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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **CM(M) 2229/2024**

SHELLY SHARAMA

..... Petitioner

Through: Mr. Shantanu Awasthi and Mr.
Shikhar Mittal, Advs.

versus

KUSUM SHARMA

..... Respondent

Through: None.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

% **28.03.2024**

CM APPL. 18743/2024—Exp.

1. Allowed, subject to all just exceptions.
2. Application stands disposed of.

CM(M) 2229/2024 and CM APPL. 18742/2024—stay

3. The present petition under Article 227 of the Constitution of India has been filed assailing the order dated 22.03.2024 passed in Misc. SCJ No. 15/24 titled as “Shelly Sharma vs. Kusum Sharma” and order dated 22.03.2024 passed in Ex. No. 548/23 titled as “Kusum Sharma vs. Shelly Sharma” by the learned Civil Judge-01, Shahdara District, Karkardooma Courts, Delhi whereby the learned Trial Court dismissed the applications under Order IX Rule 13 read with Section 151 of the Code of Civil Procedure, 1908 (“CPC”) filed by the petitioner for setting aside ex-parte



judgment and decree dated 18.08.2023 and under Order XXI Rule 26 read with Section 151 CPC for stay on execution proceedings against the petitioner/ judgment debtor respectively.

4. The petitioner herein is the defendant before the learned Trial Court.

5. It is submitted by the counsel for petitioner that the respondent is the mother in law of the petitioner herein and had filed a civil suit for permanent and mandatory injunction on 20.03.2021 against the petitioner after the demise of her son. Thereafter, petitioner responded to the said suit by filing written statement along with the application for condonation of delay on 06.10.2021. Vide order dated 24.11.2021, learned Trial Court proceeded *ex-parte* against the petitioner. Subsequently, the petitioner moved an application under Order IX Rule 7 CPC on 13.12.2021. The same was allowed vide order dated 07.06.2022 subject to payment of cost of Rs. 1000/-. Once again, vide order dated 21.04.2023, learned Trial Court proceeded *ex-parte* due to non-appearance and non-deposit of the cost imposed vide order dated 24.11.2021. On 18.08.2023 final order and judgment was passed and subsequently in January, 2024 summons of execution proceedings were received by the petitioner.

6. It is submitted that on 26.01.2024, application under Order XXI Rule 26 CPC for stay of execution proceedings was filed by the petitioner detailing about the grounds and submitting that the decree was obtained by playing fraud upon the Court as well as on humanitarian grounds.

7. Subsequently, while deciding the said application, the learned Trial Court passed the impugned orders.

8. Learned counsel for the petitioner submits that the petitioner continues to stay at her matrimonial home with her children after her



husband expired on 21.03.2022.

9. Learned counsel for the petitioner submits that one of the minor child of the petitioner had expired on 18.10.2022 and she has no support for looking after her family. Moreover, the petitioner has no other appropriate accommodation at present to reside with her two minor children. Learned counsel further submits that the learned Trial Court in haste passed the impugned orders and did not even grant an opportunity to the petitioner to assail those orders.

10. Learned counsel submits that after dismissing the application moved on behalf of the petitioner under Order IX Rule 13 CPC on 22.03.2024, on the same day, the warrants of possession were issued and the decree holder i.e. respondent has been directed to appear before the Court of ACJ for appointment of Bailiff for 28.03.2024 i.e. today itself.

11. It is submitted that in these circumstances as no appropriate time has been accorded to the petitioner even to challenge the impugned orders, the petitioner has filed the present petition. It is further submitted that in these compelling and peculiar circumstances, the impugned order dated 22.03.2024 with respect to the appointment of Bailiff for execution of warrants of possession be stayed.

12. Issue notice.

13. On taking steps by the petitioner, let service be effected upon the respondent through all permissible modes including via approved courier service, returnable on 02.04.2024.

14. In view of the aforesaid submissions, the order dated 22.03.2024 whereby the learned Executing Court has ordered for appointment of Bailiff for execution of warrants is stayed till next date of hearing.



15. Order be given *dasti* under the signature of Court Master, as requested.

SHALINDER KAUR, J

MARCH 28, 2024/ss