. Bhupal Prasad vs. State of Andhra Pradesh and Ors.** ((1995) 5 SCC 698), [Possession of tenant at sufferance is not settled possession. It is unlawful and illegal].
- vi. **Barkat Ali & Anr. vs. Badrinarain (D) by Lrs.** (2008 (4) SCC 615). [Res judicata applies to all stages of the suit including execution].
- vii. **Ramachandra vs. Laxmana Rao** (MANU/KA/0393/2000) (Hon'ble High Court of Karnataka). [Section 146 CPC includes all the representative of the judgment debtors].
- viii. **Dr. Tauqir Ahmad Khan and Ors. vs. Nagar Palika Parishad, Hasanpur, District J. P. Nagar & another** (2011 SCC Online All 1585) (Hon'ble Allahabad High Court) [Once the title of landlord stands determined by the court, tenant cannot claim independent right vis a vis the decree holder].

- ix. **Ram Gopal Sawhney vs. Suraj Balram Sawhney & Sons and Ors.** (1982 SCC Online Del 235) (Hon'ble High Court of Delhi). [Tenant derives right from landlord and his rights comes to an end as soon as the right of the landlord].
- x. **Balvant N. Viswamitra and Ors. vs. Yadav Sadashiv Mule (Dead) Through Lrs and Ors.** (MANU/SC/0625/2004). [There is no privity of contract between the plaintiff and the tenant. They are not the necessary party to the proceedings.]
- xi. **B. Gangadhar vs. B. G. Rajalingam** ((1995) 5 SCC 238). [Tenants are not eo-nominee required to be party made to the suit. They are bound by the decree].
- xii. **LIC of India vs. Dera Samadh Baba Sarv Viapi, Patiala and Ors.** (2001 (2) ILR P&H 130) (Hon'ble Punjab and Haryana High Court) [Tenant claiming right, title and interest through the judgment debtor or under the colour of interest through him, was bound by the decree. Every subordinate interest perishes with the superior interest on which it is dependent].
- xiii. **Silverline Forum Pvt. Ltd. vs. Rajiv Trust and Ors.** (MANU/SC/0252/1998). [Decree of ejectment binds tenants].
- xiv. **Atma Ram vs. Shakuntala Rani** (MANU/SC/0521/2005) [Persons claiming protection under rent control legislation must comply provision of the Act failing which they are not entitled to any protection].

- xv. **MEC India Pvt. Ltd. vs. Lt. Col. Inder Maira and Ors.** (1999 SCC Online Del 422) (Hon'ble High Court of Delhi). [Month to month tenancy is essentially a new and separate tenancy every month].
- xvi. **Kirna Rani (since deceased) vs. Jagrup Singh & Ors.** (Hon'ble High Court of Punjab & Haryana) CR No. 4709/2022, Date of Decision: 01.11.2022 [Having not raised the plea of non joinder of necessary parties at the time when the decree was passed said plea cannot be raised in execution].
- xvii. **Saira Hafeez & Anr. vs. Parveen Rehman & Ors.** (2014 SCC Online Del 7695) (Hon'ble High Court of Delhi). [Objector is no stranger to suit, participated and well aware of the proceedings].
- xviii. **Shamsher Singh and Anr. vs. Lieutenant Colonel Nahar Singh and Ors.** ((2019) 17 SCC 279). [Third persons other than judgment debtor can only be put back in possession only upon successfully establishing right, title or interest and not otherwise].
- xix. **Suresh Chand Jain vs. IIIrd Addl. DJ, Mathura & Ors.** ((2001) 10 SCC 508). [Sub-tenant bound by the decree against the main tenant].
- xx. **Suraj Lamp & Industries (P) Ltd. (2) vs. State of Haryana,** (2012) 1 SCC 656 [Immovable property can be legally and lawfully transferred/conveyed only by a registered deed of conveyance. Transactions of the nature of "GPA sales" or

“SA/GPA/Will transfers” do not convey title and do not amount to transfer].

xxi. **Suresh vs. Kamla Devi Notiyal and Ors.** (C.R.P. 245/2023, Hon’ble High Court of Delhi, Date of Decision: 11.09.2023) [Decree holder has better title than objector because agreement to sell etc. sales does not constitute any valid transfer as per Section 54/55 of Transfer of Property Act].

