



\$~66

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **CM(M) 2322/2024**

SHRI R K SHARMA

..... Petitioner

Through: Mr. Ankit Sharma, Mr. Sayan Ray,
Mr. Shibhit Parashar, Ms. Shivani
Parashar and Ms. Sonam Parashar,
Adv.

versus

MS SUNVIDEO ELECTRONICS PVT LTD

..... Respondent

Through: Mr. Deepak Rikhari, Adv.

CORAM:

HON'BLE MS. JUSTICE SHALINDER KAUR

ORDER

09.04.2024

%

CM APPL. 21291/2024, CM APPL. 21292/2024 (exemptions)

1. Allowed, subject to all just exceptions.
2. Applications stand disposed of.

CM(M) 2322/2024, CM APPL. 21290/2024—I.relief

3. The present petition under Article 227 of the Constitution of India has been filed impugning the order dated 05.04.2024 passed by the learned District Judge-07, Central District, Tis Hazari Courts, Delhi (hereinafter referred as 'Executing Court') in Ex. No. 347/22 titled as "Sunvoice Electronics Pvt. Ltd. vs. Sh. R.K. Sharma" whereby the petitioner was sent to civil imprisonment for a period of 15 days.
4. The petitioner herein is the judgment debtor before the learned



Executing Court and respondent is decree holder.

5. Learned counsel for the petitioner submits that Suit No. 229/2016 was decreed in favour of the respondent herein for a principal sum Rs. 26,88,469/- with interest @ 6% p.a. subsequently, the petitioner herein filed RFA No. 630/2019 before this court challenging the final order dated 30.03.2016. On 13.05.2022, the respondent filed the present execution proceedings against the petitioner being Execution No. 347/2022 before the learned Executing Court. Subsequently, vide impugned order dated 05.04.2024 the learned Executing Court sent the petitioner to civil prison.

6. Learned counsel for the petitioner submits that the impugned order is completely perverse and in contradiction to Section 51 of Code of Civil Procedure, 1908 ("CPC"). He further submits that as per Proviso to Section 51 CPC, it is clear that in case of execution of money decree, if the judgment debtor is to be detained in prison and opportunity to show cause is to be granted to the judgment debtor before he can be committed to custody. Contrary to the said provision, the judgment debtor has been taken into custody on 05.04.2024 when he had appeared before the Court and had filed an affidavit of assets and an appropriate show cause notice was never given to the petitioner as per law, which has caused illegal detention of petitioner. Reliance is placed on the judgment of this Court in the case of **"Cell Page Communication vs. Vijay Shankar Pandey"** 2022 SCC OnLine Del 3421.

7. Learned counsel further submits that before the learned Executing Court, it is wrongly stated by decree holder that the judgment debtor has stated that after selling property bearing no. B-20/29, Gali No. 2, Khasra No. 21/22, Karnal Vihar, Karawal Nagar, Delhi - 110094, he will satisfy the decretal amount. Learned counsel submits that the said property has been



sold, however, the sale proceeds have been spent in satisfying the decree with respect to the other creditor. He also submits that at present, the judgment debtor is in jail, therefore, it will be difficult for the counsel to give a concrete amount with respect to payment of decretal amount i.e. Rs. 26,88,469/- with interest, which shall be furnished on release of the judgment debtor before learned Executing Court. However, after seeking instructions, he can, at this stage, say that the judgment debtor is willing to pay atleast Rs. 20,000/- per month towards satisfaction of the decretal amount.

8. Issue notice.

9. Mr. Deepak Rikhari, learned counsel for the respondent is appearing on advance notice and accepts notice and submits that on 23.08.2019, in RFA No. 630/19, the judgment debtor submitted that he will sell the aforesaid immoveable property, being the owner thereof and will deposit the amount within two months. Learned counsel for the respondent further submits that judgment debtor has not complied with the said undertaking and has not taken any steps towards satisfaction of the decree. He further submits that the present petition has not been filed as per law as it is supported with a defective authority letter.

