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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ CM(M) 1290/2016 & CM Nos.46257-46259/2016
JAVED SAIFY Petitioner
Through Mr.Deepak Tyagi, Advocate
versus
OM PRAKASH Respondent
Through

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

ORDER
% **16.12.2016**
CM No.46258-46259/2016

Exemption allowed, subject to all just exceptions.

CM(M) 1290/2016 & CM Nos.46257/2016

1. By the present petition under Article 227 of the Constitution of India the petitioner seeks to impugn the order dated 17.8.2016 by which the objections filed by the petitioner under section 47 CPC were dismissed. The respondents had filed a suit for recovery of Rs.1,92,755.12 against the petitioner and M/s. Saify Interior Decorators Private Limited. The petitioner company was thereafter proceeded ex parte. An application was filed under Order 9 Rule 7 CPC and the ex parte proceedings were set aside. Ultimately the suit was dismissed in default on 19.9.2013 as none had appeared for the respondent. It is the case of the petitioner that the respondent thereafter filed an application under Order 9 Rule 9 CPC. The trial court passed an ex parte decree on 19.4.2014 for a sum of Rs.1,92,755.12 with interest.
2. The petitioner has now filed objections under section 47 before the

executing court. As per the objections the stand is that the petitioner is a partner of a firm by the name of M/s.Saify Interior Decorators. It is stated that there is no entity by the name of M/s. Saify Interior Decorators Private Limited. It is further urged that the petitioner has been impleaded in the present suit as a Director of a non-existent entity i.e.M/s. Saify Interior Decorators Private Limited.

3. The trial court dismissed the objections pointing out that a decree has been passed against both the defendants. The dealings of the decree holder with the objector have been proved during trial. If the petitioner/objector was acting as a partner he would be in any case liable under the partnership act.

4. I have heard learned counsel appearing for the petitioner. It has been urged that the petitioner has been impleaded only in the capacity of a Director of non-existent M/s.Saify Interior Decorators Private Limited.

5. I do not agree with the submissions of the petitioner. The petitioner is impleaded as defendant No.2. He may have been wrongly described as a Director but he is impleaded in his individual capacity. The decree has been passed holding the defendants i.e. including the petitioner liable to pay the decretal amount.

6. Section 47 of the CPC only provides that all questions arising between the parties to the suit in which a decree was passed relating to execution, discharge or satisfaction of the decree can be determined by the court executing the decree and not by a separate suit. What the petitioner seeks to do is not to deal with the issue of execution, discharge/satisfaction of the decree but seeks to challenge the decree on merits. Such a course is not possible under section 47 CPC. There is no infirmity in the impugned

order. Present petition is dismissed. All pending applications, if any, also stand disposed of accordingly.

JAYANT NATH, J

DECEMBER 16, 2016

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