85. Ld. Counsel for the applicants/objectors relied upon the following judgements in support of their contention that a person in a settled possession of a property cannot be dispossessed even by the owner of the property without following due process of law:

- i. **Rame Gowda (D) by Lrs vs. M. Varadappa Naidu (D) by LRs and Anr.** (AIR 2004 SC 4609).
- ii. **Thomas Cook (India) Limited vs. Hotel Imperial and Ors.** (127 (2006) DLT 431).
- iii. **East India Hotels Ltd. vs. Syndicate Bank** (1 (1992) BC1 (SC))
- iv. **Poona Ram vs. Moti Ram (D) through LRs** (AIR 2019 SC 813).
- v. **Sarvinder Singh & Anr. Vs. Vipul Tandon** (Neutral citation: 2022: DHC: 2577)

86. Submission of Ld. Counsel for the Decree Holder and Applicants/Objector heard and record of the execution petition as well as record of civil suit bearing no. 20/2010 titled “Rakesh Seth vs. Raj Kumar & Ors” and Revocation Petition bearing No.

01/2010 titled “Raj Kumar@ Raja Bhatnagar & Ors vs. State” have also been carefully perused.

REASONING, ANALYSIS AND FINDINGS:

87. At the outset, it may be relevant to set out the relevant provisions of Order XXI of the CPC:

“97. Resistance or obstruction to possession of immovable property- (1) Where the holder of a decree for the possession of immovable property or the purchaser of any such property sold in execution of a decree is resisted or obstructed by any person in obtaining possession of the property, he may make an application to the Court complaining of such resistance or obstruction.

(2) Where any application is made under sub-rule (1), the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.”

98. Orders after adjudication- Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination and subject to the provisions of sub-rule (2),-

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or

(b) pass such other order as, in the circumstances of the case, it may deem fit.

(2) Where, upon such determination, the Court is satisfied that the resistance or obstruction was occasioned without any just cause by the judgment-debtor or by some other person at his instigation or on his behalf, or by any transferee, where such transfer was made during the pendency of the suit or execution proceeding, it shall direct that the applicant be put into possession of the property, and where the applicant is still resisted or obstructed in obtaining possession, the Court may also, at the instance of the applicant, order the judgment-debtor, or any person acting at his instigation or on his behalf, to be detained in the civil prison for a term which may extend to thirty days.

99. Dispossession by decree-holder or purchaser- (1) Where any person other than the judgment-debtor is dispossessed of immovable property by the holder of a decree for possession of such property or, where such property has been sold in execution of a decree, by the purchaser thereof, he may make an application to the Court complaining of such dispossession.

(2) Where any such application is made, the Court shall proceed to adjudicate upon the application in accordance with the provisions herein contained.

100. Order to be passed upon application complaining of dispossession.- Upon the determination of the questions referred to in rule 101, the Court shall, in accordance with such determination, -

(a) make an order allowing the application and directing that the applicant be put into the possession of the property or dismissing the application; or (b) pass such other order as, in the circumstances of the case, it may deem fit.

101. Question to be determined.- All questions (including questions relating to right, title or interest in the property) arising between the parties to a proceeding on an application under rule 97 or rule 99 or their representatives, and relevant to the adjudication of the application, shall be determined by the Court dealing with the application and not by a separate suit and for this purpose, the Court shall, notwithstanding anything to the contrary contained in any other law for the time being in force, be deemed to have jurisdiction to decide such questions.”

