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

Date of decision: 06.11.2023

+ **CM(M) 1805/2023, CM APPL. 57341/2023 & CM APPL. 57342/2023**

YWC GYM MANAGEMENT PVT LTDPetitioner

Through: **Mr. J.K. Sharma and Mr. N.K. Verma, Advocates**

versus

ANIL KUMAR JAINRespondent

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. 57342/2023 (for exemption)

Allowed, subject to all just exceptions.

Accordingly, the present application stands disposed of.

CM(M) 1805/2023, CM APPL. 57341/2023

1. This petition filed under Article 227 of Constitution of India impugns the order dated 18.08.2023 passed by the ADJ-01, East District, Karkardooma Courts, Delhi ('Executing Court') in execution petition bearing Ex. No. 256/2021, titled as '**Anil Kumar Jain v. M/s YWC Gym Management**', whereby the Executing Court issued warrants of attachment against the movable as well as immoveable properties of the Petitioner



herein i.e., the judgment debtor.

2. None appears for the Respondent despite advance service.

3. Learned counsel for the Petitioner states that the Respondent i.e., the decree holder, has filed before the Executing Court a summary of the amount which is sought to be recovered in the execution proceedings. He states that the Respondent has quantified the said amount at Rs. 33,45,451/-, which is inclusive of arrears of Tax Deducted at Source ('TDS').

3.1. He states that, however, the Respondent has not accounted for the security deposit of Rs. 12,75,000/- lying deposited with him. He states on instructions from judgment debtor no.2 (i.e., Director of Petitioner company), who is present in Court, that the security amount is duly recorded in the lease deed dated 06.01.2020 executed between the parties and was paid through authorised banking channels.

3.2. He has relied upon the written correspondence exchanged between the parties on 07.06.2021 and 02.07.2021 to show that the adjustment of security amount of Rs. 12,75,000/- from the arrears was admitted by the Respondent.

3.3. He states that the Respondent has further quantified and included the applicable GST charges payable on the monthly rent for the period of April, 2021 onwards. He states that the said GST is payable to the Government and not recoverable by the Respondent.

3.4. He states that after the passing of the impugned order dated 18.08.2023, the Petitioner has filed an (undated) application before the Executing Court seeking adjustment of the security amount, which application is pending adjudication.

3.5. He states that on instructions from judgment debtor no.2 that the



judgment debtor no.1 shall make the following deposits on or before 20.11.2023:

- (i) Rs. 14,96,704/- through demand draft drawn in favour of the decree holder will be handed over before the Executing Court;
- (ii) GST amount Rs. 4,46,247/- will be deposited with the appropriate Government authorities; and
- (iii) TDS amount of Rs. 1,27,500/- with the appropriate Government Authorities.
- (iv) The Petitioner shall file before the Executing Court the proof of deposit of the GST amount to the credit of the Respondent and TDS amount to the credit of the Respondent.

3.6. He states that for the present, the Petitioner be exempted from depositing the amount of Rs. 12,75,000/-, which is equivalent to the security deposit, as the said amount already stands deposited with the Petitioner.

3.7. He undertakes that in the event the Executing Court dismisses the (undated) application raising objections and does not uphold the claim of the Petitioner with respect to adjustment of security deposit; the Petitioner will deposit the amount of Rs. 12,75,000/- with the Executing Court within four (4) weeks of the dismissal of the objections, without prejudice to the right to file appeal.

4. The statement of the Petitioner and the undertakings at paragraphs 3.5 and 3.7 of the Petitioner and judgment debtor no.2 are taken on record and they are bound down to the said undertaking.

5. The Petitioner is granted two (2) weeks to comply with the payment/deposits in the statement recorded at paragraph 3.5. Subject to the



Petitioner making the payment/deposits within two (2) weeks, the operation of the order dated 18.08.2023 shall remain stayed.

6. It is, however, made clear that if there is any default in complying with the deposits within the time granted today, this order shall stand vacated automatically without seeking any clarification from this Court. It is further clarified that the demand draft of Rs. 14,96,704/- shall be released to the Respondent upon the same being produced before the Executing Court.

7. The Petitioner is directed to move an appropriate application before the Trial Court on or before 10.11.2023 for placing on record this order and the learned Executing Court may fix an appropriate date after 20.11.2023 for verifying the compliance of the statements made by the Petitioner before this Court today.

8. With the aforesaid directions, the present petition is disposed of. Pending application, if any, stands disposed of.

9. 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 6, 2023/msh/aa