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

+ CM(M) 729/2016 & CMs No.27345/2016 & 21175/2017 (for stay)

DHAWAN SALES CORPORATION Petitioner
Through: Mr. Narendra Gautam, Adv.

Versus

RELIGARE FINVEST LTD Respondent
Through: Mr. J.M. Kalia and Ms. Bhawana
Garg, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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24.07.2017

1. This petition under Article 227 of the Constitution of India impugns the order dated 31st May, 2016 in Ex. No.330/2010 of the Court of Additional District Judge-02 (West), Tis Hazari Courts, Delhi.
2. Vide the impugned order, warrants of arrest were ordered to be issued of the proprietor of the petitioner.
3. The petition was entertained and notice thereof issued. Vide *ex-parte* order dated 1st August, 2016 which continues to be in force, subject to the petitioner depositing Rs.50,000/- in this Court, the warrants of arrest were stayed.
4. The said sum of Rs.50,000/- has been deposited and has been ordered to be released to the respondent.
5. As per the impugned order, the decree under execution is of Rs.23 lakhs.

6. Though this Court has been adjourning the matter since then but it cannot convert itself into an Executing Court.

7. I have however enquired from the counsel for the respondent/decreed holder, as to how the warrants of arrest, without recording satisfaction of the conditions of Section 51 of the CPC in terms of judgment of the Supreme Court in (i) ***Jolly George Varghese Vs. The Bank of Cochin*** (1980) 2 SCC 360; and, (ii) ***Subrata Roy Sahara Vs. Union of India*** (2014) 8 SCC 470 were ordered to be issued.

8. The counsel for the respondent/decreed holder states that the warrants of arrest were issued owing to the failure of the petitioner/judgment debtor to file the affidavit as directed and after a notice to show cause in this regard had been issued by the Court to the petitioner/judgment debtor.

9. However, neither has the petitioner/judgment debtor placed the said order if any nor is the counsel for the respondent/decreed holder able to show the same.

10. The order of issuance of warrants of arrest however without complying with ***Jolly George Varghese*** and ***Subrata Roy Sahara*** supra cannot be sustained.

11. At this stage, the counsel for the respondent/decreed holder draws attention to the order dated 7th December, 2015 in the execution proceedings issuing warrants of arrest of the petitioner/judgment debtor along with notice to show cause why he should not be sent to civil imprisonment for the reason of the petitioner/judgment debtor having not complied with the order dated 18th March, 2014 directing the petitioner/judgment debtor to furnish affidavit of assets.

12. The copy of the order dated 18th March, 2014 is not available. Even otherwise, it is inexplicable as to how at the same time warrants of arrest as well as notice to show cause why the judgment debtor should not be arrested, can be issued.

13. In these circumstances, the petition is disposed of with a request to the learned ADJ to reconsider the matter in the said perspective and thereafter proceed with the execution. It is made clear that the learned ADJ, if finds a case for acting against the judgment debtor under Order XXI Rule 43(3) of CPC or for arrest in terms of the judgment in *Jolly George Varghese* and *Subrata Roy Sahara* supra, shall be entitled to do so.

14. The date of 25th August, 2017 is cancelled.

RAJIV SAHAI ENDLAW, J.

JULY 24, 2017

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