88. The aforesaid provisions enable the executing court to deal with a situation when a decree-holder entitled to possession of the property encounters obstruction from any person. The executing court has power to deal with “all issues” relating to such matters. As per Rule 101 of Order XXI of CPC, all questions including questions relating to right, title or interest in the property arising between the parties to a proceeding on an application under Rule 97 or Rule 99 or their representatives, and relevant to the

adjudication of the application shall be determined by the court dealing with the application and not by a separate suit. The aforesaid provision has vested power on the executing court to deal with all questions arising in the matter irrespective of whether the court otherwise has jurisdiction to entertain a dispute of the nature.

89. The applicants/objectors have claimed settled possession of shops no. 1 to 5 on the ground floor property bearing no. 165, J & K Block, Laxmi Nagar, Delhi on the basis of various documents filed on record such as rent receipts, and license and certificates (issued by different authorities including Municipal Corporation of Delhi (MCD), Delhi Milk Scheme, Department of Post, etc.) in connection with the businesses that have been stated to be carried out by the applicants/objector from the said shops, as well as documents in connection with electricity and telephones connection pertaining to suit shops. The Applicants/objectors Sh. Subhash Dey, Sh. Radha Krishan and Sh. Sutantal Pal Handa have claimed that they are in possession of the shops bearing no. 1, 2, and 3 respectively for more than 30 years. The Applicant/objector Sh. Arun Kumar has claimed that he is in possession of the shops bearing no. 4 and 5 for more than 25 years. In respect of shop no. 4, the Applicant/objector Sh. Arun Kumar has filed registered General Power of Attorney, registered Will, affidavit, receipt etc. all dated 11.08.1997 (along with the previous chain of documents including sale deed) by way of which the shop no. 4 was stated to have been sold to the applicant/objector Sh. Arun Kumar by the owner of the said shop namely Smt. Uma Devi. The Decree Holder questioned the

veracity of the said rent receipts as well as other documents and submitted even if the said documents are considered they do not prove any right, title, and interest of the applicants/objectors in the said shops.

90. In this connection, it is pertinent to note that the Decree Holder, in the matter of Revocation Petition bearing No. 01/2010 in his evidence by way of affidavit tendered on 17.04.2006, deposed that the property *“was occupied by the tenants at the time of its purchase, therefore, on 09.05.2002 had pasted notice at the property calling upon the tenants to pay the rent to him.....”* Further, in his cross examination on the same date, the Decree Holder deposed that *“.....one shop is M/S Bengal Handloom, in one shop, there is M/s Handa General Store,”*. Further, the applicant/objector Sh. Arun Kumar in the matter of said Revocation Petition bearing No. 01/2010 deposed on 27.03.2008 as RW3 as *“I am running the shop in the property in question since 1993.....The number of my shops are 4 and 5.....The shop no. 1 is being run by ‘Dada’, shop no. 2 is being run by ‘Radhey’ and the shop no. 3 is being run by one Mr. Handa.....I have purchased shop no. 4 vide GPA, Agreement to sell, the photocopies of which are Mark Y (colly)’*.

91. The aforesaid deposition of the DH as well as documents filed on record by the applicants/objectors establish beyond doubt that the Decree Holder had full knowledge that the applicants/objectors were in possession of the said suit shops at least since 09.05.2002.

92. It is also pertinent to mention that Applicant/Objector Sh. Arun Kumar filed on record registered General Power of Attorney, registered Will, affidavit, receipt etc. all dated 11.08.1997 executed in favour of the Applicant/objector by Smt. Uma Devi in respect of shop no. 4 of the property bearing no. 165, J & K Block, Laxmi Nagar, Delhi, which are prior to said Registered GPA executed in favour of the DH by Sh. Syed Saud Zaid. The photocopies of said General Power of Attorney, Agreement to sell were filed by the Applicant/Objector Sh. Arun Kumar during his cross examination on 27.03.2008 in the matter of Revocation Petition No. 01/2010 as Mark Y (colly).

93. Further, the registered GPA dated 11.08.1997 executed by the Smt. Uma Devi in favour of the applicant/objector Sh. Arun Kumar is accompanied with a receipt of Rs. 95,000/-. Therefore, the said GPA was executed for consideration and thus cannot be terminated even on the death of the principal in view of section 202 of the Indian Contract Act, 1872. In view of this, the contention of the DH that the said GPA got terminated in view of section 201 of the Indian Contract Act, 1872 after the death of Smt. Uma Devi is devoid of merit.

