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

+ EX.P. 20/2019

LEO ISPAT LIMITED

..... Decree Holder

Through: Mr. Himanshu Garg & Mr. Shakeel
Sarwarwani, Advs.

Versus

RADLAY METAL PRODUCTS PVT. LTD..... Judgement Debtor

Through: Mr. Kunal Sachdeva & Ms. Srishti
Gupta, Advs.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

% **14.03.2019**

1. Execution of a money decree is sought by attachment of the immovable and movable properties of the judgment-debtor at (i) K-44, Udyog Nagar, near Peeragarhi, New Delhi, (ii) Factory at 278, Swarn Park, Udyog Nagar, Mundka, New Delhi, and (iii) 106, First Floor, State Bank Nagar, Paschim Vihar, New Delhi-63.
2. The counsel for the decree-holder, on enquiry states that the decree-holder has satisfied itself that only the judgment-debtor is in existence at the first two of the aforesaid three premises and none else is in existence. With respect to the third of the aforesaid properties, it is stated that it is the residence of the Director of the judgment debtor.
3. The decree is not against the Director of the judgment debtor and thus the third of the aforesaid property or movables therein cannot be attached.
4. The counsel for the judgment-debtor appears on seeing the matter in the cause list and states that the decretal amount has been paid in pursuance to the complaint under Section 138 of the Negotiable Instruments Act, 1881

(NI Act) also made by the decree-holder against the judgment-debtor.

5. The counsel for the decree-holder states that though the decree-holder has received the payment of the decretal amount as stated by the counsel for the judgment-debtor but an appeal preferred by the judgment-debtor as well as the decree-holder against the findings of the Metropolitan Magistrate is pending consideration.

6. The counsel for the judgment-debtor, on enquiry states that the judgment-debtor will not press the appeal preferred by the judgment-debtor insofar as with respect to payment of Rs.81,64,561/- under the decree and no refund of the said payment will be sought in the appeal preferred.

7. The decree-holder has not disclosed any of the said facts in the execution petition and is guilty of suppression to the said extent. A decree-holder, when approaching the Court, ought to make a clean breast of the state of affairs. Had the counsel for the judgment-debtor not appeared on seeing the matter in the cause list, the decree-holder would have got the warrants as sought, issued, when in fact the monies under the decree have been received. Had the decree-holder disclosed the said facts in the execution petition, the Court would have only issued notice of the execution petition and not issued warrants as sought.

8. The counsel for the decree-holder states that though it is not so stated in the execution petition but has been so stated in the list of dates.

9. A list of dates is for convenience and does not constitute a part of pleadings and the requisite averment has to be made in the pleadings and not in the list of dates. Reference in this regard may be made to *Alind Workers Congress (affiliated to INTUC) Vs. United Shippers Limited* 2008 SCC OnLine AP 470 (DB).

10. I have however perused the list of dates also and do not find the decree-holder to have therein also pleaded that it has received the amount subject to decision of the appeal. All that is stated is that the judgment-debtor and its Directors have been convicted in the Section 138 NI Act proceedings and have been directed to pay the cheque amount along with interest. It is nowhere stated in the list of dates also that the payments have been received.

11. The execution petition is thus found to be in abuse of the process of the Court and the decree-holder therefor is burdened with costs of Rs.50,000/-, out of which Rs.25,000/- be deposited with Delhi High Court Advocates Welfare Trust and Rs.25,000/- be paid to the counsel for the judgment-debtor as costs of today's hearing, both within ten days of today.

12. If the decree-holder, within ten days does not produce a receipt of deposit / payment of such costs with the Delhi High Court Advocates Welfare Trust and to the counsel for the judgment-debtor and does not show the same to the Court Master, the Court Master to have the execution petition re-listed for appropriate action against the decree-holder.

13. Else, accepting the statement of the counsel for the judgment-debtor and binding the judgment-debtor therewith, the execution petition is disposed of as satisfied.

RAJIV SAHAI ENDLAW, J

MARCH 14, 2019

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