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

+ CM(M) No.668/2017 & CM No.23072/2017 (for stay).

VIKRAM HADA

..... Petitioner

Through: Mr. Jayant K. Mehta, Ms. Madhavi
Khare and Mr. Saurabh Dev Karan
Singh, Advs.

versus

MADHVI SINGH & ORS

..... Respondents

Through: Mr. Jay Savla, Ms. Amrita Mishra
and Ms. Ritu Yadav, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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10.07.2017

1. This petition under Article 227 of the Constitution of India impugns the orders dated 3rd June, 2017 and 3rd July, 2017 of the Additional District Judge in execution of a money decree in favour of the respondents no.1&2 and against the respondent no.3 Pavik Lifestyle Pvt. Ltd.

2. Being of the view that a money decree against the respondent no.3 Pavik Lifestyle Pvt. Ltd. could not be executed by issuance of warrants of attachment of moveable property of the petitioner, even if he be the Director / Managing Director / Shareholder of the respondent no.3 Pavik Lifestyle Pvt. Ltd., the petition was entertained and vide *ad interim* order dated 5th July, 2017 warrants stayed.

3. The counsel for the respondents no.1&2 / decree holders instead of answering the question whether any law permits a money decree against a private limited company to be executed by attachment of moveable properties of its Director / Managing Director / Shareholder has contended

(i) that over rupees two crores is due under the decree; (ii) that the petitioner as the Director of the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor has been avoiding even the service of notice of execution; and, (iii) that the petitioner as the Director of the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor has not even filed the affidavit as required to be filed in terms of ***Bhandari Engineers & Builders Pvt. Ltd. Vs. Maharia Raj Joint Venture*** 227 (2016) DLT 302.

4. Merely because the respondents no.1&2 / decree holders are unable to execute the decree against the respondent no.3 / judgment debtor which is a private limited company does not permit the respondents no.1&2 / decree holders to execute the decree against the Directors and Shareholders of the judgment debtor company.

5. The counsel for the petitioner in this regard has referred to (i) ***Bhawarlal Bhandari Vs. Universal Heavy Mechanical Lifting Enterprises*** (1999) 1 SCC 558; (ii) ***J&K Bank Ltd. Vs. Jagdish C. Gupta*** (2004) 10 SCC 568; (iii) ***Deepa Bhargava Vs. Mahesh Bhargava*** (2009) 2 SCC 294; and, (iv) ***V.K. Uppal Vs. M/s. Akshay International Pvt. Ltd.*** 2010 SCC OnLine Del 538.

6. As far as the last of the aforesaid contentions of the counsel for the respondents no.1&2 / decree holders is concerned, the counsel is unable to show any direction having been issued by the learned Additional District Judge as the Executing Court to the petitioner as Director of the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor to furnish any affidavit. Only if such a direction is issued and the petitioner is in non-compliance thereof can coercive steps against the petitioner personally be taken, that too

only to secure compliance and not to recover monies due under the decree.

7. The counsel for the respondents no.1&2 / decree holders has also handed over “a list of moveable properties belonging to the judgment debtor and / or its Director Vikram Hada who is the real owner of the judgment debtor lying at Hada Farm, 30, Rajokari Road, Village Samalkha, New Delhi – 110037” stated to have been filed before the Executing Court and comprising of household items and has contended that it is for the petitioner to satisfy that the said goods belong personally to him and have been acquired by him and not by the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor.

8. I have enquired from the counsel or the respondents no.1&2 / decree holders, whether any affidavit of the respondents no.1&2 / decree holders to the effect that the said goods are of the judgment debtor company has been filed.

9. No answer is forthcoming. Rather the respondents no.1&2 / decree holders in the list aforesaid itself have admitted that the said goods may belong to the petitioner who is the Director of the judgment debtor company.

10. As far as the contention of the petitioner being the real owner of the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor is concerned, it was for the respondents no.1&2 / decree holders to implead the petitioner personally and make out a case of the petitioner personally being liable for money which the respondents no.1&2 / decree holders were claiming from the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor and the petitioner having arranged the affairs of the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor so as to defeat the decree. However nothing of

this sort was done and without obtaining a decree against the petitioner personally, the petitioner personally cannot be made liable for the decree against the company.

11. As far as the contention of the counsel for the respondents no.1&2 / decree holders that no affidavit has been forthcoming, it will be open to the respondents no.1&2 / decree holders to seek directions in this regard against the petitioner from the Executing Court.

12. To allay the apprehension that the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor and / or the petitioner would not appear before the Executing Court, the petitioner is bound down to appear before the Executing Court on 22nd July, 2017 in his capacity as the Director of the respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor.

13. The petition thus succeeds. The orders dated 3rd June, 2017 and 3rd July, 2017 of issuance of warrants of attachment of moveable property of the petitioner in execution of money decree against respondent no.3 Pavik Lifestyle Pvt. Ltd. / judgment debtor and of refusal to recall the said warrants are set aside.

14. The respondents no.1&2 / decree holders shall however be entitled to execute the decree in accordance with law and the petitioner is bound down as above.

15. The petition is disposed of.

No costs.

RAJIV SAHAI ENDLAW, J

JULY 10, 2017
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