

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

% **Date of decision: 25th October, 2021.**

+ **CM(M) 725/2021**

GOPAL TANEJA

..... Petitioner

Through: Mr. Mohit Chaudhary, Advocate.

Versus

SDM, SUB DIVISION KOTWALI DELHI & ANR.

..... Respondents

Through: Mr. Anjum Javed, ASC GNCTD with
Mr. Devendra Kumar & Mr. Faran
Ahmed, Advocates.

CORAM:

HON'BLE MR. JUSTICE AMIT BANSAL

JUDGMENT

AMIT BANSAL, J. (Oral)

CM No. 37131/2021(for exemption)

1. Allowed, subject to all just exceptions.
2. The application is disposed of.

**CM(M) 725/2021, CM No. 37130/2021 (for stay) & CM No. 37132/2021
(for call of complete set of records)**

3. The present petition under Article 227 of the Constitution of India impugns the order dated 11th October, 2021 passed by the Sub Divisional Magistrate, Sub Division Kotwali (SDM), whereby the petitioner was directed to file an affidavit with complete details of all his assets and

liabilities in the format that was provided to the petitioner.

4. Recovery proceedings were initiated by the SDM against the petitioner pursuant to the order dated 10th August, 2018 passed by the Metropolitan Magistrate, Rohini Courts. Vide the impugned order dated 11th October, 2021, the SDM directed the petitioner, who was represented by his son before the SDM on the said date, to file an affidavit with complete details of all his assets and liabilities in the format provided to the petitioner.

5. Counsel for the petitioner fairly contends that on the next date of hearing on 21st October, 2021, the SDM has himself modified the impugned order by not insisting the petitioner to file his affidavit in the format provided to the petitioner. Accordingly, he does not press the present petition. However, he contends that most of the SDMs in the city are following the judgment of this Court in ***Santosh Kumar Jha Vs. Deputy Labour Commissioner (South)***, W.P.(C) No.8092/2016 dated 27th March, 2017 whereby this Court, while following its earlier judgment in ***M/s Bhandari Engineers & Builders Pvt. Ltd. Vs. M/s. Maharia Raj Joint Venture & Ors.*** (2016) 155 DRJ 212 (***Bhandari Engineers I***), had prescribed a format of an affidavit which was attached to the said judgment which was to be followed by all SDMs. The format of affidavit prescribed in ***Bhandari Engineers I*** supra was modified and made comprehensive by this Court in ***Bhandari Engineers & Builders Pvt. Ltd. Vs. M/s. Maharia Raj Joint Venture & Ors.*** 2020 SCC OnLine Del 1969 (***Bhandari Engineers IV***). Accordingly, he submits that it may be clarified that in light of the judgment of the Division Bench of this Court in ***Delhi Chemical and Pharmaceutical Works Pvt. Ltd. & Anr. Vs. Himgiri Realtors Pvt. Ltd. & Anr.*** 2021 SCC OnLine Del 3603 (of which I was a part), the format of

affidavit attached to **Santosh Kumar Jha** supra need not be insisted on.

6. Counsel appearing on advance notice on behalf of the respondents fairly does not oppose the aforesaid.

7. The portions of the judgment in **Bhandari Engineers IV** supra to the extent it prescribed a format of affidavits of assets to be followed in all execution proceedings were overruled by this Court in **Delhi Chemical and Pharmaceutical Works** supra, wherein it was held as follows:

“48. Thus, for the Court/Commercial Division in Bhandari Engineers & Builders Pvt. Ltd. supra, to exercise powers under Section 151 of the CPC, it was necessary for the Court/Commercial Division to first hold that there was no provision in the CPC or any other law to meet the exigency which had arisen.

49. Not only did the Commercial Division in Bhandari Engineers & Builders Pvt. Ltd. supra not hold so but has itself in the judgment referred to Order XXI Rule 41 of the CPC and rather identified that also as a source of power to do what has been done therein. Order XXI Rule 41 read with Form 16A in Appendix-E of the CPC and Order XLVIII Rule 3 of the CPC are precisely for the same exigency with which the learned Judge in Bhandari Engineers & Builders Pvt. Ltd. supra was concerned i.e. holder of a money decree being unaware of the assets of the judgment debtor. Order XXI Rule 41 of the CPC enables such a decree holder to apply thereunder to the Court for a direction to the judgment debtor to disclose his assets and further empowers the Court to direct the judgment debtor to disclose his assets in Form 16A in Appendix-E of the CPC. Though Order XLVIII Rule 3 permits the Court to order variation in the forms given in the appendices to CPC but only to the extent “as the circumstances of each case may require”. Thus, under Order XLVIII Rule 3 of the CPC, as rightly contended by the senior counsels for the judgment debtors, the Court, though is empowered to, in a particular case direct the judgment debtor to file affidavit of assets in Form-16A with such variations as may be ordered as per the exigencies in

that case, but again has no jurisdiction to prescribe a variation generally, for all cases of execution of money decrees. Thus, with respect to the learned Judge, we are unable to identify Order XXI Rule 41 also as a source of power for directing/mandating, what has been directed/mandated in Bhandari Engineers & Builders Pvt. Ltd. supra.

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57. We are thus of the view that **Bhandari Engineers & Builders Pvt. Ltd. supra**, to the extent extends what is laid down therein to execution proceedings pertaining to all money decree and to all courts executing a money decree, cannot said to be good law. Axiomatically, what is held in **Bhandari Engineers & Builders Pvt. Ltd. supra** could not have been followed in the execution proceedings from which this appeal arises.

58. Once it is so, the impugned orders have no other reason whatsoever for directing the judgment debtors to file the affidavits and which are liable to be set aside on this ground alone.”

8. In view of the judgment in **Delhi Chemical and Pharmaceutical Works supra**, the judgment of this Court in **Santosh Kumar Jha supra** to the extent it directs filing of an affidavit attached as Annexure-A to the said judgment in all proceedings before the SDM, also cannot be said to be good law. Accordingly, it is directed that SDMs shall not insist on the judgment debtors following the format of the affidavit attached as Annexure-A to the judgment in **Santosh Kumar Jha supra**.

9. The SDM will carry out the execution proceedings without insisting on the format of the affidavit in terms of Annexure-A to the judgment in **Santosh Kumar Jha supra**.

10. Counsel for the respondents to ensure that a copy of the present order is forwarded to all SDMs in Delhi for compliance.

11. In view of the above, the petition along with all pending applications is disposed of.

AMIT BANSAL, J

OCTOBER 25, 2021

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