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

+ **EX.P. 61/2024**

SHRI SANJEEV JOON

.....Decree Holder

Through: Mr.Naresh K Daksh, Advocate.

versus

SHRI SURENDER BASOYA

.....Judgement Debtor

Through: Mr.Abhay Kumar, Advocate.

**CORAM:**

**HON'BLE MR. JUSTICE PURUSHAINDR KUMAR KAURAV**

**ORDER**

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**30.04.2025**

**EX.APPL.(OS) 700/2025 (under Section 151 of CPC)**

1. The instant execution petition seeks for the execution of judgment and decree dated 04.03.2024. The Court while decreeing the suit has made following observations:-

“.....

45. *It is well settled that an unregistered agreement to sell does not create any right in the property save the right to seek specific performance of the said agreement. Defendant no.1 has no right to remain in occupation of the suit property-2 or retain possession thereof merely because of the agreement to sell in his favour. This Court in Pawandeep Singh v. Gurdeep Singh Viridi, 2019 SCC OnLine Del 9495, has held as under:*

*"19. The law on this aspect is clear. An unregistered Agreement to Sell cannot be used as a shield under Section 53 A of the TPA since Section 17(1-A) of the Registration Act, 1908 makes the documents containing a contract to transfer for consideration, any immovable property for the purpose of Section 53 A, compulsorily registrable. If such documents are not registered, they shall have no effect for the purposes of Section 53 A...*

*20. The remedy, if any, for the appellant no. 1 would have*

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*been to sue for specific performance as Section 49 of the Registration Act, 1908 states that a suit for specific performance can be initiated on the basis of an unregistered Agreement to Sell...*

*21. The appellants herein do not have any right to remain in possession of the suit premises till they acquire a title in pursuance to a decree for specific performance. It was so held in Sunil Kapoor v. Himmat Singh, ILR (2010) 11 Del 616. We may note that SLP (C) No. 6010/2010 against the said judgment was dismissed by the Supreme Court on 12.03.2010."*

*46. The cheque given by the defendant no.1 under the ATS has been dishonoured. The defendant no.1, who is in the possession of the suit-property-2 pursuant to the ATS, is not willing to pay the amount due under the ATS to the plaintiff. In these circumstances, the plaintiff is entitled to a decree of cancellation of ATS. Further, in view of the affidavit filed by Anju Bansal, there is no impediment in passing a decree of possession in favour of the plaintiff qua the suit-property-2. The plaintiff is also entitled to a decree of permanent injunction in terms of prayer (d).*

*47. Accordingly, the CS(COMM) 720/2021 is decreed in terms of prayers (b), (c) and (d). The plaintiff is also entitled to costs, assessed at Rs.2,50,000/- (including Rs. 2,05,100/- paid as court fee).*

**Conclusion**

*48. The IA No.10520/2022 in CS(COMM) 719/2021 and IA No. 10444/2022 in CS(COMM) 720/2021 are allowed. The plaintiff is entitled to decree in terms of paragraphs 44 and 47.*

*49. Let decree sheets be drawn up accordingly.*

*46. Let a copy of the decree in CS(COMM) 719/2021 be sent to the concerned Sub-Registrar, where the Sale Deed dated 15.09.2016 is registered, as contemplated under Section 31(2) of the Specific Relief Act, 1963.*

*50. CS(COMM) 719/2021 and CS(COMM) 720/2021 are accordingly disposed of. All pending applications also stand disposed of"*

2. During the pendency of the instant execution petition, it has been brought to the notice of the Court that *vide* the judgment and decree which was passed, two civil suits being CS(COMM) 719/2021 and CS(COMM) 720/2021 came to be decided and against one of them, the judgment-debtor has preferred an appeal, which is pending before the Division Bench of this

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Court for its consideration. However, no appeal has been preferred against the judgment and decree which is sought to be executed in the instant execution proceedings.

3. The execution proceedings were taken up for consideration on various dates. On 24.04.2025, this Court has passed the following order:-

**“EX.APPL.(OS) 671/2025 (under Order XXI Rule 97) in EX.P. 60/2024**  
**EX.APPL.(OS) 668/2025 (under Order XXI Rule 97) in EX.P. 61/2024**

1. Heard learned counsel appearing on behalf of the decree-holder.  
2. The decree-holder in EX.APPL.(OS) 671/2025 prays for the following relief:-

a) to pass an appropriate Order thereby directing and allowing the Court Bailiff to break open the lock and door of the Property and also to take Police Assistance for taking over possession of the Property and also removing the obstructions and also Judgement Debtor, his family members, associates, relatives or any other person claiming on their behalf from the said property i.e. Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62-A/1 and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-1 10065, specifically a house built therein and in occupation of the Judgement Debtors and their family members, and to deliver the possession to Decree Holder.”

3. The decree-holder in EX.APPL.(OS) 668/2025 prays for the following relief:-

“a) to pass an appropriate Order thereby directing and allowing the Court Bailiff to break open the lock and door of the Property and also to take Police Assistance for taking over possession of the Property and also removing the obstructions and also Judgement Debtor, his family members, associates, relatives or any other person claiming on their behalf from the said property i.e. Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065, and to deliver the possession to Decree Holder.”

