



\$~11

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

Date of decision: 10.10.2023

+ EX.F.A. 35/2023 & CM APPL. 47715-16/2023

SANDEEP LAMBA

..... Appellant

Through: Mr. Sudhir Kumar, Mr. Vipin K.
Sharma and Mr. Manish Kumar,
Advocates

versus

DIMPLE MAHNA

..... Respondent

Through: Ms. Zoya Mehta, Advocate alongwith
Respondent in person

%

CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

1. This execution first appeal filed under Order 21 Rule 58 read with Order 21 Rule 16 and Section 96 (1) of the Code of Civil Procedure, 1908 ('CPC') impugns the order dated 26.08.2023 passed by ADJ-06, West District, Tis Hazari Courts, Delhi ('Executing Court') in Ex. No. 1222/2018, titled as **Ms. Dimple Mahna v. Bodysterone Foods Pvt. Ltd. & Ors.**, dismissing the application filed by the Appellant herein i.e., Judgment Debtor No.3 ('JD No.3') under Section 47 of CPC seeking recall and setting aside of the order dated 17.08.2023.

1.1. The Executing Court by a separate order dated 17.08.2023 has allowed an application filed by the Respondent No.1 i.e., decree holder seeking attachment of the immovable property of Appellant herein i.e., JD



No.3.

1.2. The Appellant herein is Judgement Debtor No. 3 and Respondent No. 1 is the Decree Holder. For the sake of convenience, the parties are being referred to in this judgment as per their rank and status before the Executing Court.

2. The execution petition Ex. DJ No. 1222/2018 was filed for execution of order dated 10.05.2018 passed by National Company Law Tribunal ('NCLT') in case bearing no. 192/ND/2017, titled as **Dimple Mahana v. Bodysterone Foods Pvt. Ltd.**

2.1. The NCLT vide the order dated 10.05.2018 held that the JD Nos. 2 & 3 are liable to pay Rs. 15,00,000/- to the decree holder. It was further directed that in case of default the decree holder can seek recovery of the said amount by attachment of property of JD Nos. 2 & 3.

2.2. The Executing Court appointed a local commissioner for preparing inventory list of the gymnasium equipment belonging to JD No. 2 and for auctioning the said equipment. The sale was concluded on 22.03.2020.

2.3. The JD No. 3 filed objection to the said execution petition, further objections were also filed by the said JD against the functioning and credentials of the Local Commissioner appointed in the execution petition. The Executing Court vide order dated 20.03.2021 dismissed the objections of the JD No.3. The said order has become final.

2.4. Thereafter an application was filed by the decree holder for the attachment of the immovable property of JD No.3, which was allowed by the Executing Court vide order dated 17.08.2023. Further vide the said order the Executing Court directed the decree holder to appear before the Court



for appointment of bailiff on 25.08.2023.

2.5. The JD No. 3 on 26.08.2023 filed an application under Section 47 of the CPC seeking the recall/setting aside of the order dated 17.08.2023, which was dismissed on the same day. The JD No.3 has challenged the said order dated 26.08.2023 of the Executing Court in the present appeal.

3. The learned counsel for JD No. 3 states that the car belonging to JD No. 3 i.e., DL1CW0686, which was attached by the bailiff as per the order of the Executing Court and placed in the possession of the decree holder, should be evaluated and in the first instance, the value of the said car (cost) should be adjusted with the decretal amount. He states that this should be done before proceeding with the attachment of JD No. 3's immovable asset.

3.1 He also raised an objection that during the execution proceedings, the gymnasium equipment of JD No. 2 i.e., Hemant Lamba was sold at a meagre sum of Rs. 3,60,000/-, whereas the evaluated cost of the said gymnasium equipment should be Rs. 53,93,000/-.

4. In reply, learned counsel for decree holder states that she has placed on record an affidavit dated 22.09.2023 enclosing the cost evaluated by a renowned second-hand car dealer, Cars 24, of the car in possession of the decree holder and the said second-hand car dealer has tentatively assessed the value the car at Rs. 1,84,608/- to Rs. 2,15,722/-.

4.1. She states, however, the keys of the car to her knowledge have been deposited in the Executing Court and that she does not have the possession of the said car keys. She states that if spare keys are provided by JD No. 3, then inspection of the car can be offered to Cars24 executive for an accurate assessment of the value; as the dealer would like to take a test drive of the



car to assess its feasibility.

4.2. She further states that the Registration Certificate ('RC') of the car has not been provided by JD No. 3 and therefore, the car cannot be sold in the absence of the RC.

4.3. She, however, states that she remains willing to dispose of the said car and adjust the payment towards the decretal amount.

