

\$~27

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

+ EX.P. 54/2016

M/S DELHI STRUCTURES

..... Decree Holder

Through: Mr. Prabhat Kumar and Mr. P.
Bashista, Advs.

Versus

M/S GULATI HOSPITALITY LTD & ANR Judgement Debtors

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

%

26.10.2016

1. This order is in continuation of the earlier order dated 30th August, 2016.
2. The notice issued to the judgment debtor (JD) at one of the addresses furnished remains unserved with the report that the JD has left the address given and the service reports from the other addresses are awaited.
3. The counsel for the decree holder (DH) has filed an affidavit with respect to the *dasti* notice taken and as per which also, the address of the JD i.e. F-66, Rajouri Garden, New Delhi was found to be sealed and the address of the JD at A-31/6, DLF Phase-I, Gurgaon, Haryana was also found to be sealed and the property at the third address was reported to have been sold.
4. The position thus remains the same as it was on 30th August, 2016.
5. The counsel for the DH has however filed EA No.278/2016 under Order XXI Rule 41 of Code of Civil Procedure, 1908 for service of notice

on the JD by publication in the newspaper and states that the JD should appear and file an affidavit of its assets.

6. I have today again enquired from the counsel for the DH whether the DH has investigated the balance sheet of the JD which is a company registered with the Registrar of Companies.

7. The counsel for DH states that the last balance sheet filed is of the year ending 31st March, 2011 and which is of before the decree.

8. I have enquired from the counsel for the DH whether the said balance sheet has been examined to see what are the assets of the JDs.

9. The answer is in the negative.

10. The counsel however contends that if the JD fails to appear despite publication, coercive measures be taken against the JD for production of the JD before the Court.

11. A perusal of the file at this stage shows that the judgment and decree of which execution is sought, besides against the JD, is also against the defendant No.2 in the suit namely Mr. Manmohan Singh Gulati. The plaintiff however has not sought execution against the said Mr. Manmohan Singh Gulati.

12. The counsel for DH states that the decree against Mr. Manmohan Singh Gulati was set aside in RFA(OS) No.126/2015 preferred against the decree.

13. I am of the view that without the plaintiff making proper efforts to find out the status of the JD which is a company and showing that any monies can be recovered therefrom, the DH cannot be permitted to indulge

in such practices, wasting the time of the Court and seeking date after date from the Court, without taking any effective measures.

14. The counsel for DH then states that though he has not produced the balance sheet but as per the information, the monies cannot be recovered from the JD as the JD Company has no assets.

15. If that be so, then also no purpose will be served in pursuing this execution.

16. This execution is closed with liberty to the DH to, after has made proper enquiries and proper inspections, approach this Court if there is any possibility of any recovery from the JD Company.

RAJIV SAHAI ENDLAW, J.

OCTOBER 26, 2016

bs..