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

+ CM(M) 836/2013 & CM No.13002/2013

M/S ARCTIC TECHCOM LIMITED

..... Petitioner

Through Mr.Anil K.Kher, Sr.Advocate with
Mr.Rishi Manchanda, Mr.Kunal Khera and
Ms.Harsha, Advocates

versus

SHRI PREM NATH AHUJA & ORS

..... Respondent

Through Mr.Kapil Dua, Advocate for R-1
Mr.Sanjay Kumar, Advocate for R-2

CORAM:

HON'BLE MR. JUSTICE JAYANT NATH

ORDER

02.11.2016

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1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 2.8.2013 passed in Execution Petition No.283/2008 whereby warrants of attachment were issued in respect of immovable property No.254, Okhla Industrial Area, Phase-III, New Delhi.

2. A suit for recovery was filed by respondent No.1 against respondent No.2 which was decreed for a sum of Rs.2,07,500/- on 3.7.2000. The execution is still lingering on.

3. Learned counsel for the petitioner submits that the immovable property which is a subject matter of the impugned order, namely, 254, Okhla Industrial Area, New Delhi has been bought by the petitioners by registered conveyance deed on 12.10.2012 though it is claimed that the

Agreement to Sell was entered into in 2001.

4. Learned senior counsel appearing for the petitioner submits that the attachment order has been passed by the impugned order despite the fact that an application had been filed by the petitioner under section 151 CPC pointing out that the petitioner is the owner of the property and the property cannot be attached for the recovery of money pursuant to a decree passed against respondent No.1. He further submits that the impugned order wrongly notes that the judgment debtor has failed to apprise the court as to who is the tenant of the property inasmuch as the judgment debtor is not the landlord. He submits that the petitioner is the landlord/owner and that respondent No.3 herein, namely, The Centre for Genomic Application is the tenant of the premises.

5. He further points out that earlier the executing court had passed an order dated 17.8.2012 whereby the rent of the said premises was directed to be deposited by the tenant in court. Against the said order dated 17.8.2012 petition under Article 227 of the Constitution of India was filed before this Court being CM(M)1085/2012 which was disposed of modifying the order of the executing court to the extent that the rent which is deposited will not be released to the decree holder, till disposal of the execution petition.

6. Be that as it may, it is no doubt true that the petitioner claimed to be the owner of the property which is sought to be attached by the impugned order dated 2.8.2013. As the application is in the form of objections is pending adjudication, it would be in the interest of justice that the said application is heard and disposed of first before further steps are taken by the Executing Court regarding present property at Okhla Industrial Area.

7. Accordingly, impugned order dated 2.8.2013 is set aside. The

Executing Court is requested to expeditiously hear the application of the petitioner and dispose of the same which is filed under section 151 CPC.

8. Till pendency of the application of the petitioner under section 151CPC for adjudication before the Executing Court the petitioner is restrained from selling, alienating, transferring or parting with possession of the property 254, Okhla Industrial Area, New Delhi without prior permission of the executing court.

9. However, in case the petitioner deposits a Fixed Deposit for a sum of Rs.4 lacs before the executing court the above stay order shall stand modified.

10. Petition and all pending applications stand disposed of.

JAYANT NATH, J

NOVEMBER 02, 2016

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