

3

*

IN THE HIGH COURT OF DELHI AT NEW DELHI

+

EX.F.A. 8/2008

MAHINDER PAL BAGGA

..... Appellant

Through: Mr. B.R. Kaushik, Advocate.

versus

SUNITA

..... Respondent

Through: None.

CORAM:**HON'BLE MR. JUSTICE VALMIKI J. MEHTA****ORDER**

%

21.11.2011

1. No one appears for the respondent in spite of the matter having been passed over. It is 12.30 P.M.

2. Learned counsel for the appellant argued that the impugned order dated 2.4.2008 dismissing the appellant's objections to the execution of the money decree cannot stand inasmuch as the judgment debtor was Rajkumar Bagga and not the appellant, and by means of the income tax return filed of the assessment year 2003-04, i.e. even before the judgment and decree was passed in favour of the respondent for maintenance, the business of M/s. Bagga Electricals was shown to be the sole proprietorship concern of the appellant/objector. I may note that the trial Court has glossed over this document by observing as under:-

EFA No.8/08**page 1 of 3**

Signature Not Verified

Digitally Signed By: AMULYA
 Certify that the digital file and
 physical file have been compared and
 the digital data is as per the physical
 file and no page is missing.

12

"10. The objector Mahender Pal filed the photocopy of application form for adhoc registration of the firm Bagga Electricals. However, from the income tax returns filed by Mahender Bagga, it cannot be said that it is Mahender Bagga alone who is carrying on business Bagga Electricals Works. In my view the Judgment Debtor is also one of the beneficiaries of the business being the son of Tilak Raj who is the owner of the property No.C-144, wherein the business of Bagga Electricals Works is being carried on. Accordingly, objections filed by Mahender Pal are dismissed, but the Objector of Tilak Raj are partly accepted. However, since Judgment Debtor is not the owner of immoveable property C-144, Tagore Garden Extension, same cannot be attached in execution of the decree. Warrant of attachment are issued against the moveable assets of Judgment Debtor lying at shop Bagga Electricals at C-144, Tagore Garden Extension, New Delhi-110027."

3. Once document in the form of income tax return shows that the business of Bagga Electricals Works was of the appellant/objector and not of the Judgment Debtor, there could not have been attachment with respect to goods of M/s. Bagga Electricals Works in execution of the decree against Rajkumar/Judgment Debtor.

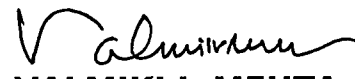
4. Learned counsel for the appellant however states that without prejudice to the fact that goods of M/s. Bagga Electricals cannot be attached, in the interest of equity and justice, appellant will pay a sum of ₹ 65,000/- to the respondent, who is the "Bhabhi" of the appellant purely as a gesture of goodwill. This amount of ₹ 65,000/- be sent to the respondent by means of a bank draft at the address of the respondent as stated in the memo of parties. The appellant can also tender this amount personally to the respondent. It is clarified

1. .

19

that no rights will be created in favour of the respondent or any liability will be created against the appellant with respect to the business of M/s. Bagga Electricals merely because the amount of ₹ 65,000/- is paid by the appellant to the respondent/Decree Holder.

5. With the aforesaid observations, the appeal is allowed and disposed of.


VALMIKI J. MEHTA, J

NOVEMBER 21, 2011
Ne