

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

C.M. (Main) No.280 of 2010 & C.M. Appl. Nos.3813-3814 of 2010

%

05.03.2010

RAKESH KUMAR

.....Petitioner

Through: Mr. K.K. Jha, Advocate.

Versus

M/S. SHREE RAM PALACE

.....Respondent

Date of Reserve: 2nd March, 2010

Date of Order: 5th March, 2010

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment?
2. To be referred to the reporter or not?
3. Whether judgment should be reported in Digest?

J U D G M E N T

1. By present petition, the petitioner has sought direction for the trial court to dispose of the application of the petitioner under Order 37 Rule 4 read with Order IX Rule 13 CPC at the earliest since an execution of the decree was pending against the petitioner before transferee court at Gurgaon and there was likelihood of the petitioner being arrested.

2. A perusal of list of dates and events filed by the petitioner shows that ex-parte decree was passed against the petitioner on 1st April, 2008. The petitioner alleged that he learnt about the decree having been passed against him when a police officer came to his residence for execution on 13th April, 2009. Thereafter, the petitioner moved an application for setting aside ex-parte decree on 18th April, 2009. Reply to the application was filed by the respondent/decreed holder on 19th May, 2009 and the matter was listed by the court on 17th September, 2009. On 17th September, 2009, the petitioner's counsel did not appear before the court on the plea of his illness. The matter was adjourned to 28th January, 2010. On 28th January, 2010, it appears that the petitioner counsel was not

present in the court and proxy counsel on behalf of respondent appeared and sought adjournment on the ground of illness of respondent's counsel and the matter was adjourned for 5th July, 2010. The petitioner thereafter changed his counsel who made an application for early hearing and for stay of proceedings. The trial court issued notice of the application for 1st April, 2008.

3. The plea taken by the petitioner that his warrant of arrest has been issued by the executing court does not seem plausible. A warrant of arrest can be issued by the Civil Court in execution of a decree only when other modes of execution of the decree by way of attachment of movable and immovable assets fail and thereafter, a show cause notice is issued as to why he should not be sent to civil imprisonment. The petitioner is supposed to file reply to this show cause notice along with affidavit of his assets and the court orders civil imprisonment only when it is found that the petitioner was deliberately not paying the amount.

4. From the proceedings filed by the petitioner, it appears that the petitioner has not been diligent even in prosecuting application under Order 37 Rule 4 CPC and did not make an application for stay of judgment and decree along with the application. In any case, the trial court is directed to decide the application made by the petitioner for stay of execution in an expeditious manner preferably within two weeks from receipt of this order.

5. With these directions, this petition is disposed of.

SHIV NARAYAN DHINGRA J.

MARCH 05, 2010
'AA'