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

\+ CM(M) 125/2017 and CM Nos.4049-4050/2017

RAJINDER SINGH ..... Petitioner

Through Mr. Anuroop P.S, Advocate.

versus

NATIONAL RESEARCH DEVELOPMENT CORPORATION ..... Respondent

Through Mr.J.M.Kalia, Mr. D.V.Singh and Ms.Bhawana Garg, Advocates.

CORAM:
HON'BLE MR. JUSTICE JAYANT NATH

<u>O R D E R</u>

% **03.02.2017**

1. By the present petition filed under Article 227 of the Constitution of India, the petitioner seeks to challenge the order dated 04.01.2017 by which order the applications filed by the petitioner were dismissed and warrants of attachment were issued against the movable properties of the judgement debtor i.e. M/s. Priya Clay Product Pvt. Ltd. (not arrayed in the memo of parties by the petitioner as a respondent) and against the petitioner, the Director of the JD Company

2. The background facts are that the respondent company, M/s. Priya Clay Product Pvt. Ltd., M/s. Priya Bricks Pvt. Ltd. and M/s Lakhi Ram Priya entered into an agreement for the development of a technology for hollow building blocks. A Royalty agreement was also entered into between the respondent Company and M/s. Priya Bricks Pvt. Ltd. On 27.09.2005, the

respondent Company invoked the arbitration clause and the matter was referred to the sole arbitrator. In the course of the arbitration proceedings, a settlement was arrived at between the respondent and the said M/s/ Priya Clay Product Pvt. Ltd. and an award was passed. As the award/decree remained unsatisfied, the respondent has filed the present execution proceedings. In the meantime, State of Bank of Patiala has taken over the factory land and all other assets of M/s. Priya Clay Product Pvt. Ltd. in the proceedings under the SARFAESI Act.

3. On 18.03.2016, the executing court issued warrants of attachment of movable goods of M/s. Priya Clay Product Pvt. Ltd. The bailiff reached the address at H-71, Ground Floor, Shivaji Park-West, Punjabi Bagh, Delhi. It is claimed that the said premises had nothing to do with M/s. Priya Clay Product Pvt Ltd. and was the office of M/s. Priya Transport Company Pvt. Ltd. of which Shri Rajinder Singh was the Director. Under duress, an employee of the Company handed over to the Bailiff a cheque for Rs.5,99,782/- from the personal bank account of Sh. Rajinder Singh/the petitioner. The Cheque was drawn in favour of the court i.e. ADJ-II(N/W), Rohini Court, Delhi. The court endorsed the said cheque in favour of the judgment debtor. The cheque when presented for clearance by the bankers was returned unpaid

4. It is in the above facts that the executing court has held that the petitioner is prima facie found responsible for running the affairs of the JD Company in the past as well in the present. Hence, fresh warrants of attachment were directed to be issued against the petitioner.

5. I have heard the learned counsel for the parties.

6. Learned counsel for the petitioner has stressed that Directors of a

Company cannot be made liable for the dues of the Company. Regarding the issue of cheque, he submits that that was given without his authority by one of the employees who was present when the Bailiff reached the office and hence, the petitioner cannot be held liable for the dues as stated in the cheque.

7. In my opinion, there is merit in the contention of the petitioner to the extent that a director of a company normally cannot be made liable for the dues of the Company unless there are certain specific circumstances stating so. However, in the present case, it is matter of fact that the Director was not impleaded as a party before the arbitration proceedings and the decree has not been passed against the Director.

8. Be that as it may, however the peculiar facts and circumstances of this case persuaded me not to interfere in the impugned order. The process of the court, namely, attachment of movable properties that was directed by the executing court through the bailiff by its order dated 18.03.2016 was halted as a cheque was tendered by the petitioner for the sum of Rs. 5,99,782/- from his personal bank account. The cheque was in the name of the executing court. The petitioner cannot be permitted to resile from his act by claiming that some employee of his had under duress handed over this cheque to the Bailiff. Having taken the advantage of the fact that the Bailiff could not complete his proceeding as the cheque had been handed over, the petitioner cannot be permitted to resile in the manner he is seeking to do. A person who seeks equity must also do equity.

9. I may also note that an offer was made by the learned counsel for the respondent that the petitioner should at least honour the cheque of Rs.5,99,782/-, even in instalments, if necessary. This offer was also not

accepted by the petitioner.

10. In my opinion, there are no reasons to interfere in the impugned order. The petition is dismissed. All pending applications also stand dismissed.

JAYANT NATH, J

FEBRUARY 03, 2017
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