94. In view of the above discussion, it is clear that the applicants/objectors were in possession of the shops in question for a considerably long period and the said possession was within the knowledge of the Decree Holder. The DH was aware about the said possession of the applicants/objector prior to the filing of civil suit bearing CS no. 20/2010 (date of institution 14.09.2004) in which the judgement and decree dated 20.05.2011 was passed. Further, from the date of knowledge of said possession, the

Decree Holder did not take any step to claim the possession of the said shops from the applicants/objectors by impleading them in the said suit or by filing a separate suit. Therefore, it can be inferred that the possession of the applicants/objectors in the shops in question was a settled possession.

95. Further, for the sake of argument, even if it is assumed that the applicants/objectors are trespassers in the said shops, in view of dictum in the judgement of Hon'ble Supreme Court in **Rame Gowda (D) by Lrs. vs. M. Varadappa Naidu (D) by Lrs. and Ors.** (15.12.2003 - SC) :MANU/SC/1044/2003 relied upon by the applicants/objectors, the decree holder was required to follow due process of law to evict them from the shops in question. In this connection, the relevant extract from the aforesaid judgments of the Hon'ble Supreme Court is reproduced hereinbelow:

10. It is thus clear that so far as the Indian law is concerned the person in peaceful possession is entitled to retain his possession and in order to protect such possession he may even use reasonable force to keep out a trespasser. A rightful owner who has been wrongfully dispossessed of land may retake possession if he can do so peacefully and without the use of unreasonable force. If the trespasser is in settled possession of the property belonging to the rightful owner, the rightful owner shall have to take recourse to law; he cannot take the law in his own hands and evict the trespasser or interfere with his possession. The law will come to the aid of a person in peaceful and settled possession by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner (of course subject to the law of limitation), if the latter has dispossessed the prior possessor by use of force. In the absence of proof of better title, possession or prior peaceful settled possession is itself evidence of title. Law presumes the possession to go with the title unless rebutted. The owner of any property may prevent even by using

reasonable force a trespasser from an attempted trespass, when it is in the process of being committed, or is of a flimsy character, or recurring, intermittent, stray or casual in nature, or has just been committed, while the rightful owner did not have enough time to have recourse to law. In the last of the cases, the possession of the trespasser, just entered into would not be called as one acquiesced to by the true owner. (*Emphasis supplied*)

96. The aforesaid judgement **Rame Gowda (supra)**, laid down the general principle of law requiring litigants to follow due process of law for obtaining possession of immovable property and said the principle of law is also applicable to execution proceedings.

97. Now the question arises whether the decree holder in the present matter followed the due process of law while obtaining possession from the applicants/objectors on 06.04.2024 in terms order dated 01.03.2024 of this Court.

98. In the present execution proceedings, at the time of filing of the present execution petition the Decree Holder concealed and suppressed the material fact that the applicant/objectors are in settled possession of the said shops for at least 20 years and the said applicants/objectors claim to be tenants of shop no. 1, 2, 3, and 5 and applicant/objector Sh. Arun Kumar has asserted his right to shop no. 4 as the owner of the same on the basis of registered General Power of Attorney, registered Will, affidavit, receipt etc. all dated 11.08.1997, which is even prior to the sale documents executed in favour of the Decree Holder in respect of the property bearing no. 165, J & K Block, Laxmi Nagar, Delhi.

99. Further, the Decree Holder neither at the time of issuance of warrant of possession against Judgement Debtors on

08.01.2024 nor at the time of moving an application on 27.02.2024 praying for police assistance to the Bailiff informed the Court that the applicants/objectors are in possession of the portion of the aforesaid property for a considerably long period of time. In fact, the DH had knowledge of their possession even before filing of the suit in which the decree as sought to be executed by way of the present execution petition was passed. The Decree Holder had several opportunities and occasions to place full facts of the case on record but he failed to do so.