10. Apart from hearing the arguments, impugned order and the record has been perused.

11. On 05.04.2024, in the execution petition, the parties had appeared before the learned Executing Court and after hearing the parties, learned Executing Court has observed as under:-

“4. It clearly shows the misconduct of the JD. It is also not clear whether the JD is telling the correct consideration amount of the said property or not. He is accordingly directed to file copy of



sale documents of the said property as well as copy of documents showing payments to Cholamandalam.

5. Now, Ld. Counsel for the DH states that JD may be sent to civil imprisonment and he is ready to pay the substance allowance. As per the proviso (a) (ii) of the Section 51 of CPC, it stands proved that the JD dishonestly transferred/removed the aforesaid amount and did not use the same for payment of decretal amount. The JD was directed to show cause as to why he should not be sent to civil imprisonment and whether he can arrange the decretal amount, to which he only claimed that he suffered losses in his business and he can't pay any amount. The said explanation is not satisfactory. Accordingly, the JD is sent to Tihar Jail to serve the civil imprisonment for a period of 15 days on payment of subsistence allowance.”

12. Learned counsel for the petitioner submits that show cause notice as per the provision of Section 51 CPC was never issued to the petitioner and he was taken by surprise, hence he could never explain for not being committed to imprisonment as the show cause notice given was a mere formality.

13. Learned counsel for the petitioner further submits that decree holder has also not pointed out before the learned Executing Court that the judgment debtor is likely to abscond or to leave local jurisdiction of the Court, therefore, without providing further opportunity to the judgment debtor to show cause, in such circumstances, he could not have been sent to civil imprisonment.

14. Proviso of Section 51 of Code of Civil Procedure, 1908 reads as under:-

“[Provided that, where the decree is for the payment of money, execution by detention in prison shall not be ordered unless, after giving the judgment-debtor an opportunity of showing cause why he should not be committed to prison, the Court, for reasons recorded in writing, is satisfied-

(a)that the judgment-debtor, with the object or effect of obstructing or delaying the execution of the decree,-



(i) is likely to abscond or leave the local limits of the jurisdiction of the Court, or

(ii) has, after the institution of the suit in which the decree was passed, dishonestly transferred, concealed, or removed any part of his property, or committed any other act of bad faith in relation to his property, or

(b) that the judgment-debtor has, or has had since the date of the decree, the means to pay the amount of the decree or some substantial part thereof and refuses or neglects or has refused or neglected to pay the same, or

(c) that the decree is for a sum for which the judgment-debtor was bound in a fiduciary capacity to account.

Explanation .-In the calculation of the means of the judgment-debtor for the purposes of clause (b), there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the decree.] [Inserted by Act 21 of 1936, Section 2.]”

15. Prayer clause in the petition reads as under:-

“(i) Call for the Records and Set aside the Impugned Final Order dated 05.04.2024 passed by the Ld. District Judge, Tis Hazari (Central) in Execution Petition No. 347/2022, and

(ii) Direct the immediate release of the Petitioner from his confinement in civil prison at Tihar Jail on such terms and conditions as may be imposed by this Hon’ble Court, and

(iii) Pass any other order or such other order as may be deemed necessary in the interests of justice.”

16. Having considered the above submissions as well as the impugned order, specifically Proviso to Section 51 CPC and that a reasonable show cause notice was not given to the petitioner, also, the petitioner will make submissions before the learned Trial Court for making payment towards satisfaction of the decree, the impugned order is set aside.

17. Accordingly, the petitioner / judgment debtor be released forthwith, if not required in any other case, subject to giving undertaking before the Jail Superintendent that he shall appear before the learned Executing Court on 15.04.2024, which is stated to be the next date of hearing before the learned



Executing Court and shall also furnish an appropriate plan with respect to payment of the decretal amount. Thus, the learned Executing Court to proceed with the execution petition as per law.

18. It is needless to state that the observations made herein shall not tantamount to be an observation on the merits of the case before the learned Executing Court.

19. With above observations, petition along with pending application stands disposed of.

20. Copy of order be given *dasti* under the signature of Court Master, as prayed.

SHALINDER KAUR, J.

APRIL 09, 2024/ss