



\$~2 (Appellate Side)

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 333/2022 & CM APPL. 17602/2022, CM APPL.
17603/2022, CM APPL. 17604/2022

PRATAP RANJAN SAHANI Petitioner
Through: Mr. Sibbo Shankar Mishra, Adv.

versus

MUKESH MARWAH & ANR. Respondents
Through: Mr. Sameer Rohatgi, Adv. with
Mr. Akhilesh Kr. Pandey, Mr. Akshit
Pradhan and Mr. Manoj Kumar, Adv. for R-
1
Respondent 2 in person

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

ORDER
% **13.04.2022**

**CM APPL. 17602/2022 & CM APPL. 17604/2022 in CM(M)
333/2022**

1. Exemptions allowed subject to all just exceptions.
2. The applications stand disposed of.

CM(M) 333/2022 & CM APPL. 17603/2022

3. This petition, under Article 227 of the Constitution of India, challenges an order dated 11th March, 2022, passed by the learned Additional Senior Civil Judge (“the learned ASCJ”) in execution 1203/2019, whereby the learned ASCJ has, in execution proceedings for execution of a decree dated 8th April, 2019, passed by the learned CM(M) 333/2022



ASCJ in Civil Suit No. 1583/2016, directed issue of warrants of possession of property No. 61-D, MIG DDA Flats, Motia Khan, Paharganj (“the suit property”, hereinafter) and warrants of attachment against the judgment debtors (the petitioner and Respondent 2) *qua* their movable properties for the decretal amount.

4. Shorn of other unnecessary details, for today, the case of the petitioner, as urged by Mr. Sibbo Shankar Mishra, learned Counsel for the appellant, is that, *qua* the suit property, there was already an *ex-parte* decree passed against him and Respondent 2 on 19th March, 2010, whereunder the suit of Respondent 1 was decreed for recovery of arrears of rent for the period from 1st September, 2001 to 30th November, 2009 with further rent @ ₹ 4,000/-p.m from the petitioner and Respondent 2 till recovery of possession of suit property. He submits that Respondent 2 moved an application under Order IX Rule 13 of the CPC, which was allowed *vide* order dated 1st February, 2011. The suit, therefore, revived against Respondent 2. The *ex-parte* decree against the petitioner, however, continued undisturbed.

5. Mr. Mishra submits that the decree dated 8th April, 2019, now been sought to be executed, directs recovery of arrears of rent in favour of Respondent 1 and against both the defendants in the suit i.e. plaintiff and Respondent 2. He submits that, in view of the earlier *ex-parte* decree dated 19th March, 2010, which remained undisturbed, there could be no second decree against his client for the same period in respect of the same property.

6. It is in these circumstances that the petitioner has moved the
CM(M) 333/2022



present petition.

7. The prayer in this petition is only for setting aside the order dated 11th March, 2022 passed in Execution 1203/2019 in the aforesaid Civil Suit No. 1583/2016 to the extent of attachment of movable assets of the petitioner.

8. Issue notice, returnable on 2nd August, 2022.

9. Notice is accepted on behalf of Respondent 1 by Mr. Akhilesh Kr. Pandey and Respondent 2, who appears in person.

10. Mr. Rohtagi submits, on instructions, that, till the next date of hearing, the Respondent 1 would not seek to proceed for attachment of movable assets of the petitioner.

11. As such, no *ad interim* order need be passed today. The statement is taken on record.

12. Reply to the petition and the stay application, if any, be filed within four weeks, with advance copy to learned Counsel for the appellant who may file rejoinder thereto, if any, before the next date of hearing.

13. It is made clear that there is no stay of attachment of the warrants of possession issued in respect of suit property, as this petition has been preferred only by the petitioner, who claims not to be in possession of the suit property at all and is not contesting the



issuance of warrants of possession of the suit property.

C. HARI SHANKAR, J.

APRIL 13, 2022

dsn