100. The contention of the Decree Holder that they disclosed in paragraphs 7, 8, and 9 about the possession of the applicants/objectors in the shop in question is also baseless as the said paragraphs aver about the examination of certain witnesses including alleged tenants in the matter of suit bearing CS No. 20/2010 and Revocation Petition bearing no. 01/2010. There is no disclosure in the execution petition that the applicants/objectors were in possession of the shops in question even before filing the suit and continued in possession of suit shops till their dispossession. In the execution petition, the DH has cleverly concealed and suppressed the information from the court that the applicants/objectors have been in possession of the shops in question for more than 20 years.

101. Further, another fact that has been concealed by the Decree Holder from the Court at the time of filing of execution petition and thereafter at the time of issuance of the warrant of possession is that there are litigations pending between Decree Holder and other persons in respect of the half portion of the property bearing municipal number 165, J & K Block, Laxmi Nagar,

Delhi i.e. northern side of property measuring 123 square yards having its dimensions as 30' x 37' forming part of the suit property i.e. 165, J & K Block, Lakshmi Nagar, Delhi-110092. The Decree Holder during the the course of arguments on the instant applications/objections informed the court about said litigations i.e. suit bearing no. CS No. 8454/2016 titled "Rakesh Seth vs. Baby Sachdeva & Ors." and another suit bearing no. 7099/2016 titled "Baby Sachdeva@Rita Sachdeva vs. Rakesh Seth & Ors." The Decree Holder prayed for and obtained warrant of possession for the entire 246.66 sq. yd. of the property bearing no. 165, J & K, Block, Laxmi Nagar, Delhi by concealing and suppressing the fact of pending litigations regarding half of the portion of the suit property. Further, the Decree Holder did not even make an attempt to take possession of said half portion because the DH did not point out the said portion to the Bailiff during the execution of the warrant of possession in the matter. This again shows gross concealment and suppression of material fact from the Court by the Decree Holder.

102. The Hon'ble Supreme Court in its various judgements emphasised upon the necessity that the litigants approach the Court with clean hands without concealing or suppressing material facts. In the case of **K.D. Sharma vs. Steel Authority of India & Ors reported as MANU/SC/3371/2008**, while dealing with this aspect of concealment, the Hon'ble Supreme Court observed as under:

24. It is, therefore, of utmost necessity that the petitioner approaching the Writ Court must come with clean hands, put forward all the facts before the Court without concealing or suppressing anything and seek an

appropriate relief. If there is no candid disclosure of relevant and material facts or the petitioner is guilty of misleading the Court, his petition may be dismissed at the threshold without considering the merits of the claim.

25. The underlying object has been succinctly stated by Scrutton, L.J., in the leading case of *R. v. Kensington Income Tax Commissioners* (1917) 1 KB 486 : 86 LJ KB 257 : 116 LT 136 in the following words:

[I]t has been for many years the rule of the Court, and one which it is of the greatest importance to maintain, that when an applicant comes to the Court to obtain relief on an ex parte statement he should make a full and fair disclosure of all the material facts- it says facts, not law. He must not misstate the law if he can help it; the Court is supposed to know the law. But it knows nothing about the facts, and the applicant must state fully and fairly the facts; and the penalty by which the Court enforces that obligation is that if it finds out that the facts have not been fully and fairly stated to it the Court will set aside any action which it has taken on the faith of the imperfect statement. (emphasis supplied)

103. Further, in **Vijay Syal and Anr vs State of Punjab And Ors.** in Appeal (Civil) No. 812 of 2002 decided on 22.05.2003), the Hon'ble Supreme Court observed as under:

"..... In order to sustain and maintain sanctity and solemnity of the proceedings in law courts it is necessary that parties should not make false or knowingly, inaccurate statements or misrepresentation and/or should not conceal material facts with a design to gain some advantage or benefit at the hands of the court, when a court is considered as a place where truth and justice are the solemn pursuits. If any party attempts to pollute such a place by adopting recourse to make misrepresentation and is concealing material facts it does so at its risk and cost. Such party must be ready to take consequences that follow on account of its own making. At times lenient or liberal or generous treatment by courts in dealing with such matters are either mistaken or lightly taken instead of learning proper lesson.

