

# Mohd. Noor Hassan vs Ashok Kumar Passi on 2 December, 2021

**Author: Prathiba M. Singh**

**Bench: Prathiba M. Singh**

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\* IN THE HIGH COURT OF DELHI AT NEW DELHI  
+ EX.F.A. 16/2021 & CM APPLs. 43117/2021 & 43118/2021  
MOHD. NOOR HASSAN ..... Appellant  
Through: Ms. Archana Midha, Advocate (M:  
8510988004).  
versus  
ASHOK KUMAR PASSI ..... Respondent  
Through: Mr. N.K. Aggarwal, Advocate.  
CORAM:  
JUSTICE PRATHIBA M. SINGH  
ORDER

% 02.12.2021

1. This hearing has been done in physical Court. Hybrid mode is permitted in cases where permission is being sought from the Court.

2. The present appeal has been filed challenging the impugned orders dated 2nd November, 2021 and 26th November, 2021 passed by the Executing Court in Ex. No.89/2021 titled Sh. Ashok Kumar Passi v. Noor Hassan, by which objections filed by the Appellant/Judgment Debtor (hereinafter "Appellant") have been rejected by the said Court.

3. The Appellant's case is that initially, since 2008, the Appellant was a tenant in the suit property bearing House No. RZ-H-84, Pole No:102, Gali No. 2, Raghu Nagar, Dabri village, Delhi state, measuring 100 Sq. yards, comprising in Khasra No. 17/24 in the revenue estate of Village Dabri, New Delhi-110045 (hereinafter "suit property"). However, on 15th March, 2013, he entered into an agreement to sell with the Respondent-landlord (hereinafter "Respondent"). Various documents are relied upon including the part sale consideration which has been paid, to argue that the Appellant had agreed to purchase the suit property from the Respondent and had paid Digitally Signed By:DEVANSHU JOSHI Signing Date:03.12.2021 15:43:17 various sums in his suit. Accordingly, notice was issued to the Respondent, on 9th December, 2015, seeking enforcement of the agreement to sell and other documents. However, it is the case of the Appellant that the said notice was not replied to, leading to the filing of a suit for specific performance, permanent injunction, and with alternate relief of declaration, being Civil Suit No. 21/16 (earlier Civil Suit No.57307/2016) titled Md. Noor Hassan v. Sh. Asoka Kumar Passi, which is stated to be pending. Thereafter, the

Respondent filed a suit for possession, arrears of rent, water and electricity charges, mesne profits/damages against the Appellant, on the ground that the tenancy had been terminated and that the possession of the suit ought to be given back to the Respondent along with rent arrears and mesne profits, being Civil Suit No.58094/16 titled Ashok Kumar Passi v. Sh. Noor Hassan.

4. The suit filed by the Respondent, however, came to be decreed vide order dated 3rd February, 2021, under Order VIII Rule 10 CPC, in favor of the Respondent, on account of the Appellant not having filed their written statement in time. This order was challenged by the Appellant in RFA 216/2021 titled Sh. Noor Hassan v. Sh. Ashok Kumar Passi, and the Court vide order dated 13th April, 2021 dismissed the said RFA with the following observations:-

"16. So it follows that in the facts, the Trial court has rightly struck off the defence of the appellant / defendant on failure to file written statement and passed the decree of possession. In fact, even the right of limited cross examination would not have helped the case of the appellant as the factum of tenancy, duration of tenancy, rent payable, termination of the same, have not been disputed, so as to enable the appellant secure the possession.

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17. Insofar as the plea that this suit being a subsequent suit as, earlier the appellant / defendant has filed a suit for specific performance which is pending, need to be stayed is concerned, the same is also not appealing. This Court in the case of Sunil Kapoor (supra), as relied upon by Mr. Aggarwal, has held as under:-

"16. Once that is found to be the position in law, the defence of the agreement to sell is not a legal defence available to the petitioner in the suit for ejectment. If that be so, there is no common question involved in the previously instituted suit for specific performance and the subsequently instituted suit for ejectment."

18. In other words, in the suit for possession, arrears of rent, water and electricity charges, mesne profits / damages/declaration is not an issue in question, which is identical to the issue in suit for specific performance. The reliance placed by Mr Kanth on the judgement of the Supreme Court in Modula India (Supra) is concerned, the same is not applicable in the facts of this case and in view of my conclusion above.

19. In view of my above discussion, this Court is of the view that the Trial Court has rightly decreed the suit for possession. I may make it clear that the appellant / defendant has to prove its case for specific performance in suit being CS 57307/2016 titled Noor Hasan v. Ashok Kumar Passi filed by the appellant / defendant herein.

20. In view of the above, I do not see any merit in the appeal. The same is dismissed. No costs."

5. In the meantime, the Respondent also filed an execution petition being Ex. No.89/2021, which is the subject-matter of the present appeal. Upon dismissal of the RFA, the Appellant herein preferred an SLP being SLP No.16502/2021 titled Noor Hassan v. Ashok Kumar Passi, which was also dismissed on 22nd October, 2021. The Executing Court had thereafter, Digitally Signed By:DEVANSHU JOSHI Signing Date:03.12.2021 15:43:17 vide order dated 2nd November, 2021, issued warrants of possession after rejecting the objections under Order XXI Rule 58 CPC and appointed a bailiff. Vide further order dated 26th November, 2021, it was recorded that the bailiff was not allowed to execute the warrant of possession at the suit property and police aid was provided to the bailiff for execution. The present execution first appeal arises out of these orders of the Executing Court.

