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

\+ CM(M) 807/2023, CM APPL. 25130/2023

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

O R D E R

% 15.04.2024

1. The present petition has been filed under Article 227 of the Constitution of India impugning the order dated 27.01.2023 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 attachment against the petitioner/judgment debtor on filing of PF within 15 days.

2. Petitioner herein is the judgment debtor before the learned Executing Court.

3. It is submitted that in 2017, a summary suit bearing CS No.878/2017 was instituted by respondent against the petitioner herein on the basis of a forged agreement dated 22.10.2014. Vide order dated 29.05.2019, petitioner

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was granted leave to defend in the said suit upon the condition that the petitioner shall deposit the amount of Rs. 30,00,000/- in the form of FDR of a nationalized bank in Court as condition to the defence. The said order was challenged before this Court and vide order dated 23.08.2019 in CM(M) No. 1225/2019, the said order dated 29.05.2019 was modified to the effect that instead of a deposit of FDR of Rs. 30,00,000/-, the petitioner shall furnish a bank guarantee to the satisfaction of the learned Trial Court for the sum of Rs. 30,00,000/-.

4. It is submitted on behalf of the petitioner that vide final order dated 24.10.2019, the learned Trial Court *ex-parte* decreed the suit in favour of respondent primarily on the ground that the petitioner did not fulfil the condition of furnishing bank guarantee as aforesaid. The said order dated 24.10.2019 was challenged by the petitioner for setting aside of *ex-parte* order and decree, however, the same was dismissed vide order dated 05.11.2020.

5. It is further submitted that vide order dated 15.05.2023, learned Predecessor Bench of this Court directed the learned Executing Court not to proceed with coercive action till 17.05.2023. Vide order dated 17.05.2023, this Court referred both the parties to Delhi High Court Mediation and Conciliation Centre and directed them to appear before it on 23.05.2023. Subsequently, settlement was drawn between the parties vide settlement agreement dated 20.09.2023.

6. 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.4,00,000/- to the

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respondent and in lieu of the balance amount, he is willing to transfer a plot.

7. It is submitted on behalf of the respondent that the said proposal is not acceptable to the respondent and, moreover, he takes serious objections to the submissions 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 he is offering to transfer 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.

8. Learned counsel for the petitioner submits that the petitioner has challenged warrants of attachment issued vide impugned order dated 27.01.2023 against moveable properties of the petitioner/judgment debtor and vide the same order objections filed by him under Order XXI read with Section 47 and 151 CPC were dismissed without recording any reasons for the same.

9. This Court has perused the impugned order dated 27.01.2023 wherein the warrants of attachment against movable properties of the petitioner/judgment debtor on filing of the PF within 15 days were issued and objections filed by the petitioner/judgment debtor under Order XXI read with Section 47 and 151 CPC were dismissed without noticing the pleas of the petitioner.

10. The learned Executing Court has passed casual order as it is stated that all the submissions have not been considered by the learned Executing Court.

11. In these circumstances, the impugned order dated 27.01.2023 is set

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aside.

12. In view of the above, 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 objections raised by the petitioner as per law and pass a speaking order within one week thereafter.

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

SHALINDER KAUR, J.

APRIL 15, 2024
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