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**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
WRIT PETITION (ST) NO. 1238 OF 2020**

Inderjeet Singh Amardeep
Singh Chadha @ Supremo

.... Petitioner.

V/s

The State of Maharashtra and Ors.

..... Respondents.

Mr. Subhash Jha i/b Mr. Yogesh T. Bamne for the Petitioner.

Mr. Y.D. Patil, AGP for Respondent Nos. 1 and 6.

Mrs. Manisha Jagtap for Respondent No.7

Mr. Karan Bhosale i/b Ms. Priyanka Dube with Mr. Sanjay Thakur with
Ms. Megha Gupta for Respondent No.2.

CORAM: NITIN W. SAMBRE, J.

DATE: JANUARY 27, 2020

P.C.:-

1] In response to the prayer for deletion moved by learned Counsel for Respondent Nos. 1 and 7, learned Counsel for the Petitioner concedes that Respondent Nos. 1 and 7 can be deleted from array of Respondents. As such prayer for deletion of Respondent Nos. 1 and 7 stands allowed.

2] This Petition by the husband, takes exception to the order dated 23/12/2019 passed by Family Court, which reads thus:-

“Order

Distress Warrant was issued however distress warrant could not be served and returned unserved, hence issue arrest warrant against judgment debtor for the recovery of rupees 40 lacs.”

The aforesaid order came to be passed on the application dated 11/12/2019 moved by the decree holder, praying therein arrest warrant as the Petitioner failed and neglected to pay maintenance. The aforesaid impugned order dated 23/12/2019 preceded with an application dated 8/11/2019 moved by wife praying for distress warrant against judgment debtor. After hearing learned Counsel for the Petitioner-husband, Court issued distress warrant on 8/11/2019.

3] Facts necessary for deciding Petition are as under:-

4] Pursuant to the provisions of Section 13-B of the Hindu Marriage Act, 1955, the Petitioner and the Respondent filed joint Petition, requesting divorce by mutual consent. Hasmeet Kaur Chadha, daughter and Gurmair Chadha, son, were born out of the aforesaid wedlock. In view of matrimonial discord, parties as such started living separately from 2/5/2015.

5] Family Court allowed the said joint Petition on 30/1/2017. Amongst other, the terms of settlement provides for vesting of following properties in Respondent-wife:-

“i) Gift Deed dated 27.5.2016 registered under serial No.BDR-1-5854-2016 of Flat No. 301 admeasuring 1335 sq. ft. Preetika Apartments, Saraswat Colony, Saraswat Road, Santacrus (West), Mumbai 400054.”

“ii) Sale Deed dated 17/10/2015 registered under serial No.Vasai3/8357/2015 Commercial Building known as “Lavdeep C.F.C. Building” consisting of Ground Plus plus Third (Part) floor totally admeasuring 436 sq.mtrs on the plot of land bearing S. No.34, Hissa No. 1A of Village, Waliv, Taluka Vasai, District Thane.” (Hereinafter referred to as “property at Serial No.2”)

“iii) Sale Deed dated 16.12.2014 registered under serial No. BDR-9/9512/2014 Flat No.3 admeasuring 213 sq. ft. Carpet equal to 255.6 sq. ft. Built Up equal to 23.75 sq. meters, Khar Sunrise HSG Society, ground Floor, 5th Road, Khar (West), Mumbai – 400 052”.

In addition to aforesaid properties, it was also agreed between the parties that monthly maintenance of Rs 7 lakhs would be

paid to Respondent-wife who is a custodian of two children. Out of this amount of Rs 7 lakhs, 50% would be paid towards maintenance of wife and remaining 50% would be equally divided and would be paid towards maintenance of children till son attains the age of majority, daughter gets married and Respondent-wife gets re-married. It was also agreed between the parties that Petitioner shall pay expenses towards education of the children in present and future, whether in India or Overseas and also towards stay of the children for such education at different places.

6] After aforesaid consent decree was executed by order dated 30/1/2017, I am informed that Petitioner got re-married. As the Petitioner has failed to honour the aforesaid decree i.e. payment of maintenance amount of Rs 7 lakhs per month, execution proceedings came to be initiated before the Family Court for recovery of an amount for the period from 1/1/2019 to 25/6/2019. From the record it appears that Respondent-wife was also required to initiate execution proceedings for recovery of school expenses to the tune of

around Rs 18,20,000/- for a period from 2018 to 2020. Property at Serial No.2 since was mortgaged to New India Co-operative Bank and since the Petitioner has not paid EMI, Respondent-wife was required to move the application-Exhibit-6 before Family Court seeking direction to Petitioner/judgment debtor to clear arrears of dues of Financial Institution i.e. New India Co-operative Bank, so also pay maintenance to children, Respondent and education expenses of children.

