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

+ **CM(M) 881/2017**

RAM KUMAR ATREE

..... Petitioner

Through: Mr. Naveen Sharma & Mr. Gaurav
Kakar, Advs.

Versus

DHARAMBIR SINGH

..... Respondent

Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **18.08.2017**

CM No.29393/2017 (for exemption)

1. Allowed, subject to just exceptions.
2. The application is disposed of.

CM(M) 881/2017 & CM No.29392/2017 (for stay)

3. This petition under Article 227 of the Constitution of India impugns the orders [dated 7th April, 2017 and 2nd June, 2017 in Ex.No.5576/2016 of the Court of Additional District Judge (ADJ)-03, Patiala House Courts, New Delhi] directing the petitioner / decree-holder to furnish the fresh address for service of the respondent / judgment-debtor.
4. Execution is sought of an *ex parte* arbitral award in favour of the petitioner and against the respondent, of specific performance of an agreement of sale of immovable property. Execution is sought by issuance of warrants of recovery of possession of immovable property and by appointment of a Court Commissioner to execute a deed of transfer of the property in favour of the petitioner.

5. The factum of the respondent having not contested the arbitral proceedings and the arbitral award being *ex parte* and the respondent not appearing in the execution also raises suspicion as to the validity of the arbitral award. In fact, when I asked the counsel for the petitioner as to where is the respondent, the counsel for the petitioner states that the petitioner does not know. If the petitioner does not know the whereabouts of the respondent, then the report claimed of service of the respondent in the arbitral proceedings becomes all the more doubtful.

6. Today, a large number of such claims are coming before the Court, of procured arbitral awards by proceeding *ex parte* against the respondent and taking coercive action in execution thereof. The Courts, if not the arbitrators, thus have to be cautious in allowing substituted service also by publication, as is sought.

7. I have enquired from the counsel for the petitioner to place himself in the place of the respondent and asked him whether he would, in such a situation, avoid service.

8. The counsel for the petitioner has fairly stated that he would not.

9. Once that is so, there can be no question of the respondent avoiding service and the only inference can be, of the petitioner choosing not to furnish the correct address of the respondent and not serving the respondent.

10. In fact, I have enquired from the counsel for the petitioner as to what are the documents of title in favour of the respondent of the subject property, for the petitioner to claim title from the respondent.

11. The counsel for the petitioner states that the said documents are in possession of the petitioner but he is not sure of the nature of the said

documents i.e. whether there is a sale deed or whether they are registered documents.

12. Before the Court, in execution, has a sale deed executed, the Court has to be satisfied that there exists a title in the property in favour of the respondent. It is common knowledge that the Registrar / Sub-Registrars, when presented with a document executed under directions of the Court, do not make enquiries which they are required to make, relying on the order of the Court and the Court cannot abdicate the said jurisdiction.

13. I have enquired from the counsel for the petitioner as to how the payment of sale consideration was made and that if it was through a bank, what enquiries have been made from the bank about the whereabouts of the respondent.

14. The counsel for the petitioner states that the payments were made by RTGS but is unable to tell the enquiries made.

15. For all the aforesaid reasons, the directions as sought cannot be granted.

16. The petition is dismissed.

17. The counsel for the petitioner then states that the execution proceedings be adjourned *sine die* till the petitioner finds out about the whereabouts of the respondent.

18. The petitioner is at liberty to do so.

19. In fact, even if the execution is allowed to be dismissed, the petitioner can again file an execution petition within the prescribed period of limitation.

No costs.

A copy of this order be forthwith forwarded to the Executing Court aforesaid.

RAJIV SAHAI ENDLAW, J

AUGUST 18, 2017/‘gsr’..

CM(M) 881/2017

Page 3 of 3