

Ex. No. 231/2024
Jagdip Singh Bedi & Anr. Vs.
Kshitij Gupta

14.11.2024

Present: Sh. Murari Kumar, Ld. Counsel for DHs with DH-2.
Sh. Anil Kumar Maurya, Ld. Counsel for JD.

1. An application u/o XXI Rule 26 & 28 r/w sec.47 & 151 CPC, filed on behalf of JD, for seeking stay of the execution proceedings till final disposal of RFA No.588/2024, is pending for disposal. On LDOH i.e. 26.10.2024, when the application was taken up for hearing, Ld. Counsel for respondents/ DHs has strongly opposed the plea made in the application on the grounds including that the applicant/ JD has not deposited the arrears of rent/ occupational charges as per directions of this Court and on inquiry, Ld. Counsel for the applicant/ JD has stated that as per terms of the relevant order the applicant/ JD was required to deposit the arrears of rent/ occupational charges by first week of November, 2024. Hence, the matter was postponed to today under expectation that in order to do equity the applicant/ JD would deposit the arrears of rent/ occupational charges within the stipulated period.

2. At the outset, Ld. Counsel for the applicant/ JD has stated that the applicant/ JD needs time to deposit the arrears of the rent/ occupational charges till 15.12.2024. He has also stated that the order dated 07.10.2024, passed by this Court in the main case (whereby the applicant/ JD/ defendant was directed to deposit the arrears of rent/ occupational charge), has been challenged before the Hon'ble High Court and that notice of the

relevant petition has been issued to the respondents/ DHs for 04.03.2025. In this regard, he has produced copy of order dated 12.11.2024, passed by Hon'ble High Court in CM(M) 3800/2024, CM APPLs. 65869-65870/2024.

3. Ld. Counsel for the respondents/ DHs has strongly opposed the pleas made on behalf of the applicant/ JD by reiterating that the application before the Hon'ble High Court for seeking stay of the execution was dismissed as withdrawn, as reflected in order of the Hon'ble High Court dated 23.09.2024 and that otherwise also no specific order has been passed for staying the execution proceedings. He has mainly contended that earlier when the Ld. Counsel for the respondents/ DHs has conceded to get the execution proceedings stayed, the matter before the Hon'ble High Court was fixed after short period, however, now the matter is listed there after a period of more than three months, hence, a great prejudice shall be caused to the respondents/ DHs who are super senior citizens and that the applicant/ JD is not intended to deposit the arrears of rent/ occupational charges and he just wants to prolong the proceedings unnecessarily in order to harass the respondents/ DHs.

4. The present application has been filed as per the provision u/o XXI Rule 26 & 28 r/w sec.47 & 151 CPC. As per provision u/o XXI Rule 26 CPC the executing court is empowered to stay the execution of decree for a reasonable time only in order to enable the JD to apply to the Court by which the decree was passed or to Appellate Court, for an order to stay execution, etc. In the present matter the situation is that the JD

has already filed an appeal challenging the relevant decree and the respondents/ DHs have also joined the proceedings thereof, hence, this Court is not empowered to stay the decree under this provision. Needless to say and as provided u/o XXI Rule 28 CPC, the executing court is bound by the order of the court by which decree was passed or of the Appellate Court.

5. Main contention of the applicant/ JD is that vide order dated 23.09.2024, passed in RFA 588/2024, the Hon'ble High Court has directed the parties to make a joint request before the executing court to adjourn the proceedings of the execution beyond 18.10.2024, the date fixed before the Hon'ble High Court, however, on that day the matter was re-notified due to paucity of time for 11.03.2025 and that re-notification of the matter due to paucity of time contemplates that the execution proceedings are also adjourned beyond the date fixed for hearing in appeal before the Hon'ble High Court.