5. In reply, the learned counsel for the JD No. 3 states on instructions from JD No. 3 that he does not have any car keys in his possession, as the same is deposited before the Executing Court.

6. This court has heard the parties and perused the record.

7. At this stage, it was put to the parties by the Court that decree holder can engage the services of an authorised key maker, who can make a duplicate key for the car, so that, Respondent No.1 can offer physical inspection of the car to Cars 24 executive for accurate evaluation.

7.1. The learned counsel for the JD No.3 has objected to the proposed modus on the plea that his (JD No. 3's) laptop and documents are lying in the car. He, therefore, opposes the direction for appointing a duplicate key maker.

8. In the circumstances as discussed above, it has become evident that the JD No. 3 does not wish to cooperate in true valuation of the car, therefore, the offer made by the Appellant that the value of the car should be adjusted against the decretal amount cannot be accepted at this stage.

8.1. Further, this Court notes from the pleadings in this appeal, specifically at paragraph '17', the Appellant has admitted in this appeal that he has two sets of keys of the car; however, in the course of hearing, he refused to offer



the spare keys for the purpose of valuation of the car by Cars 24 and therefore, this Court is not satisfied with the bona fide of the Appellant. If the car cannot be evaluated, it cannot be sold at its accurate value. Therefore, the Executing Court has not committed any error in not proceeding with the sale of the car as the non-cooperation of the JD No. 3 is writ large.

9. It is apposite at this stage to note that JD No. 2 itself has not raised any objection to the sale of the gymnasium equipment, owned by him, by the Local Commissioner and its subsequent acceptance by the Executing Court.

9.1. This Court further notes that the Executing Court in the impugned order dated 26.08.2023 has returned the categorical finding with respect to the due participation of both JD No. 2 and JD No. 3 in the proceedings for sale of the gymnasium equipment. The relevant portion of the order reads as under: -

“12) As far as the objection mentioned in para 2 of the application of JD no.3 is concerned, it is contended by the applicant JD. No.3 that the JD no.2 was never brought before the court in the execution petition and was never heard on any objections. However, order sheet dated 17-10-2020, 18-02-2021 & 20-03-2021 reveal that the JD no.2 was produced from judicial custody and the counsel Sh. Vipin Kumar Sharma also appeared for the JD no.2 as his counsel. It is also relevant to mention here that vide order dated 20-03-2021 ld. Predecessor of this court observed in the order sheet that JD no.2 was represented by counsel and execution proceedings were not going-on at the back of JD no.2. The records also reveal that the auction order of movable property of the Gym of JD no.2 was made in the presence of JD no.2 and wife of JD no.3. In view of the above observation, the said objection of the JD no.2 is not tenable. Same is dismissed.”

(Emphasis supplied)

9.2. This Court is of the opinion that JD No. 3 herein has no locus to raise



objections with respect to the sale of the gymnasium equipment in view of the aforesaid findings of the Executing Court. Even otherwise JD No. 3 has no concern with the said equipment.

10. No other arguments were raised by the counsel for the JD No.3. Accordingly, the Appellant has been unable to point out any infirmity in the impugned orders dated 26.08.2023 and 17.08.2023.

11. In this regard, before concluding, it would be relevant to note that the objections (1st) of JD No. 3 to the execution of the decree was initially dismissed by the Executing Court vide a detailed order dated 20.03.2021. The said order was not challenged and the same has become final.

11.1. The JD No. 3, thereafter, sought to stall the execution by filing second (2nd) objections, which were dismissed vide order dated 17.08.2023 and then filed third (3rd) objections, which came to be dismissed on 26.08.2023.

11.2. The present proceedings are therefore a fourth (4th) round of litigation by JD No. 3 to obstruct the execution of the decree.

11.3. The decree was passed in favour of Respondent No. 1 on 10.05.2018 for a sum of Rs. 15,00,000/- and as per the record of the Executing Court, Respondent No. 1 has till date only recovered an amount of Rs. 3,60,000/-, Rs. 10,710/- and Rs. 21,332/-.

11.4. This Court, therefore, agrees with the finding of the Executing Court that JD No. 3 has been filing successive applications to merely delay the execution proceedings. Even before this Court, as noted hereinbefore JD No. 3 after consenting to the sale of his car on 19.09.2023 today during the course of the hearing raised objections to its evaluation, which are not genuine and clearly intended to prolong the proceedings.



12. The present appeal is accordingly dismissed. Pending application stands disposed of.

MANMEET PRITAM SINGH ARORA, J
OCTOBER 10, 2023/rhc/sk
Click here to check corrigendum, if any