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IN THE HIGH COURT OF DELHI AT NEW DELHI

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CM(M) 661/2017 & CM APPLs. 22700-22701/2017

SACHIN JAIN

..... Petitioner

Through

Mr. Amit Jain, Advocate

versus

NARENDER JAIN

..... Respondent

Through

None

CORAM:**HON'BLE MR. JUSTICE MANMOHAN****ORDER**

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28.06.2017

Present petition has been filed challenging the order dated 7th June, 2017, passed by ADJ-05 (West), Tis Hazari Courts, Delhi in Execution Petition No. 61544/2016.

The impugned order dated 7th June, 2017 reads as under:-

“JD no. 2 has filed an application for stay of the warrants of attachment. He has been asked to deposit the decretal amount in the court if he wants to stay of the execution petition.

Counsel for the JD no. 2 seeks time of one month for making the payment. He is directed to deposit the post dated cheques of the decretal amount within the course of the day and he shall deposit the banker's cheque/demand draft in lieu of the said cheques within one month from today.

Subject to deposit of cheque by the JD no. 2, the warrants of attachment may not be executed till the next date of hearing. Nazir is directed to recall the warrants of attachment sent to

the bailiff.

Put up for further proceedings on 05/05/2017 the date already fixed.”

Learned counsel for the petitioner states that the trial court has failed to appreciate that the judgment and decree dated 31st August, 2016 did not specifically mention as to against which judgment debtor the relief of damages @ Rs. 4,000/- per month has been passed.

He further states that the decree holder has first to realise the amount from the articles taken on superdari as per the list at the time of taking of possession of suit property and if the decreetal amount is not realized from the sale of articles of superdari, only then the decree holder could have proceeded for issuance of warrants of attachment of property of the judgment debtors.

In the opinion of this Court, if the decree does not specify which defendant is liable to pay, then all the defendants are jointly and severally liable to pay. Consequently, the said plea is untenable.

As far as the plea that the decree holder should first realise the amount from the articles taken on superdari, this Court finds that the said argument was not raised before the Additional District Judge. However, learned counsel for the petitioner states that in the application filed under Order 21 Rule 26 CPC, the said ground had been taken.

Since the cheque furnished by the petitioner is dated 5th July, 2017, this Court grants liberty to the petitioner to file an application seeking review of the order dated 7th June, 2017 in accordance with law.

In the event the said application is filed by 1st July 2017, the Additional District Judge is directed to dispose of the same on or before 5th

July, 2017.

With the aforesaid observations and directions, present petition and applications are disposed of.

Order dasti under the signature of the Court Master.

MANMOHAN, J
(Vacation Judge)

JUNE 28, 2017
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