

IN THE COURT OF SH. SHIV KUMAR
DISTRICT JUDGE: WEST
TIS HAZARI COURTS; DELHI

Execution no. 280/2025

Kiran Dewan

..... Decree holder

Versus

Sh. Mahender Singh

..... Judgment Debtor.

ORDER ON APPLICATION FILED ON BEHALF OF SHRI GAURAV MAKHIJA S/O HARI KISHAN MAKHIJA AND SMT. NEHA MAKHIJA, D/O SHIR HARI KISHAN MAKHIJA UNDER SECTION 47 AND ORDER 21 RULE 15 AND SECTION 151 CPC.

- 1) Vide this order, I shall decide the application (IA NO. 2/2026) filed on behalf of Shri Gaurav Makhija S/o Shri Hari Kishan Makhija and Smt. Neha Makhija D/o Shri Hari Kishan Makhija under section 47 and order 21 rule 15 and section 151 CPC.

2) It is averred in the application that Shri Hari Kishan Makhija had filed a suit bearing no. 361/22 against the judgment debtor for recovery of possession and rent etc which was decreed by the Hon'ble court vide judgment and decree dated 12.08.2025.

3) It is further averred in the application that Shri Hari Kishan Makhija had died during the pendency of the above said suit leaving behind the decree holder and the applicants herein as his only legal heirs. All the said legal heirs were substituted in place of the deceased Shri Hari Kishan Makhija in the said suit and thereafter decree was pass in favour of all the abovesaid legal heirs.

4) It is further averred in the application that while passing the aforesaid judgment and decree, this Hon'ble court had directed payment of deficient court fees and the said court fees had been paid and deposited in the court by the applicants herein.

5) It is further averred in the application that the applicants had received ane-mail dated 19.09.2025 on behalf of Smt. Kiran Dewan. The applicants had replied to the said e-mail vide email dated 28.09.2025 objecting to the filing of any execution petition by Smt. Kiran Dewan to the exclusion of the applicants. Thereafter, applicants mentioned the contents of the e-mail dated 28.09.2025.

6) It is further averred that applicants have an undivided interest of 1/3rd share each in the property in dispute and they are the major shareholders in the same. It is further averred that in spite of the objections raised by the applicants, Smt. Kiran Dewan fraudulently filed the present execution without the knowledge and consent of the applicants and without impleading them as a party in the same. It is further averred that as a matter of fact, she was bound to have made the applicants as a party to the execution and was also duty bound to disclose to the Hon'ble Court about the abovesaid email dated 28.09.2025 sent by the applicant.

7) It is further averred in the application that Smt. Kiran Dewan/DH had no right to execute the decree or to take the possession of the premises in dispute to the exclusion of the applicants. It is further averred that the applicant learnt of the present execution petition only on 16.01.2026 when Shri Gaurav Makhija had visited the property in dispute and where he came to know that the possession has been taken from the judgment debtor. Shri Gaurav Makhija, thereafter, contacted his counsel Shri Sanjay Aggarwal, Advocate who on enquiries came to know of the present execution petition.

8) It is further averred in the application that Smt. Kiran Dewan had no right to exclusively take the possession of the

premises in dispute and the applicants being the decree holder have a right to joint possession alongwith Smt. Kiran Dewan.

9) It is further averred in the application that the applicants also learnt that the movable goods of the judgment debtor have also been attached by this Hon'ble Court. In case, any amount is realized by Smt. Kiran Dewan in the present execution from the judgment debtor she may be directed to pay the 1/3rd share each out of the aforesaid amount to the applicants.

10) It is further averred in the application that in the above mentioned circumstances, it is necessary in the interest of justice, that it be ordered that the possession taken by Smt. Kiran Dewan to the exclusion of the applicants is illegal and thereafter direct that Smt. Kiran Dewan holds the property on behalf of herself and the applicants jointly and direct Smt. Kiran Dewan to handover one set of keys of the premises in dispute to the applicants. It is further averred that the above said directions is necessary in order to protect the interests of the applicants. Accordingly the present application has been filed.

11) Reply to the present application has been filed on behalf of DH.

