



\$~12 & 13

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

+ C.R.P. 140/2024

DEVENDER KUMAR AGGARWAL Petitioner

Through: Mr. Mohit Chaudhary, Mr.
Kunal Sachdeva, Mr. Anubhav
Singhal, Mr. Aashish A., Mr.
Raghav Dixit, Advs.

versus

SMT RUCHI TULSIAN THROUGH SPA SH. RAJ KUMAR
TULSIAN Respondent

Through: Mr. Hitendra Nahata, Adv.
alongwith Sh. Raj Kumar
Tulsian/SPA and Mr. Anshul
Tulsian/Husband in person

13

+ C.R.P. 141/2024

DEVENDER KUMAR AGGARWAL Petitioner

Through: Mr. Mohit Chaudhary, Mr.
Kunal Sachdeva, Mr. Anubhav
Singhal, Mr. Aashish A., Mr.
Raghav Dixit, Advs.

versus

SMT ANITA TULSIAN THROUGH SPA SH. RAJ KUMAR
TULSIAN Respondent

Through: Mr. Hitendra Nahata, Adv.
alongwith Sh. Raj Kumar
Tulsian/SPA in person

CORAM:

HON'BLE MR. JUSTICE DHARMESH SHARMA

ORDER

%

25.04.2024

1. This hearing is being conducted through hybrid mode.

CM APPL. 23888/2024 (Ex.) in C.R.P. 140/2024

CM APPL. 23910/2024 (Ex.) in C.R.P. 141/2024

2. Allowed, subject to all just exceptions.

3. The application stands disposed of.



C.R.P. 140/2024 and CM APPL. 23887/2024 (Stay)
C.R.P. 141/2024 and CM APPL. 23909/2024 (Stay)

4. The petitioner, who is the Judgment Debtor in the execution proceedings pending before the learned Executing Court, is assailing the impugned order dated 27.03.2024, whereby the learned Executing Court/ADJ-07, Central District, