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

\+ EX.P. 367/2008

SMT. SUMEDHA BHARDWAJ ..... Decree Holder
Through Mr. Manu Nayar, Advocate

versus

SHRI JAGDEEP BHARDWAJ ..... Judgement Debtor
Through Ms. Rajni Anand, Advocate

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

O R D E R

% 18.01.2016

EA (OS) No.1176/2015 (by decree holder u/O VI Rule 17 CPC)

1. A reading of the execution petition shows that execution proceedings were filed with respect to a petition no.195 of 2004. The order which was sought to be executed in this petition no.195/2004 is stated to be the order dated 11.8.2006. After stating so that the order which is sought to be executed is the order dated 11.8.2006 in para 3 of the execution petition, the relief clause in the execution petition reads as under:-

> **"**That the Hon'ble Court vide order dated 11.8.2006 had passed a Decree of restitution of conjugal rights against the Judgment Debtor. That the decree holder has been staying in her matrimonial home but Judgment Debtor has got the electricity in the matrimonial house disconnected due to which the Decree Holder and her minor daughter had to shift to her mother's flat at Vasant Kunj. Judgment Debtor has failed to comply with

the orders passed by the Hon'ble Court. Maintenance of Rs. 10,000 was fixed on the application under Sec 24 HMA while the decree holder had been living with the minor in the matrimonial home i.e. Ground Floor of House No.368, Sant Nagar, New Delhi. Out of Rs.10,000/- decree holder has been receiving only Rs.4,500/- directly from the interest accrued from the post office savings. The balance amount of Rs.5,500/- from the date of application i.e. 93,500/- along with litigation expenses of Rs. 5000/- are due from the judgment debtor which has not been paid by the judgment debtor for which Decree Holder has already filed an execution application.

This Hon'ble Court may be pleaded to issue warrants of attachment in favour of the petitioner/decree holder and against the judgment debtor in respect of House No.368, ground/first floor, Sant Nagar, East of Kailash, New Delhi movable and immovable assets and all items including furniture, computers, fridge, TV and other household items kept in the aforesaid properties be also attached against the judgment debtor and the same be auctioned and sold.

That the Hon'ble Court may also attach the Savings Account No.3110323 in Post office Kalkaji, New Delhi with directions to the Post Master, Kalkaji, New Delhi not to allow the judgment debtor to withdraw the said amount.

Any other and further relief which this Hon'ble Court may deem fit and proper under the circumstances of the case may also be passed in favour of the Decree Holder and against the Judgment Debtor.

Sd/-
DECREE HOLDER

DELHI:
DATED: 10.9.2008 THROUGH

HAMEED SHAIKH
ADVOCATE

VERIFICATION:-

Verified at Delhi on this the th day of July 2008 that the contents of above application are true to my knowledge.

Sd/-
DECREE HOLDER"

2. A reading of the petition as a whole including the prayer clause makes

it quite clear that the execution petition sought execution of a specific order dated 11.8.2006, and which was passed in a petition for restitution of conjugal rights. The relief clause thereafter further states that in the said matrimonial case maintenance of Rs.10,000/- was fixed in the application under Section 24 of the Hindu Marriage Act. Further averment is that out of Rs.10,000/- the decree holder has been receiving only Rs.4,500/-. Obviously, these figures are monthly figures. Thereafter, the execution petition states that balance amount payable is of Rs.5,500/- (and which is obviously per month) along with litigation expenses of Rs.5,000/-. For such a purpose, warrants of attachment were accordingly prayed for execution of the aforesaid order.

3. Today, by this application seeking amendment, a totally new case is sought to be made of execution of a totally different judgment passed in IPA No.9/2004 whose judgment is said to be dated 20.9.2007. In the facts as stated above, it cannot be said that the execution petition inadvertently mentioned execution of the order dated 11.8.2006 inasmuch as details as made in the prayer clause show that there was a specific order passed in the petition for restitution of conjugal rights and which was sought to be

executed.

4. This Court executes a decree only if the decree is passed by this Court but once the decree is passed by a court exercising matrimonial jurisdiction under the Hindu Marriage Act, execution will necessarily have to be filed in the court which passed the decree viz the Court of Additional District & Sessions Judge, Delhi, which dealt with the matrimonial case of the decree of restitution of conjugal rights.

5. In view of the above, the application under Order VI Rule 17 CPC is wholly misconceived and dismissed.

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6. In view of the fact that the counsel for the petitioner/decree holder in the execution petition states that the petitioner/decree holder is not executing the decree dated 11.8.2006 in case no.195/2004 but is seeking to execute a separate decree, therefore, this execution petition no longer need be continued, inasmuch as, no execution is sought of the order dated 11.8.2006 in case no.195/2004 being a case for restitution of conjugal rights. Also, in any case, as stated above, this Court does not have jurisdiction to execute a decree which is passed by the Court of Additional District & Sessions Judge

and execution of a decree passed by the Court of Court of Additional District & Sessions Judge has to be by the Additional District & Sessions Judge vide judgment of a learned Single Judge of this Court in the case of ***Pearey Lal and sons (Pvt.) Ltd vs. Jamuna Properties (P) Ltd and Ors, AIR 2004 Delhi 126.***

7. Execution petition is accordingly dismissed.

8. In case, according to the judgment debtor, the decree holder has been overpaid with respect to the subject order dated 11.8.2006 of which execution is sought, the judgment debtor can always move an appropriate application seeking restitution of the amount.

VALMIKI J. MEHTA, J

JANUARY 18, 2016
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