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

+ CM(M) 793/2023, CM APPL. 24775/2023--stay

SATYA PRAKASH

..... Petitioner

Through: Mr. Mukesh Kumar, Mr. Rajesh Kumar, Mr. Madhup kumar Tiwari & Mr. Adarsh Kumar Pandey, Advs.

versus

MUKESH RAJORA

..... Respondent

Through: Mr. Neeraj Dahiya, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

15.04.2024

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1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 28.04.2023 moved by the learned Additional District Judge-03, North West, Rohini Courts, New Delhi (hereinafter referred to as 'Executing Court') in Execution Civil No.122/2020 titled as "Mukesh Rajora vs. Satya Prakash" whereby the learned Executing Court has issued warrants of arrests against the petitioner/judgment debtor whereby the mandatory notice to show cause as to why the petitioner should not be arrested was done away with.

2. It is submitted that in 2017, a summary suit bearing CS No.878/2017 was instituted by respondent against the petitioner on the basis of a forged agreement dated 22.10.2014. Vide order dated 29.05.2019, petitioner was granted leave to defend in the said suit. Ex-parte order and decree dated



24.10.2019 was passed by the learned Trial Court by the petitioner which was challenged by the petitioner and further dismissed vide order dated 05.11.2020. Vide order dated 28.04.2023, learned Executing Court issued warrants of arrest against the petitioner/judgment debtor.

3. It is further submitted that vide order dated 17.05.2023, learned Predecessor Bench of this Court referred the matter to Delhi High Court Mediation and Conciliation Centre and directed the parties to appear before it on 23.05.2023. Settlement agreement dated 20.09.2023 was drawn between the parties.

4. Learned counsel for the petitioner submits that due to certain reasons, the petitioner could not comply with the settlement dated 20.09.2023 arrived at between the parties in the Delhi High Court Mediation and Conciliation Centre. However, he has made a part payment of Rs.4 lacs to the respondent and in lieu of the balance amount, he is willing to transfer a plot, however, the said proposal is not acceptable to the respondent and takes serious objection to the submission made on behalf of the petitioner. Learned counsel contends that the petitioner has been deliberately delaying the execution proceedings and has not been complying with the settlement arrived at between the parties. Moreso, the petitioner is not the owner of the plot which is offering to the respondent with respect to balance settled amount. Therefore, no further time with respect to the settlement arrived at between the parties may be granted.

5. Insofar as the impugned order is concerned, learned counsel for the petitioner submits that the learned Executing Court had ordered for issuance of warrant of arrest against the petitioner without hearing the petitioner on the application moved on behalf of the respondent under Section 51(c) of the



Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

6. Impugned order dated 28.04.2023 is perused wherein the respondent had filed an application under Section 51(c) CPC for arrest and detention of petitioner/judgment debtor. Though the copy of the same was furnished, however, notice of the application was dispensed away with and apparently, without hearing the parties, the learned Executing Court had issued warrant of arrest against petitioner/judgment debtor on filing process fee within 7 days.

7. In these circumstances, as the parties have not been heard on the application moved on behalf of the respondent under Section 51(c) CPC, thereby not adhering the principles of natural justice, the impugned order dated 28.04.2023 is set aside.

8. The parties are directed to appear before the learned Executing Court on 02.05.2024 which date is convenient to both the counsels and learned Executing Court is directed to hear the parties on the application under Section 51(c) CPC as per law and pass a speaking order within one week thereafter.

9. With the above observations, the petition stands disposed of.

SHALINDER KAUR, J.

APRIL 15, 2024

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