

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

C.R.No.3510 of 2023 (O&M)

Date of Order: 04.07.2023

NLDK Timbers Private Limited and another

.Petitioners

Versus

K Abrasive Solutions Private Limited

..Respondent

CORAM: HON'BLE MR. JUSTICE ANIL KSHETARPAL

Present: Mr. Nitin Kaushal, Advocate, for
Mr. Saurabh Chawla, Advocate
for the petitioners.

ANIL KSHETARPAL, J

1. The petitioners herein are the judgment debtors. A civil suit for recovery of Rs.3,70,833/- along with interest @ 6% per annum was decreed with cost on 04.07.2019. In the execution petition, the court by way of impugned order has ordered issuance of warrants of arrest of petitioner no.2, whereas petitioner no.1 is a company.

2. On 02.06.2023 the following order was passed:-

“Counsel for the petitioners seeks some time to get his instructions as to whether the petitioners are willing to deposit the entire decretal amount within a specified period. On his request, adjourned to 04.07.2023.”

3. The learned counsel representing the petitioners contends that the petitioner no.2, at present, does not have the wherewithal to pay the amount in lump sum. He submits that in order to show their bonafide, petitioner no.2 has prepared a Demand Draft of Rs.2,00,000/- (DD No.302287) drawn in favour of the respondent-decree holder and has sent a

copy as a WhatsApp message to him.

4. The learned counsel representing the petitioners *inter-alia* contends that the Executing Court without giving an opportunity to the petitioner to show cause has directly ordered issuance of warrants of arrest which is not in consonance with the provisions of Order 21 Rule 37 of the Code of Civil Procedure, 1908.

5. From the reading of the order, it appears that the execution petition remained pending for nearly 4 years and the petitioners were given sufficient opportunities to comply with the decree. However, inability to comply with the civil court decree for recovery of the amount *ipso facto* does not lead to arrest and detention of the judgment debtor in civil imprisonment. Before such order is passed, the Executing Court is required to record a satisfaction that the judgment debtor is intentionally refusing to comply with the decree despite having wherewithal to comply with the same.

6. The learned counsel representing the petitioners submits that the next date of hearing before the Executing Court is 12.07.2023 and petitioner no.2 undertakes to tender the Demand Draft of Rs.2,00,000/- in the Court on 12.07.2023.

7. Keeping in view the aforesaid facts, the Executing Court is directed to keep in abeyance the warrants of arrest issued against the judgment debtor (petitioner) till the petitioner is granted sufficient opportunity to furnish explanation disclosing the reasons for failure to comply with the decree. The Executing Court would consider the same in accordance with law before proceeding further.

8. Since, this order has been passed without issuing notice to the decree holder, hence liberty is granted to file objections, if any.
9. Needless to observe that the observations made by this court shall not be construed as final expression on the merits of the case.
10. Disposed of accordingly.
11. All the pending miscellaneous applications, if any, are also disposed of.

July 04, 2023
nt

(ANIL KSHETARPAL)
JUDGE

Whether speaking/reasoned	:YES/NO
Whether reportable	:YES/NO