Hence there is a compelling need to take serious view in such matters to ensure expected purity and grace in the administration of justice....." (*emphasis supplied*)

104. In view of the concealment and suppression of material fact, it is evident that the DH has not followed due process of law in taking possession of the suit shops in question.

105. The contention of the Decree Holder that in view of the judgment of **Shamsher Singh (supra)**, the applicants/objectors cannot be put back in possession till they establish their rights, title, and interest in suit shops in question, it is pertinent to mention that the facts of the present case are distinguishable from the facts of the **Shamsher Singh (supra)** as in the present case there is a gross concealment and suppression of material facts from the side of the Decree Holder that the applicants/objectors were in possession of shops in question for a long time. There was also concealment of fact of pending litigation qua half of the portion of the property in question in the present execution proceedings. By way of the said concealment and suppression of material facts, the Decree Holder has managed to obtain an order of issuance of warrant of possession from this Court which this Court would not have passed if Decree Holder had disclosed the full facts regarding the long possession of the applicants/objector for more than 20 years which were within the full knowledge of the Decree Holder as well as pending litigations qua half of the portion of the property in question in the present execution proceedings. Had this fact been disclosed to the Court, the Court would have ordered the issuance of notice to the said occupants of the shops in question. On account of concealment on the part of the Decree Holder, the Decree Holder has wrongfully

dispossessed the applicant/objectors from the shops in question without due process of law. Therefore, the DH cannot be allowed to take benefit from his wrong act including gross concealment and suppression of material facts from the Court. Further, in view of the ratio of the judgement of three judges Bench of the Hon'ble Supreme Court in **Rame Gowda (supra)**, wherein it is held that if a person in peaceful and settled possession has been dispossessed without following the due process of law, law will come to his aid by injuncting even a rightful owner from using force or taking law in his own hands, and also by restoring him in possession even from the rightful owner. Thus, with all due respect the ratio of the judgement of Hon'ble Supreme Court in **Shamsher Singh (supra)** is not applicable to the facts of the present execution proceeding.

106. Further, it is worth noting that the judgment/decreed in the matter of civil suit bearing CS No. 20/2010 titled "Rakesh Seth vs. Raj Kumar@Raja Bhatnagar" in which the decree under execution in the present execution proceeding was passed is not a judgement *in rem*. The said judgement decided the rights and title to the suit property among the parties inter se. The said judgment and decree are applicable to the parties to the suit only.

107. In the prayer clause of the plaint of the said civil suit bearing CS No. 20/2010, the plaintiff had, *inter alia*, prayed for a decree of mandatory injunction directing defendants no. 1, 2, and 3 and their associates, legal representative etc. to remove possession from the property in question and further not to create any title in their favour. It is also prayed in the said suit that a decree of possession in respect of the property bearing No. 165,

Bock-J & K, measuring 246.6 sq. yd., may also be passed in favour of the plaintiff and against the defendants. In the said suit, the plaintiff did not implead the applicants/objectors as parties to the suit despite having knowledge about their possession even before the filing of the suit and despite admittedly serving them with notice by pasting the same on 09.05.2002 at the property and calling upon the tenants to pay rent to him. In the said civil suit, the plaintiff was granted relief of permanent injunction restraining defendants no. 1 and 2 from selling any part of the suit property in favour of defendant no. 3 and the defendants were directed to hand over the possession of the suit property to the plaintiff.

108. Therefore, neither applicants/objectors were parties to the said civil suit nor the decree dated 20.05.2011 passed in the said suit was specifically directed against them because there is nothing to show, at this stage, that the applicant/objectors were associates, legal representative, agents of the defendants. Moreover, the finding in the said suit regarding better title qua the suit property is binding only on the parties to the suit.

