



2025:DHC:6004



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\* IN THE HIGH COURT OF DELHI AT NEW DELHI

% *Date of Decision: 22<sup>nd</sup> July, 2025*

+ CM(M) 2930/2024 &amp; CM APPL. 39577/2024 &amp; CM APPL. 24617/2025

MOHD. SAMAR

.....Petitioner

Through: Mr. Rajeev Saxena, Sr. Advocate with Mr. I Ahmed, Ms. Sana Ansari, Ms. Megha Saxena and Mr. Shaurya Dahiya, Advocates.

versus

WASEEM AHMED &amp; ANR.

.....Respondent

Through: Mr. Himan Akhtar with Mr. Javed, Mr. Juned Salmani, Ms. Rehana, Advocates along with respondent in person.

**CORAM:****HON'BLE MR. JUSTICE MANOJ JAIN****J U D G M E N T (oral)**

1. The petitioner herein is objector before learned Executing Court and has raised grievance with respect to the issues framed by the learned Executing Court with respect to his objection petition.

2. The learned Executing Court has framed following issues:

*"i. Whether Zafar Hotel at 410, Jafrabad Main Road Delhi-110053 was being run by JD Mohd. Shamin Ahmed since 1994 as claimed by DH? OPDH*

*ii. Whether Zafar Hotel at 410, Jafrabad Main Road Delhi-110053 was being run by Objector Mohd. Samar Ahmed as claimed by Objector? OObjector"*

3. According to the learned counsel for the petitioner/objector, the issues should have been differently worded and it should have been, merely, to the effect that whether the decree in question was binding on the objector or not.



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4. After the notice was issued, learned counsel for respondent/decreed holder appeared and when the matter was taken up on 24.04.2025, he expressed his *no objection* if the issue was to be re-casted by this Court.

5. During course of arguments, Mr. Rajeev Saxena, learned Senior counsel for petitioner/objector, on instructions, submits that the objector is no longer interested in pursuing with this present petition and, therefore, seeks to withdraw the present petition.

6. It is, however, noticed that the present petition is pending for last one year and, it also becomes quite evident and manifest that the issues should have been framed in a different manner.

7. The respondent No.1 is already armed with a decree and, on the strength of such decree, he filed an Execution Petition. During the pendency of such Execution Petition, objection has been filed by the petitioner herein, and such objection has been put to trial, after framing the issues in the aforesaid manner.

8. It is, however, indeed surprising and intriguing, as to why the objector has rushed to this Court, seeking invocation of supervisory jurisdiction. The onus should not have been rather put upon the decree holder and, if at all, anyone was aggrieved by the impugned order, it was decree holder as, while framing the issues, the onus has been put upon him, despite the fact that there is already a decree in his favour with respect to the suit property, where a *Zafar hotel* is being run at the moment. The decree, in his favour, is in the following terms:-

*“In view of the decision of above issues, the suit of the plaintiff is decreed with cost as under:-*

*i. a decree of possession be passed in favour of plaintiff and against the defendant qua suit property no. 410, Khasra No. 92,*



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*Gali No. 19, Jafar Hotel, Jafarabad, Main Road, Delhi-110053 shown in Red in Site Plan Ex.PW1/4 for vacating the same and handing over peaceful possession to the plaintiff forthrightly;*  
*ii. The decree is passed in favour of plaintiff and against the defendant restraining the defendant from creating third party interest or transferring the possession of the suit property in any manner.*  
*iii. Decree in favour of plaintiff be also passed for damages @ Rs.36,000/- per month w.e.f. 01.08.2022 onwards till actual vacation of the suit property.”*

9. This court had, earlier, suggested that the issue be recast as under:-

*“Whether the objector is not bound by the judgment and decree dated 31.05.2023 and whether the objector has any independent right of possession with respect to suit property? (Onus on Objector).”*

10. Viewed thus and on the basis of the perusal of the objection filed by the objector under Order XXI Rule 97 read with Section 151 CPC, and also considering the fact that the objector is real brother of the judgment debtor, the Court finds it to be a fit case where, instead of permitting the petitioner to, merely, withdraw the present petition, it be rather disposed of with certain directions.

11. The petition is accordingly disposed of with the directions that the issue with respect to the objection petition stands re-cast as under:-

*“Whether the objector is not bound by the judgment and decree dated 31.05.2023 and whether the objector has any independent right of possession with respect to suit property? (Onus on Objector).”*

12. It is also clarified that mere re-casting of issues would not mean anything substantial as, both the parties have already led their respective evidence and, as agreed during the arguments, there is no requirement of leading any fresh evidence after the abovesaid



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re-casting of the issue.

13. Therefore, the learned Trial Court would hear final arguments and answer the abovesaid re-cast issue as per the pleadings and evidence adduced by the parties, without being influenced by any of the observation appearing in the present petition.

14. Petition stands disposed of in aforesaid terms.

15. Pending applications also stand disposed of in aforesaid terms.

**(MANOJ JAIN)**  
**JUDGE**

**JULY 22, 2025/sw/JS**