4. Learned counsel appearing on behalf of the judgment-debtors submits that he be granted another opportunity to file the reply. He contends that his application is pending in the instant matter, whereby, he challenged the maintainability of the instant petitions itself. Additionally, he contends that there is an appeal pending before the Division Bench of this Court and

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*if the aforesaid proceedings are decided in his favour, he would be unable to reap the benefits thereof. Under these circumstances, he requests that some time be granted to file the reply.*

5. *I have considered the aforesaid submissions and also perused the record.*

6. *The order passed by this Court dated 30.01.2025 reads as under:-*

*“1. The submission of learned counsel for the judgment debtor to the effect that the Division Bench vide order dated 31.05.2024 has stayed the proceedings of this Court is completely misplaced, as the order clearly states that any steps taken in the matter will be subject to the outcome of the appeal. It does not mean that the proceedings of the Executing Court have been stayed by the Division Bench or the Executing Court is restrained to take further steps in accordance with law.*

*2. Both the execution applications relate to the execution of the judgment and decree dated 04.03.2024 wherein, a decree for declaration was passed.*

*3. The possession of the above properties requires to be handed over to the decree holder in terms of the judgment and decree.*

*4. It is seen that despite various opportunities the judgment debtor has not taken any steps neither any plausible explanation has been offered.*

*5. The details of property in EX.P. 60/2024 are as under:-*

*"Plot of land measuring 270 sq. yards (225 sq. meters) out of Plots measuring 400 sq. yards (335 sq. meters) bearing Property No. 62- A/I and adjoining Plot measuring 400 sq. yards (335 sq. meters) of Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi- 110065"*

*6. The details of property in EX.P. 61/2024 are as under:-*

*"Plot of land measuring 230 sq. yards out of Plots measuring 400 sq. yards situated in Khasra No. 136/1/2 (Min) at Village Garhi Jharia Maria, New Delhi-110065."*

*7. In view of the aforesaid, let the matter be placed before the Joint Registrar on 03.03.2025 for appointment of the Bailiff for taking over the possession of the proper in question to be handed over the decree holder."*

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7. *It is thus seen that thereafter the matter was taken up on an application bearing EX.APPL. (OS) 223/2025 filed on behalf of the judgment debtors, seeking stay of the execution proceedings.*

8. *The Court vide order dated 06.02.2025, found that the application filed by the judgment debtors lacked merit. In light of the observations made in the order dated 30.01.2025, the Court noted that the Division Bench had not stayed the execution proceedings but had only observed that any steps taken would be subject to the outcome of the appeal.*

9. *The matter was thereafter taken up on 06.03.2025 and notice was directed to be issued. Thereafter the matter was taken up on 02.04.2025, wherein, inadvertently, certain typographical errors occurred and the same were rectified vide order dated 04.04.2025. The matter was next called out on 22.04.2025.*

10. *On the overall conspectus of the facts and circumstances, the Court finds that the judgment debtors have made repeated attempts to delay the execution proceedings. As per the Court's order dated 30.01.2025 the possession of the suit property, deserves to be handed over without further delay.*

11. *With respect to the submissions made by the learned counsel for the judgment-debtors, who argued that certain applications are still pending and the matter is before the Division Bench, needless to state that the Division Bench has already clarified that any proceedings during this period would remain subject to its further directions. Therefore, the order of the Division Bench applies in full force.*

12. *Accordingly, the Court finds that in the interregnum, the prayers made in the instant applications deserve to be accepted; and accordingly, the bailiff is directed to break open the lock and door of the suit properties and also to take police assistance for taking over possession of the property and to also remove the obstructions in handing over the possession to the decree-holder.*

13. *Let fresh warrants of possession be issued in both the execution petitions by the concerned Joint Registrar within three working days.*

14. *Let a copy of this order be sent to the concerned SHO, South-East District for necessary action and compliance.*

15. *Applications stand disposed of."*

4. *It is at this point of time, the present applicant/judgment-debtor has*

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filed the instant application, seeking following reliefs:-

*“1. Pass an order/ orders thereby directing the bailiff to file the chart of the total number of owner/ owners since very beginning of total 1600 Gaj in the favour of Sh. Harbal and Sh.Harpat ( Original Owners) of the property in khasra no. 136/1/2 (min) at village: garhi jharia maria New Delhi- 65 till date.*

*2. Pass an order/ orders thereby directing the bailiff to locate and identify plot of the land admeasuring 230 sq. Yards out of plot admeasuring 400 sq. Yards in khasra no. 136/1/2 (min) at village: Garhi Jharia Maria New Delhi- 65 for which DH is claiming to be owner and to proceed further in accordance with rule of law in the interest of Justice.”*

5. Having considered the background of the facts and circumstances including the orders passed from time to time, the Court finds that the instant application is misconceived, and it *prima facie* appears that the same has been filed to avoid the execution of the judgment and decree. Accordingly, the said application stands dismissed.

6. The bailiff is directed to execute the judgment and decree, strictly in terms thereof, and in accordance with law.

**PURUSHAINDRA KUMAR KAURAV, J**

**APRIL 30, 2025**

***Nc/sp***

[Click here to check corrigendum, if any](#)