7] In view of default in payment of maintenance, as referred to above, distress warrant was issued after hearing the learned Counsel for Petitioner and decree holder on 8/11/2019. As same was not honoured, at the behest of Respondent-wife, another application for issuance of arrest warrant was moved.

8] Petitioner was appearing in execution proceedings and through his lawyer was aware of issuance of distress warrant. Since same was not honoured by depositing the amount of maintenance, Family Court in execution proceedings issued

arrest warrant. As such this Petition.

9] Shri Jha, learned Counsel for the Petitioner while questioning the order impugned, would urge that the property referred to above which is more particularly identified as property at Serial No.2 is mortgaged to Indian Co-operative Bank. According to him, for a period from October 2015 to January, 2017, Petitioner has paid an amount of Rs 66,98,592/- towards repayment of loan amount for a period of 16 months. He would further claim that Petitioner has paid EMI for a period from 1/2/2017 to 31/3/2019 i.e. an amount of Rs 1,13,03,874/- i.e. for a period of 27 months. According to him, said payment needs to be adjusted against the amount of maintenance of Rs 7 lakhs, payable to the Respondent-wife and children per month. As such, according to him Court should have considered the same before passing the order impugned. He would further claim that the proceedings for issuance of distress warrant are decided hurriedly, as no opportunity was granted before passing of order of issuance of distress warrant against the judgment debtor.

10] The learned Counsel for the Petitioner would urge that execution proceedings are initiated in contravention to provisions of Order XXI Rule 11(2)(e), Rule 11-A and Rule 22 of Civil Procedure Code. According to him, execution proceedings do not contain adjustment of the aforesaid payment of EMI by Petitioner-husband in the matter of repayment of loan with regard to one of the properties.

11] The learned Counsel for the Petitioner would then urge that application for issuance of arrest warrant is not accompanied with affidavit stating grounds on which the arrest is applied for. He would then urge that second execution was initiated after a period of two years from the date of decree and notice should have been served on the Petitioner before execution was taken to its logical end. As such, according to him, order of arrest issued against the Petitioner is liable to be quashed and set aside.

12] Per contra, learned Counsel for the Respondent-wife

would urge that Petitioner by one or the other way is trying to evade payment of maintenance to wife and children. According to him, it is really sad that wife is required to approach Family Court for recovery of education expenses, maintenance as promised. He would then claim that property which is more particularly identified as property at Serial No.2 since was given to Respondent-wife by the Petitioner by virtue of the documents mentioned in the decree under execution, the Petitioner was duty bound to pay its EMI as property was to be given free from all encumbrances, so that Respondent-wife and children can enjoy the said property. He would further urge that proceedings are in the nature of money decree and that being so, in strict sense Rules which are relied on are not applicable. Hence, he sought dismissal.

13] Considered rival submissions.

14] Perusal of consent decree dated 30/1/2017 demonstrates the object with which Petitioner has handed over the properties to Respondent-wife. Apart from payment of

monthly maintenance of Rs 7 lakhs, the property, particularly identified as property No.2, which was purchased in the name of Respondent-wife is to be enjoyed by Respondent-wife free from all encumbrances including that of loan to be cleared by the Petitioner-husband. The fact remains that if the contention raised by the learned Counsel for the Petitioner Mr. Jha about adjustment of the payment of EMI of Rs 4,18,662/- per month to be payable to the Indian Co-operative Bank against the payment of monthly maintenance of Rs 7 lakhs is accepted, what remains with Respondent-wife is an amount of Rs 2 lakhs and odd in which it will be really difficult for her to maintain herself and children. The breakup provided in the consent decree itself demonstrates that 50% of the amount of Rs 7 lakhs of maintenance i.e. Rs 3,50,000/- will go to Respondent-wife whereas balance amount i.e. Rs 3,50,000/- will be required to be spent on son and daughter. As such, illogical and irrational submissions of the Petitioner cannot be accepted, so as to frustrate the terms of consent decree which is under execution.

15] In support of the aforesaid observations, this Court is required to rely on the terms of Consent Decree dated 30/1/2017. The said decree in no words provides for any liability on the Respondent-wife to clear payment of monthly installment to be payable to Indian Co-operative Bank towards repayment of loan. Rather, it is the duty of the Petitioner to regularly pay EMI of the said loan amount, as it is his bounden duty to give said property to Respondent-wife and children free from all encumbrances, so that they can enjoy the property. As such, claim of the Petitioner that amount of EMI should have been adjusted as against the amount of maintenance is liable to be rejected.