12) In the reply, the DH has taken preliminary objections that the present application is not maintainable and ought to be dismissed in limine.

13) It is further contended that admittedly, a partition suit qua the subject property is pending adjudication before Hon'ble Delhi High Court, thus the contentions of the applicants are sub-judice before Hon'ble High Court.

14) It is further contended that admittedly, the captioned execution petition is filed qua property bearing house no. 322, Block B3, Paschim Vihar ad-measuring 200 Sq. yards (Subject property). It is further contended that a partition suit filed by Smt. Kiran Dewan/the petitioner herein, against the applicants (Gaurav & Neha) is pending before Hon'ble High court titled Kiran Dewan v. Gaurav Makhija & Ors, bearing CS (OS) No. 326 of 2024 (Partition suit).

15) It is further contended that the lis/dispute before Hon'ble High Court concerns the 1/3rd share each of Smt. Kiran Dewan, Gaurav Makhija & Neha Makhija being class-1 legal heirs of late Sh. Hari Kishan Makhija (original plaintiff in whose favour the captioned suit was decreed).

16) Pertinently, the subject property herein is among the 6 properties in which the parties have agreed for 1/3rd share each and the same is sub-judice before the Hon'ble High

Court, as demonstrated from the order dated 13.03.2026 passed by the Hon'ble High Court. (Annexure -1)

17) It is further submitted that without prejudice, Smt. Kiran Dewan/petitioner has undertaken that the reliefs qua the execution proceedings shall be subject to the outcome of the partition suit pending before Hon'ble High Court.

18) It is further contended that admittedly, the petitioner/Smt. Kiran Dewan has filed the captioned petition in her capacity as one of the legal heirs, which is legally permissible. Furthermore, a bare perusal of paragraph no. 3 & 4 of the petition, would demonstrate that Smt. Kiran Dewan has undertaken that the fruits from the execution proceedings shall be subject matter of the Partition suit before Hon'ble High Court.

19) It is further submitted that the conduct of the petitioner clearly demonstrates that there was no intention to exclude or defeat the rights of the applicants, but rather to ensure effective enforcement of the decree, which had remained unsatisfied. The petitioner has , at all material times, acknowledged the existence of other legal heirs and has already place on record that the outcome of the executive shall remain subject to the outcome of the pending partition proceedings.

20) It is further submitted that the actions of the petitioner are guided by bona fide intent to realize the decretal relief and preserve the property and not to appropriate the same exclusively. It is further submitted that the apprehensions sought to be created by the applicants are wholly unfounded and contrary to the record.

21) The most of the contents of the application are denied and it is submitted that the interpretation sought to be placed on the reply email dated 28.09.2025 are denied. It is further submitted that the applicants were duly intimated regarding the execution and were called upon to participate in the same. It is further submitted that the execution petition has been instituted in accordance with law by one of the joint decree holders, which is permissible and cannot be impugned on the grounds as sought to be raised.

22) It is further contended that no directions, as sought by the applicants, is either warranted or permissible in facts and circumstances of the present case. It is further submitted that the possession has been taken by the petitioner strictly in execution of the decree and through due process of law and the same cannot be termed as illegal. It is therefore prayed that the present application is not maintainable in view of the facts and circumstances mentioned above.

23) Arguments heard. Case file perused.

24) It is admitted fact that the decree holder and both the applicants have 1/3rd share each in the property i.e. 322, First Floor, Block B3, Paschim vihar, New Delhi (hereinafter to be referred as subject property).

25) On 15.12.2025, the bailiff has delivered the possession of the subject property to the DH by executing warrant of possession issued by this Court and now the subject property is in the possession of DH.

26) I have perused the judgment and decree dated 12.08.2025, on the basis of which, the present execution has been filed by the DH/Ms. Kiran Diwan. In the original suit, Ms. Kiran Diwan along with both applicants were impleaded as legal representative of the original plaintiff/Late Sh. Hari Krishan Makhija. The abovesaid judgment and decree have been passed jointly in favour of DH as well as both applicants and they are held entitled to obtain the possession of subject property from the JD/defendant in the said suit.

