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

Date of decision: 03.11.2023

+ CM(M) 1788/2023, CM APPL. 56775/2023 & CM APPL. 56776/2023

UMA SHANKAR GUPTA

..... Petitioner

Through: Mr. V.K. Sharma, Advocate

versus

SHARMA ELECTRICALS

..... Respondent

Through: None

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CORAM:

HON'BLE MS. JUSTICE MANMEET PRITAM SINGH ARORA

J U D G M E N T

MANMEET PRITAM SINGH ARORA, J (ORAL):

CM APPL. 56775/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1788/2023 & CM APPL. 56776/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 20.10.2023 passed by the Civil Judge-06, Central District, Tis Hazari Courts, Delhi ('Executing Court') in execution petition bearing Ex. No. 96759/2016, titled as "**Sharma Electricals v. M/s Aggarwal & Co.**", whereby the Executing Court dismissed the objections filed by the Petitioner herein for non-prosecution and issued warrants of attachment to the extent of the decretal amount in respect of movable property of judgment debtor.



1.1. The Respondent is the decree holder and the Petitioner is the son of late Sh. Kunj Bihari Gupta, proprietor of M/s Aggarwal & Co. (i.e., the judgment debtor).

1.2. The civil suit filed under Order XXXVII of Code of Civil Procedure, 1908 ('CPC') was decreed ex-parte by the Trial Court in favour of the Respondent, for a sum of Rs. 1,57,934/- along with pendente lite interest at the rate of 12% interest per annum.

2. Learned counsel for the Petitioner states that the warrants of attachment issued on 20.10.2023 have been returned unexecuted. He states that the Petitioner has substantial defences, which would evidence that the decree is non-executable.

2.1. He has drawn this Court's attention to the death certificate dated 31.03.2011 which records the date of death of his father i.e., Sh. Kunj Bihari Gupta, as 12.02.2011; which is prior to the date of the institution of the suit i.e., 25.08.2012. He states that therefore the ex-parte decree has been passed against a dead person.

2.2. He, further states on instructions that 50% of the decretal amount will be deposited with the Executing Court within two weeks i.e., on or before 17.11.2023.

2.3. He states that the Petitioner undertakes that a copy of the objections will be re-served on the Respondent as well as the counsel representing the Respondent, through speed post and courier within one (1) week from today.

2.4. He undertakes to this Court that the Petitioner will remain duly represented before the Executing Court on each date of hearing and no adjournment will be sought and he will cooperate for early adjudication of his objections.



3. This Court has considered the submission of the counsel for the Petitioner and perused the record.
4. None appears on behalf of the Respondent despite advance service.
5. The statements and undertakings given by the Petitioner as recorded above, are taken on record and he is bound down to the same.
6. The operation of the impugned order dated 20.10.2023 is stayed, subject to the Petitioner depositing 50% of the decretal amount on or before 17.11.2023.
7. It is directed that upon the Petitioner depositing 50% of the decretal amount on or before 17.11.2023, the impugned order dated 20.10.2023 directing dismissal of the objections shall stand set aside. It is clarified that if the Petitioner fails to make the deposit within the time granted by this Court, this opportunity shall stand forfeited and the order dated 20.10.2023 shall come into operation.
8. The learned Executing Court is requested to disburse the 50% of the decretal amount deposited by the Petitioner, after deciding the objections filed by the Petitioner herein.
9. With the aforesaid directions, the present petition is disposed of. Pending applications are disposed of.
10. The digitally signed copy of this order, duly uploaded on the official website of the Delhi High Court, www.delhihighcourt.nic.in, shall be treated as a certified copy of the order for the purpose of ensuring compliance. No physical copy of order shall be insisted by any authority/entity or litigant.

MANMEET PRITAM SINGH ARORA, J

NOVEMBER 3, 2023/msh/aa

Click here to check corrigendum, if any