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

Date of decision: 07.08.2026

CNR No. DLHC010330772026

+ EX.F.A. 63/2026 & CM APPL. 47824/2026 (Stay)

SURENDER PAL

.....Appellant

Through: Mr. Amit Singh Tanwar, Adv.

versus

DEVENDER KUMAR

.....Respondent

Through:

CORAM:

**HON'BLE MR. JUSTICE HARISH VAIDYANATHAN
SHANKAR**

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JUDGEMENT (Oral)

1. The present Execution First Appeal, under Order XXI Rule 58 of the Code of Civil Procedure, 1908, has been filed seeking to impugn the Order dated 29.05.2026, passed by the learned JSCC/ASCJ/Guardian Judge, North-East District, Karkardooma Courts, Delhi, in Execution Petition No. 202/2023. By way of the Impugned Order, the learned Executing Court dismissed the objections filed by the Appellant herein in the aforesaid Execution Petition.

2. *Brevitatis causa*, the present Appeal finds its genesis from the Settlement Agreement entered into between the parties, dated 30.11.2015, which pertained to the division of the property bearing No. B-2 and B-3, Main Market, Gokapuri, Delhi -94, built up to 3rd floor [“**Subject Property**”], by way of which the basement of the



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subject property was agreed upon to be divided between the parties in two equal halves, the first (from the side of the staircase) with the Respondent and the other half to be further divided by between the daughters of the Appellant herein.

3. It is stated in this Appeal, and as argued by the learned counsel for the Appellant, that subsequent to the Settlement Agreement, Municipal Corporation of Delhi [“**MCD**”] declared the entire basement of the subject property to be illegal and dangerous. It is further stated in the Appeal that in fear of demolition and legal action, the Appellant, with the consent of the Respondent, closed the basement after filling the same with sand/waste building material in 2019 itself.

4. In view thereof, learned counsel appearing for the Appellant seeks to challenge the Impugned Order on the ground that the Respondent herein/ Decree Holder had consented to the filing up of the basement which by virtue of settlement as between the family members came to be shared.

5. He further submits that the closure of the said basement by filing up with *malba* and other material was necessitated due to the MCD having declared the same to be dangerous and irrelevant.

6. This Court had queried the Appellant as to on what basis these assertions have been made, to which learned counsel for the Appellant forthrightly submitted that there is no document to support either of these assertions.

7. This Court also deems it appropriate to extract the relevant portion of the impugned judgment, which reads as follows:



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“5.2. The JD has also raised the objections that the basement was filled with *Malba* in the year 2019-2020. It is again clear from mediation settlement dated 30.11.2015 that the JD was required to give half portion of basement to DH but without any reason the JD has claimed to have filled the basement with Malba, which is contrary to the terms of mediation settlement dated 30.11.2015, so the averment made by JD that the basement has been filled with Malba has no legs to stand as nobody can get benefit of his own wrong.

5.3. The JD has also taken the objections that the said basement has been declared illegal and dangerous by MCD but the JD failed to bring on record any such document whereby MCD has declared the basement either illegal or dangerous, so the present objections raised by JD is again not tenable.

5.4. Any consent, set to have been given by daughter of JD to the JD cannot be use contrary to interest of DH without the consent of DH rather DH is contesting for his rights accruing through settlement dated 30.11.2015 and hence, the present objection of JD that is daughter has also consented to close the basement as no real effect or binding to the right of DIF herein. In view of above, the objection filed by JD are hereby dismissed.”

8. Having considered the submissions advanced on behalf of the Appellant, this Court finds no infirmity in the Impugned Order warranting interference in the present Appeal. The entire edifice of the challenge raised by the Appellant rests upon two assertions, namely, that the basement of the Subject Property was declared to be illegal and dangerous by the MCD and that the Respondent/Decree Holder had consented to the closure and filling up of the basement. Significantly, neither of these assertions finds any documentary support on the record.

9. The Settlement Agreement dated 30.11.2015, which forms the very foundation of the rights sought to be enforced in the execution proceedings, is admittedly not in dispute. Under the said Settlement Agreement, the basement of the Subject Property was agreed to be



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divided between the parties in the manner specifically recorded therein. The Appellant, therefore, cannot, merely by asserting that the basement was subsequently filled up, seek to defeat or dilute a right which stood crystallised in favour of the Respondent under the Settlement Agreement.

