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

+ CM(M) 380/2017 and CM APPL.13531/2017 (stay)

MUKESH BHATIA Petitioner

Through: Petitioner in person.

versus

VINOD KUMAR SATRAWALA Respondent

Through: Mr. Ajay Kumar, Advocate

CORAM:

HON'BLE MR. JUSTICE R.K.GAUBA

ORDER

% **03.04.2018**

Though the petition at hand questions the correctness and propriety of order dated 07.04.2017 passed on the file of execution case (No.117/2016) to the extent thereby warrant of arrest was issued against the petitioner (judgement-debtor), copy of the said order has not been placed on record.

During the course of hearing, the counsel for the respondent (decree-holder) placed on record copy of order dated 28.03.2017 and the orders passed prior to the said date on the file of the execution case beginning with proceedings dated 27.11.2013 and subsequent orders, the last being one recorded on 01.05.2017.

The learned counsel for the decree-holder fairly conceded that the order of warrant of arrest with which the petitioner is aggrieved was passed on account of non-compliance with the directions under Order XXI Rule 41 of the Code of Civil Procedure, 1908 (CPC) and, therefore, will have to be read as an order meant to secure the physical presence of the petitioner so

that he could be detained in civil prison within the mischief of Order XXI Rule 41(3) CPC. He further fairly conceded that the order for disclosure of the assets in terms of Order XXI Rule 41(1) & (2) was later complied with by the petitioner by an affidavit, the grievance of the decree-holder being that the judgment-debtor is withholding the relevant information falsely claiming to be not in possession or control of any assets which could be reached to execute the money decree.

Against the above backdrop, while conceding to the prayer for direction in the order dated 07.04.2017 for warrant of arrest to be issued to be set aside, the counsel for the decree-holder submitted that the petitioner (judgment-debtor) be directed to appear before the executing court on a date to be fixed and thereafter on each and every date of hearing fixed without any default till the execution proceedings are pending so that the efforts can be made for decree to be satisfied, the decree-holder reserving the right to move appropriate application before the executing court to enforce the decree, *inter alia*, by sending the judgment-debtor to civil prison.

Ordered accordingly.

The impugned order dated 07.04.2017 issuing of warrant of arrest against the petitioner is set aside.

The petitioner (judgment-debtor) is directed to appear in person before the executing court on 2nd May, 2018 and thereafter remain present on each and every date of hearing before the executing court during the pendency of the execution proceedings. In case of any default in strict compliance with these directions, the executing court will be within its jurisdiction to issue necessary duress process.

The respondent decree-holder will have the liberty to seek release of amount of Rs.50,000/-, which is stated to have been deposited by the petitioner with the executing court pursuant to the interim order dated 11.04.2017 for part satisfaction of the decree. The decree-holder also has the liberty to pursue the execution application, if so advised, by moving an appropriate application for enforcing the decree by sending the judgment-debtor to civil prison. Of course, for such purposes, the executing court will be obliged to consider and pass the necessary orders in accordance with law.

The petition and the application filed therewith stand disposed of in above terms.

R.K.GAUBA, J.

APRIL 03, 2018

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