6. As highlighted in order dated 26.10.2024, passed by this court, in para no.10 of order dated 23.09.2024, passed by the Hon'ble High Court in RFA No.588/2024, etc., the following observation was made-

10. In view of the fact that the court has fixed this matter for hearing on 18.10.2024 at a fixed time, both parties shall jointly request the Ld. Trial Court to adjourn the matter to a date beyond the date fixed by this Court.

7. As pointed out by Ld. Counsel for the respondents/ DHs, in the aforesaid order dated 23.09.2024, passed by the Hon'ble High Court, it is mentioned that CM APPL. 55893/2024, for seeking stay of the execution was dismissed as withdrawn

and no specific order has been passed for staying the execution proceedings. The Hon'ble High Court has ordered the parties to jointly request the Ld. Trial Court acting in the capacity of executing court, to adjourn the matter to a date beyond the date fixed by that court (Hon'ble High Court). In compliance of the said order, on 24.09.2024 Ld. Counsel for the respondents/ DHs jointly with Ld. Counsel for the applicant/ JD has fairly submitted before the Ld. ACJ, West, to adjourn the appointment of bailiff to any date after 18.10.2024.

8. Since the plea made on behalf of the applicant/ JD to adjourn the execution proceedings beyond 11.03.2025, the date fixed before the Hon'ble High Court, is strongly opposed on behalf of the respondents/ DHs, it needs to be considered as to whether or not in the present circumstances this court can stay the proceedings of the execution on unilateral prayer of the applicant/ JD.

9. Vide aforesaid order dated 07.10.2024 the applicant/ JD was directed to deposit the arrears of rent/ occupational charges from July 2021 to September 2024 @ Rs.60,000/- per month in court in court within a period of one month and to continue to deposit the rent/ occupational charges every month, which he has failed to comply with. For the time being the arrears of rent/ occupational charges have only been directed to be deposited in the court and not to be released to the respondents/ DHs, hence, no prejudice would have been caused to the applicant/ JD in doing so.

Although, it has been submitted on behalf of the applicant/ JD that he shall deposit the arrears of rent/ occupational charges by

15.12.2024, however, the said statement is not appearing to be sincere as he has not deposited even a single penny and has already challenged the aforesaid order dated 07.10.2024 before the Hon'ble High Court. The conduct of the applicant/ JD that till date he has not deposited anything towards arrears of rent/ occupational charges in compliance of aforesaid order dated 07.10.2024, which has not been stayed by the Hon'ble High Court, reflects that he is not ready to do equity with the respondents/ DHs.

10. As mentioned in their affidavits on record, the age of the DH-1 and DH-2 is 85 years and 77 years, respectively. Under the given circumstances staying the execution proceedings beyond the date fixed before the Hon'ble High Court, which is after more than three months, prejudice shall be caused to the respondents/ DHs and it will work as unconscionable against them.

11. In view of above discussions, no ground is made out to further stay the proceedings of the execution proceedings, hence, the application of the applicant/ JD under consideration is being dismissed.

12. At this stage, Ld. Counsel for the DHs has prayed for issuance of fresh warrants of possession with police aid and permission to break open the locks.

13. Issue fresh warrants of possession in respect of the suit property i.e. entire 3rd floor of property bearing no.16/31, East Patel Nagar, New Delhi (as shown in red colour in site plan filed with the petition at page no.32), with direction to bailiff that

vacant and peaceful possession of the suit property be handed over to the DHs. The aforesaid process be issued on filing of PF. The bailiff is permitted to break open the locks of the suit property and to seek police assistance, if need arises during execution of warrants of possession. The concerned SHO is directed to do the needful in this regard.

14. Needless to say that in case after breaking open lock of the suit property any movable property belonging to the JD is found therein, the bailiff shall deal with the same as per rules.

DH to appear before Ld. ACJ for appointment of bailiff on 29.11.2024

Put up for report before this Court on **03.01.2025**.

(GOPAL SINGH CHAUHAN)
DJ-03, WEST/DELHI
14.11.2024