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

+ **CM(M) 73/2019 & CM APPL. 2083/2019**

MMTC LTD

..... Petitioner

Through: Mr. Kartickay Mathur, Adv with Ms.
Akansha Rana, Advocate.

versus

M/S NARENDER KUMAR RAJEEV KUMAR Respondent

Through

CORAM:

HON'BLE MS. JUSTICE ANU MALHOTRA

ORDER

% **18.01.2019**

CM APPL. 2084/2019 (Ex.)

Exemption allowed subject to all just exceptions.

The application stands disposed of.

CM(M) 73/2019

The petitioner i.e. MMTC LTD which is Public Sector undertaking, vide the present petition assails the impugned order dated 17.04.2018 and the subsequent order dated 22.12.2018 of the Court of the learned Civil Judge-06, Central, Tis Hazari Courts in Execution No.97862/16.

Vide the order dated 17.04.2018, an application under Order XXI Rule 26 & 29 read with Section 151 of the CPC filed by the petitioner herein seeking a stay of the execution proceedings in relation to the *ex parte* decree granted by the Court of the learned Civil Judge (Senior Division), Farrukhabad, Uttar Pradesh, qua which the execution thereof was transferred to Delhi as the office of the JD

i.e. the petitioner herein was here, was declined inasmuch as it was observed vide Para 8, 9, 10 & 11 of the said order dated 17.04.2018 to the effect:-

“8. Before giving my findings on the merits of the application, it would be apposite to reproduce the provisions under Order XXI Rule 26 and 29 CPC.

9. Order XXI Rule 26 reads as under:-

“When a court may stay execution:- (1) The Court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time, to enable the judgment debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution, which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if the application for execution had been made thereto.

(2) Where the property or person of the judgment debtor has been seized under an execution, the Court which issued the execution may order the restitution of such property or the discharge of such person pending the result of the application.....”

10. Order XXI Rule 29 CPC reads as under:-

“ Stay of execution pending suit between decree holder and judgment debtor- Where a suit is pending in any court against the holder of a decree of such Court or of a decree which is being executed by such Court, on the part of the person against whom the decree was passed, the Court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has

been decided:

Provided that if the decree is one for payment of money, the Court shall if it grants stay without requiring security, record its reasons for so doing.”

11. At the very outset, I would like to state that the power and discretion under Order XXI Rule 29 CPC can be invoked only when the execution proceedings and the other suit are pending in the same court. In the instant case, the other suit filed by the JD against the DH is pending in another Court and hence, this power under Order XXI Rule 29 CPC cannot be invoked at this stage. Further, even the power under Order XXI Rule 26 CPC cannot be invoked by this Court at this time as it only empowers a Court to which a decree has been sent for execution to stay the execution of such decree for a reasonable time so as to enable the judgment debtor to apply to the Court by which the decree was passed or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution proceedings. A reasonable amount of time has already been given to the JD for the said purpose. The very fact that the Court which passed the decree has still not ruled in favour of the JD and has also not passed any stay order against the present execution proceedings shows that no further grounds remain to stall the present execution proceedings. Hence, even the power under Order XXI Rule 26 CPC is not capable of being exercised at this stage in the present matter. I also find the plea of the JD that execution proceedings be stalled till the disposal of the other suit, on the ground that the JD being a public sector undertaking it would not flee and would pay the decretal amount subsequently, to be specious and totally bereft of any merit. The judgment and decree of which execution is being sought was passed in 2007 and ten years have already elapsed. The DH has been left deprived of the fruits of the decree for almost a decade and it would be a travesty of justice if the execution proceedings are stalled further. Just

because a JD is public sector enterprise doesn't give it immunity from expeditious disposal of the execution petition filed against it. If the contention of the JD was accepted, it would create a culture of impunity amongst the public sector enterprises which would press for stalling execution proceedings or deferring them on such specious pleas and such a scenario cannot be countenanced by a Court of law."

An application filed thereafter, on behalf of the JD i.e. the petitioner herein seeking an adjournment on the ground that an application under Order IX Rule 13 of the CPC was pending at the Farrukhabad Court which is listed for the date 20.02.2019, and seeking a stay of the execution proceedings was also declined in view of the order dated 17.04.2018 qua which reference has already been made hereinabove.

On behalf of the JD i.e. the petitioner herein, the prayer is made once again to the effect now to this Court that the matter having been fixed for the appointment of the bailiff on 24.01.2019 and for reporting to the Court of the learned Civil Judge-06, Central for the date 27.02.2019, the execution of the warrants of attachment be stayed till the date 20.02.2019 in view of the application under Order IX Rule 13 of the CPC having been filed by the petitioner herein qua the original suit no.417/99 before the Court of the Civil Judge (Senior Division) at Farrukhabad.

In reply to a specific court query, learned counsel for the petitioner has submitted that the application under Order IX Rule 13 of the CPC had been filed by the petitioner herein before the

Farrukhabad Court in the year 2016.

The provisions of Order XXI Rule 26 adverted to hereinabove as reflected in Para 9 of the impugned order dated 17.04.2018 categorically spell forth that a reasonable time may be granted to enable the judgment debtor to apply to the Court by which the decree was passed, or to any Court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay execution, or for any other order relating to the decree or execution, which might have been made by such Court of first instance or Appellate Court if execution had been issued thereby, or if the application for execution had been made thereto which provision may be implemented by a Court to which a decree has been sent for execution in the event of sufficient cause being shown.

In the instant case, the application under Order IX Rule 13 of the CPC having been filed by the petitioner herein before the Farrukhabad Court in the year 2016, it is apparent that there has been reasonable time till 2019 to the petitioner herein to seek the stay of the execution of the decree of the Court of the Civil Judge (Senior Division) Farrukhabad dated 17.03.2007 more than a decade ago.

There is thus, no merit whatsoever in the prayer made by the petitioner. The present petition and the accompanying application are declined.

Copy of the order be given Dasti, as prayed.

ANU MALHOTRA, J

JANUARY 18, 2019/NC

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