27) Order 21 rule 15 CPC is relevant to decide the present controversy between the DH and both applicants and the same is reproduced as under:

“Application for execution by Joint decree-holders.—

(1) Where a decree has been passed jointly in favour of more persons than one, any one or more of such persons

may, unless the decree imposes any condition to the contrary, apply for the execution of the whole decree for the benefit of them all, or, where any of them has died, for the benefit of the survivors and the legal representatives of the deceased.

(2) Where the Court sees sufficient cause for allowing the decree to be executed on an application made under this rule, it shall make such order as it deems necessary for protecting the interest of the persons who have not joined in the application.

28) As per Order 21 Rule 15 CPC, in case of passing of joint decree in favour of more than one person, any one or more of such persons can file execution for executing of entire decree for the benefit of all the persons, in whose favour, the joint decree has been passed by the court.

29) In the present case, since joint decree has been passed in favour of DH and both applicants, any of them is entitled for filing execution for executing of entire decree but for the benefit of all the persons, in whose favour, the joint decree has been passed.

30) By way of judgement and decree dated 12.08.2025, the court has passed joint decree in favour of DH and both applicants for obtaining the possession of the subject property, so, none of them can claim right of exclusive possession of the subject property, in the present execution.

31) Ld counsel for the DH has argued that the partition suit between the parties regarding the joint properties, including subject property is pending before Hon'ble High court of Delhi and the title of said case is "Kiran Diwan Vs Gaurav Makhija & Ors " , CS (OS) no. 326/2026. He further argued that this court has no jurisdiction to pass any direction regarding the subject property as the matter is subjudice before Hon'ble High court of Delhi.

32) Ld counsel for the DH has filed on record copy of order dated 05.05.2026 passed by Hon'ble High court of Delhi. I have perused the copy of said order. In para no. 5 & 6 of said order, it is mentioned that

“5.Learned counsel appearing for the plaintiff submits that as regards the property bearing no. 322, Block-B3, situated at Paschim Vihar, on the plot admeasuring 200 sq. yards, the same was got vacated recently from the tenants. Further, the execution proceedings, i.e., Ex P.280/2025 before the Tis Hazari Court have been initiated by the plaintiff herein.

“6. He, thus, submits that as regards to rental income from the aforesaid property, the plaintiff as well as defendants have 1/3rd share each in the said rental income.”

33) There is no stay on the proceedings of present execution. The rights of parties to obtain exclusive

possession of any part of the subject property has not yet been decided. The final decree regarding partition of the subject property by metes and bound has not yet been passed.

34) In para no. 4 of the present execution, the DH has undertaken that the possession of the subject property as well as any amount recovered from the JD in the present execution shall be deposited before this court and shall remain subject to outcome of the partition suit.

35) As per order 21 rule 15 CPC, this court has not delivered possession of the subject property to the DH by excluding the rights of both applicants, who are also jointly entitled to recover the possession of the subject property. The Order 21 rule 15 CPC does not require the filing of execution petition by all the joint decree holders only with intent to avoid unnecessary procedural obstacles in execution proceedings and to ensure that the decree be executed expeditiously and not remain unexecuted due to non-joining of all the decree holders.

36) In view of the abovesaid facts and observations, it is held that both the applicants along with DH are entitled for joint possession of the subject property as the joint decree has been passed in their favour to recover the possession of the

subject property. Therefore, the DH is directed to give one set of keys of the subject property to both the applicants, within 07 days from today.

37) It is made clear that the DH and both applicants will be entitled to joint possession of the subject property and no one will be entitled to exclude any one from the joint possession of the subject property. However, the rights of DH and both applicants regarding joint possession of the subject property shall be subject to the decision of Hon'ble High Court of Delhi passed in partition suit titled "Kiran Diwan Vs Gaurav Makhija & Ors", CS (OS) no. 326/2026. Accordingly, the present application (IA no. 2/2026) stands allowed and disposed off accordingly.

**Announced in the open court
on 30.05.2026.**

(SHIV KUMAR)
District Judge-02, Court no.127,
West Distt, THC:Delhi