109. Further, the decree holder was well aware of the claim of applicant/objector Sh. Arun Kumar to be the prior owner of shop no. 4 of the suit property by way of registered GPA, registered Will, notarized agreement to sell, receipt etc. all dated 11.08.1997 during the trial of the civil suit bearing CS No. 20/2011. However, even Sh. Arun Kumar was not impleaded as a party to the said suit nor any other separate suit was filed against him seeking declaration of the said documents as null and void and recovery of possession of shop no. 4 from him.

110. As regards the contention of the decree-holder that the doctrine of res judicata as enshrined in section 11 of CPC applies to the present applications/objections instituted on behalf of applicants/objectors, it is seen that the instant proceedings have been instituted by the applicants/objectors after their dispossession by the concealment and suppression of material fact by the Decree Holder from the court, thereby, the applicants/objectors have been dispossessed from the shops in question without following due process of law. Therefore, now the DH cannot be heard to say that the doctrine of res judicata applies to the instant proceedings. In any case, the applicants/objectors were never made a party to the suit in which the present decree being executed was passed despite the plaintiff having knowledge of the possession of the shops in question by applicants/objector even before the filing of the said suit. Further, there is nothing to show at this stage that applicants/objectors are proxy litigants of the Judgement Debtors or they are their associates, agent, and acting at their instance. Therefore, the doctrine of res judicata is not applicable to the present proceedings.

111. Further, the contention of the Decree Holder that the provision of Delhi Rent Control Act is not applicable as the Decree Holder is not landlord of the applicants/objectors. In this connection, it is seen that the as per the deposition of the Decree Holder in the Revocation Petition bearing no. 01/2010, the decree holder issued notices to the tenants in the suit property by pasting the same at the property and calling upon the tenant to pay the rent to him. In view of this, it is a matter of trial whether the rent

control legislation has application to the present proceedings. Further, for the aforesaid reason, the contention of the tenancy of the applicants/objectors in respect of shop no. 1, 2, 3 and 5 being from month to month and same having come to an end due to efflux of time and now the applicants/objectors being only tenant at sufferance is also matter of trial. Similarly, whether the provision of section 52 of the Transfer of Property Act, relating to the doctrine of *lis-pendens* is applicable to the present proceedings would also be a matter of trial.

112. Moreover, in view of the DH admittedly pasting notice at the suit property bearing no. 165, J & K Block, Laxmi Nagar, Delhi and the applicants/objectors having been in the settled possession of the shops in the suit property and further applicant/objector Sh. Arun Kumar claiming to have purchased shop no. 4 in the said property on 11.08.1997, it is also a matter of trial whether the applicants/objectors are only claiming through the judgment debtors without any independent right, title or interest in the suit property.

113. As regards the contention of the Decree Holder that the applicant/objector Sh. Arun Kumar does not have any right, title or interest in shop no. 4 of the suit property on the basis of alleged documents namely registered GPA, registered Will, notarized agreement to sell, receipt etc. all dated 11.08.1997, suffice it is to say that the Decree Holder had obtained the decree of possession of the suit property in suit bearing no. 20/2010 on the basis of execution of GPA, Will, etc. in his favour.

114. Moreover, the contention of the Decree Holders regarding rent receipts filed by the applicants/objectors as being forged and

fabricated also requires the adducing of evidence by both the sides.

115. Furthermore, in the present matter, whether the applicants/objectors have rights or interest in respect of shops no. 1, 2, 3, and 5 and are entitled to occupy the same and the said applicants and occupant are bound by the decree dated 20.05.2011 passed in the civil suit bearing CS No. 20/2011; whether decree dated 20.05.2011 passed in the civil suit bearing CS No. 20/2011 is operative against the applicants/objectors as well; and whether objector Sh. Arun Kumar has any right, title and interest in the shop no. 4 on the ground floor of the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi on the basis of registered GPA and registered Will, notarized Agreement to Sell, notarized affidavit, and receipt etc. all 11.08.1997 are all questions which require adducing of evidence by both the parties for their determination.