6. Ld. counsel for the Appellant, Ms. Archana Midha, makes three submissions in furtherance of her prayer to set aside the impugned orders and stay the execution proceedings.

(i) There is a status quo order granted in the suit for specific performance being Civil Suit No.57307/2016 on 8th January, 2019, which has not been considered by any of the Courts below, including the Executing Court;

(ii) The terms of the agreement to sell have not been dealt with by the Courts below, and that would be an important consideration for protecting her possession, under Section 53A of the Transfer of Property Act, 1882;

(iii) Though, the High Court has observed that there is no registered document in favour of the Appellant, the fact that the Appellant is in possession of the suit property and the fact that the suit for specific performance is also pending, would go in her favour and these facts ought to be appreciated by the Executing Court, i.e., that the Appellant is not a mere tenant but also has some rights and interest in the suit property.

7. On the other hand, Mr. Aggarwal, Ld. Counsel for the Respondent submits that the decree for possession has been passed by the Trial Court Digitally Signed By:DEVANSHU JOSHI Signing Date:03.12.2021 15:43:17 which has been upheld up to the Supreme Court. Once the decree is passed, there is no impediment in enforcing the same in accordance with law. Moreover, he relies upon the conduct of the Appellant and his wife which is recorded in the report of the bailiff in order dated 26th November, 2021 of the Executing Court, to argue that no indulgence should be shown to them. He also submits that vide order dated 16th April, 2021 in Ex. No.89/21, the Appellant had sought 15 days' time for vacating the suit property, which was not opposed by the Respondent, therefore the Appellant cannot now seek to remain in the suit property.

8. Heard and perused the record. There are two aspects in this matter, firstly, the passing of the Trial Court's decree under Order VIII Rule 10 CPC, vide order dated 3rd February, 2021 in CS No.58094/16. The decree having been granted and having been upheld up till the Supreme Court, this Court in an appeal challenging the orders passed by the Executing Court cannot go behind the decree. The decree stands and deserves to be enforced. Second however, in so far as the status quo

order dated 8th January, 2019 in Civil Suit 57307/2016, is concerned, the Trial Court had passed the injunction order in the following terms:-

"There are three applications on record, one under Order 47 Rule 1 CPC moved by the defendant second under Order 10 and 11 CPC moved by the defendant and third under Order 7 Rule 11 CPC as moved by the plaintiff. Arguments on the applications heard at length. During the course of the arguments as far as application under Order 47 Rule 1 CPC is concerned it is submitted by Ld. Counsel for the defendant that he wants to withdraw the application and same may be dismissed as withdrawn. Accordingly the said applications is dismissed as withdrawn. Nonetheless considering the overall fact and circumstances of the Digitally Signed By:DEVANSHU JOSHI Signing Date:03.12.2021 15:43:17 case as well as other litigation i.e. CS No. 58094/16 and as the plaintiff is admittedly in possession of the suit property, parties are directed to maintain status quo in respect of suit property till further orders. Possession of the suit property shall not be handed over to anyone else of parted with by the plaintiff. As far as application under Order 10 and 11 CPC is concerned it is submitted by Ld. Counsel for the defendant that he wants to withdraw the said application as well. Accordingly same is dismissed as withdrawn more so when Ld. Counsel for the plaintiff submits that he shall be filing the original documents especially the receipt on the next date of hearing. As far as application under Order 7 Rule 11 CPC is concerned, Ld. Counsel for the plaintiff submits that he wants to withdraw this application as well as he has taken all the defence/objections raised in the application under order 7 Rule 11 CPC in the written statement which is already on record. Accordingly, the said application is also dismissed as withdrawn. Relist the matter for admission/denial and framing of issues now on 18.02.2019."

9. This order is admittedly still in operation. However, the same does not find any consideration by the Executing Court. Thus, the interest of the parties would have to be balanced. The suit for specific performance continues to remain pending and the suit of the Respondent for mesne profits etc. also continues to remain pending. Both these suits are being heard before the same Trial Court.

10. While the decree dated 3rd February, 2021 would have to be honored, the Appellant's interest would also have to be protected in some manner, till the trial court considers the rival contentions of the parties as to which party ought to have possession of the property and on what terms. Accordingly, the following directions are issued:-

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- (i) The bailiff shall take possession of the suit property in terms of the impugned orders of the Executing Court;
- (ii) Upon the bailiff taking possession, the keys of the suit property shall, however, be deposited with the Trial Court where the two suits are pending;

(iii) The status quo order dated 8th January, 2019, shall continue to operate against the Respondent;

(iv) The Respondent may move an application for handing over of keys/modification of this status quo order. The same shall be adjudicated by the Trial Court where the two suits are pending, in accordance with law, on such terms and conditions as the Trial Court deems appropriate;

(v) The bailiff shall ensure the execution of the decree dated 3rd February, 2021, within the next one week; and

(vi) The bailiff shall seek the assistance of the local SHO for taking possession, if required, considering the obstructions being caused in the past by the Appellant in execution of the decree.

11. The present petition with all pending applications is disposed of in these terms.

12. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, [www.delhihighcourt.nic.in](http://www.delhihighcourt.nic.in), shall be treated as the certified copy of the order for the purpose of ensuring compliance. No physical copy of orders shall be insisted by any authority/entity or litigant.

PRATHIBA M. SINGH, J.

DECEMBER 2, 2021/MR/MS