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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.P. 88/2019 & EAs No.601/2019 (u/O XXI R-41 CPC) &
602/2019 (u/O XXI R-37 & 38 CPC)
RAJESH SABHARWAL Decree Holder
Through: Mr. Fanish K. Jain and Mr.
Deepanshu Garg, Advs.
Versus
RAJASAVI ESTATE & DEVEOPERS PVT. LTD.
& ORS. Judgement Debtors
Through: None.

CORAM:

HON'BLE MR. JUSTICE RAJIV SAHAI ENDLAW

ORDER

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26.09.2019

1. Execution is sought of a money decree, by (i) arrest and detention in civil prison of judgment debtors (JDs) No.2&3; and, (ii) attachment of moveable and immovable properties of the JDs to be disclosed by the JDs themselves under Order XXI Rule 41 of the Code of Civil Procedure, 1908 (CPC).
2. Though the Registry of this Court put an objection, that the list of moveable and immovable properties had not been filed along with the Execution Petition, but the counsel for the decree holder (DH) insisted that the Execution Petition be listed; the Execution Petition has been listed subject to office objection.
3. Attention of the counsel for the DH is drawn to ***Jolly George Varghese Vs. The Bank of Cochin*** (1980) 2 SCC 360 holding that arrest and detention in civil prison of the JDs is the means of execution of a money decree only in certain circumstances. The Execution Petition does not even

pay lip service to satisfy the Court of the said circumstances. The execution of a money decree by arrest of a JD is sought in a routine manner that does not satisfy the test laid down in *Jolly George Varghese* supra. Further, Order XXI Rule 11A provides that where an application is made for arrest and detention in prison of the JD, it shall state or be accompanied by an affidavit stating the ground on which arrest is applied for, which has also not been done in this case.

4. As far as Order XXI Rule 41 of the CPC is concerned, attention of the counsel for the DH is invited to *M.L. Gupta Vs. Aerens Gold Souk Int. Ltd.* 2018 SCC OnLine Del 7621 and in view whereof, need to reiterate the law is not felt.

5. The counsel for the DH draws attention to EA No.602/2019 filed along with the Execution Petition and contends that it is the plea of the DH that the JD No.2 has sold an immoveable property and is intending to run away.

6. If the JD No.2 is possessed of monies to satisfy the decree, the said fact itself shows the fault in seeking execution by arrest and detention in civil prison. The remedy available to the DH, as per the judgments aforesaid, is to investigate where the said monies are kept and to seek attachment thereof.

7. The Execution Petition being not in accordance with law, is rejected.

RAJIV SAHAI ENDLAW, J.

SEPTEMBER 26, 2019

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