16] Further contention of Mr. Jha that order dated 18/11/2019 issuing distress warrant was passed without giving appropriate opportunity of hearing is concerned, fact remains that Counsel for the Petitioner was very much heard in the said proceedings. As such the requirement of Order XXI Rule 22 of issuance of notice is very much satisfied as the Petitioner has appeared in execution proceedings and the orders are passed

only after Counsel for the Petitioner was heard. Apart from above, the said order dated 18/11/2019 is not subject matter of challenge in the present Petition. Petitioner has rather taken out application for recall of distress warrant dated 8.11.2019, which I am informed is pending till today. Apart from above, this Court is required to take note of the fact that Petitioner has already moved executing court seeking stay to the warranted dated 23/12/2019. I am informed that Family Court in execution proceedings has granted certain protection to the Petitioner. However, when the Petition was filed, said fact of filing stay application and stay to the execution warrant was suppressed by the Petitioner from this Court. It is only by way of an additional affidavit, pursuant to the objection raised by the Counsel for Respondent-wife, Petitioner today has placed on record the Application. As such, it can be noticed that the Petitioner has no intention to pay any maintenance to his wife and his children and also that of educational expenses as is agreed by him in the Consent Decree dated 30/1/2017. This very ground was very much mentioned in the Application for issuance of arrest warrant as provided under Order XXI Rule

11-A of C.P.C.

17] This Court on Friday i.e. on 24/1/2020 when heard the matter, gave an option to the Petitioner to deposit an amount of Rs 40 lakhs in the Family Court to which Petitioner refused. Even today morning also, Petitioner was again given same option of depositing Rs 40 lakhs in Family Court, which he has not agreed.

18] In the aforesaid backdrop, this Court is required to consider, “whether order of issuance of arrest warrant which is impugned in this Petition passed on 23/12/2019 is justified?”

19] Pleadings of the Petitioner need to be appreciated particularly from para-vi onward.

20] In the aforesaid pleadings, Petitioner is seeking adjustment of the amount of loan repayment against property No. 2 referred to above. Petitioner-husband from the terms of settlement appears to be very well off and financially sound.

He appears to be intentionally causing hardship to the Respondent-wife and dependent children and making them approach this Court even for execution of money decree in the form of maintenance. Insensitivity of the Petitioner to honour money decree can be inferred from the pleadings in ground No.vi of the Petition. Though Shri. Jha has relied on the Judgment of the Apex Court in the matter of *Inder Mohan Goswami and another vs. State of Uttaranchal and others*¹(para 47), so as to claim that power of issuance of arrest warrant should not be exercised in mechanical manner, however, the very conduct of the Petitioner in showing complete disrespect to money decree and also putting life of Respondent-wife and dependent children in jeopardy rightly prompted the Family Court to issue arrest warrant.

21] Petitioner after 2nd marriage made children to suffer. Apart from above, application moved by the Petitioner for recalling of the distress warrant, cancellation of arrest warrant and his refusal to deposit an amount of Rs 40 lakhs which is

¹ (2007) 12 SCC 1

claimed for period from 1/1//2019 to 31/5/2019 prima facie demonstrates very intention of the Petitioner of not honouring the terms of consent decree (money decree).

22] In the aforesaid backdrop, claim of the Petitioner that there is no compliance of provisions of Order XXI Rule 11 (2) (e) and 11-A is required to be rejected, particularly having regard to the provisions of order XXI Rule 11(1). Order XXI Rule 11(1) reads as under:-

“ORDER XXI
EXECUTION OF DECREES AND ORDERS
Payment under decree

(11) Oral application.- (1) Where a decree is for the payment of money the Court may, on the oral application of the decree-holder at the time of the passing of the decree, order immediate execution thereof by the arrest of the judgment-debtor, prior to the preparation of a warrant if he is within the precincts of the Court.”

23] As such, admittedly, in the case in hand, money decree is under execution. The oral application is sufficient to seek execution of money decree. As such, from the very conduct of

the Petitioner, as is observed above, order of issuance of arrest warrant is perfectly justified. That being so, there is no substance in the Petition. Petition is dismissed.

24] Considering the very conduct of the Petitioner of scuttling execution proceedings in one way or other and intentionally not paying maintenance to the dependent-wife and children, it will be appropriate in my opinion to saddle cost of Rs. 25,000/- to be deposited in the Family Court by the Petitioner within 4 weeks from today, which Respondent-wife will be entitled to withdraw. If the said amount of costs is not deposited, same can be recovered by attaching movable assets of the Petitioner by taking recourse to provisions of Order XXI of the Code of Civil Procedure, 1908.

25] At this stage Mr. Jha, learned Counsel for the Petitioner submits that protection granted to the Petitioner as ordered by court below be extended for a period of two weeks. The said prayer is objected by the learned Counsel for Respondent-wife. The learned Counsel for Respondent-wife submits that extension can be granted subject to deposit of Rs 40 lakhs in

the Family Court. Mr. Jha, learned Counsel for the Petitioner submits that there is no question of depositing Rs 40 lakhs in Family Court. That being so, prayer for extension of protection as ordered by court below also stands rejected.

(NITIN W. SAMBRE, J.)