10. More importantly, the explanation furnished by the Appellant for having filled up the basement is itself unsupported by any material whatsoever. There is equally no material to demonstrate that the Respondent had consented to the closure or filling up of the basement. In the absence of any such material, the assertions made by the Appellant remain nothing more than bald averments and cannot constitute a legally sustainable basis for resisting execution of the Settlement Agreement.

11. The submission that the Respondent had consented to the filling up of the basement is, in any event, wholly inconsistent with the Respondent's conduct in pursuing his rights under the Settlement Agreement. The very fact that the Respondent has objected to the Appellant's attempt to deny him the benefit of the agreed division of the basement demonstrates that no such consent, as now alleged, can be presumed. A party seeking to rely upon an alleged consent, particularly when such consent is sought to be used to defeat an otherwise crystallised right of the Decree Holder, must establish the same by cogent and reliable material. No such material has been placed on record.

12. The principle that a person cannot take advantage of his own wrong also operates against the Appellant. Having admittedly filled up the basement, the Appellant cannot, in the absence of any material



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demonstrating that the Respondent had agreed to such an alteration of the Settlement Agreement, contend that the very act undertaken by the Appellant has rendered the Respondent's right under the Settlement Agreement incapable of execution. The Settlement Agreement cannot be unilaterally altered or rendered nugatory by one party by undertaking an act contrary to its terms.

13. This Court also finds considerable force in the reasoning of the learned Executing Court that the alleged consent of the Appellant's daughter could have no bearing upon the rights of the Respondent/Decree Holder. The rights of the Respondent flowed from the Settlement Agreement dated 30.11.2015, to which the Appellant and the Respondent were parties. Any alleged arrangement or consent inter se the Appellant and his daughters, who were not competent to alter or extinguish the Respondent's rights under the Settlement Agreement, could not operate to the prejudice of the Respondent. The Appellant, therefore, cannot seek to rely upon an alleged intra-family consent to defeat a right which had already accrued in favour of the Respondent.

14. It is also material to note that the present proceedings arise in execution of the Settlement Agreement and not in adjudication of some independent dispute regarding the legality or structural safety of the basement. If the Appellant's case was that subsequent events, including any order or action of the MCD, had rendered performance of the Settlement Agreement impossible or otherwise altered the rights of the parties, the burden was upon the Appellant to place the relevant material before the Executing Court. No order, notice, communication, demolition direction or other document issued by the



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MCD has been produced to substantiate the plea that the basement had been declared illegal or dangerous.

15. The absence of such material assumes significance particularly because the Appellant's entire defence to execution is premised upon the alleged declaration by the MCD and the alleged consent of the Respondent. Once the Appellant candidly admits that there is no document whatsoever supporting either assertion, there is no basis upon which this Court can displace the findings returned by the learned Executing Court. A mere assertion, unsupported by contemporaneous documentary evidence, cannot be permitted to defeat the execution of a settlement which has attained finality between the parties.

16. It is equally well settled that an executing court cannot travel beyond the decree or the terms which are sought to be executed. The Appellant cannot, under the guise of objections to execution, seek to introduce a new factual arrangement contrary to the Settlement Agreement, particularly when the alleged subsequent consent and the circumstances leading to the filling up of the basement are themselves disputed and unsupported by evidence. The scope of the present proceedings cannot be expanded to confer upon the Appellant a benefit which he has failed to establish before the learned Executing Court.

17. The Appellant has, therefore, failed to demonstrate any error of law, perversity or material irregularity in the Impugned Order. On the contrary, the learned Executing Court has considered each of the objections raised by the Appellant and has correctly found that the same were unsupported by any material on record. The findings



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returned by the learned Executing Court are based upon the Settlement Agreement and the absence of any evidence supporting the Appellant's contrary assertions.

18. This Court is, consequently, of the view that the Appellant cannot be permitted to frustrate the enforcement of the Settlement Agreement dated 30.11.2015 on the basis of an alleged subsequent consent which has neither been pleaded with supporting particulars nor established by any cogent material.

19. In view of the foregoing discussion, this Court finds no merit in the present Appeal. The Appellant has failed to demonstrate any ground warranting interference with the Impugned Order. The Impugned Order is accordingly upheld, and the present Appeal is dismissed.

20. Needless to state, nothing contained in the present judgment shall be construed as an adjudication upon any independent right or remedy which may otherwise be available to either party in accordance with law.

21. Accordingly, the present Appeal alongwith all pending application(s), if any, stands disposed of in the aforesaid terms.

HARISH VAIDYANATHAN SHANKAR, J.
AUGUST 07, 2026/ v/va