116. As the question whether applicants/objectors are bound by the decree dated 20.05.2011 is matter of trial, therefore, the question of whether the applicants/objectors are entitled to protection under Order 21 Rule 36 of CPC is also a matter of trial.

117. In view of the above, the present applications filed by the Applicants/Objectors under provisions of Order XXI Rules 99, 100 and 101 of the CPC are maintainable and this court, being the Executing Court has to adjudicate issues relating to right, title or interest in the property, while deciding the aforesaid applications.

118. For the foregoing discussion, the Court is of the opinion that the manner in which the Decree Holders took possession of the suit shops in question from the Applicants/Objectors by concealing and suppressing the material fact was prima facie unlawful. The Decree Holders were aware of the settled possession of the Applicants/Objectors in the aforesaid shops for a sufficiently long period of time and even prior to the filing of civil suit bearing CS No. 20/2010 in which the decree under execution in the present execution proceeding was passed. Despite this knowledge, the Decree Holder did not inform the Court about the possession of the applicants/objectors. In fact, there is an active concealment of the said fact from the Court.

119. Thus, the Applicants/Objectors have made out a case for grant of status quo ante and are entitled to the restoration of possession of the aforesaid suit shops.

120. Accordingly, the Decree Holder is directed to restore the possession of shop no. 1 to the applicant/objector Sh. Subhash Dey, shop no. 2 to the applicant/objector Sh. Radha Krishan, Shop no. 3 to the applicant/objector Sh. Sutantar Pal Handa, shop no. 4 & 5 to the applicant/objector Sh. Arun Kumar, situated on the ground floor of the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi within a period of 30 days from today, that was taken by the Decree Holder pursuant to warrants of possession issued by this Court vide order dated 01.03.2024.

121. Further, the interim order restraining the decree holder from creating third party interest in respect of the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi is made absolute till the objections of the applicants/objectors are

decided, and therefore, the Decree Holder is directed not to create third party interest in respect of any portion of the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi as well as to maintain status quo regarding possession of the remaining portion of the said property, after handing over the possession of the suit shops on the ground floor of the suit property to the applicants/objectors. Accordingly, the applications under section 151 of CPC filed on behalf of applicants/objectors praying for restraining the Decree Holder from creating third party interest in the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi is disposed off.

122. The Court is also of the view that issues raised in the present applications/objections and replies thereof can only be decided after evidence is led on behalf of the parties. Therefore, the following issues are framed as under:

1. **Whether the applicants/objectors have any rights or interest in the shops no. 1, 2, 3 and 5 forming part of the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi? (OP-Objectors)**
2. **Whether the decree dated 20.05.2011 in CS No. 20/2010 would be operative against the Objectors Sh. Subash Dey, Sh. Radha Krishan, Sh. Sutantar Pal Handa, and Sh. Arun Kumar in respect of the suit shops forming part of the property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi occupied by them? (OP-Decree Holder)**
3. **Whether Decree holder is entitled to recover possession of the suit shops from the applicants/objectors? (OP- Decree Holder)**

4. Whether the applicant/objector Sh. Arun Kumar has any right, title, or interest in shop no. 4 on the ground floor of the property bearing no. property bearing no. 165, J & K Block, Lakshmi Nagar, Delhi on the basis of registered GPA and registered Will, notarized Agreement to Sell, notarized affidavit, and receipt etc. all dated 11.08.1997? (OP-Objector-Sh. Arun Kumar)

5. Whether the objectors are associates, agents representative or acting at the instance of the Judgement Debtors? (OP- Decree Holder)

6. Whether the objectors are entitled to any damage from the Decree Holder for their dispossession from the suit shops in question? (OP-Objectors)

123. The Applicants/Objectors and the Decree Holder to file their list of witnesses within three weeks. The evidence by way of affidavit be filed by the Applicants/Objectors and the Decree Holder within four weeks.

124. List the matter for evidence on behalf of both parties on 04.03.2025.

**Announced in the open Court on
this 18th day of January, 2025**

**(SOMITRA KUMAR)
District Judge-06/ East
Karkardooma Courts, Delhi**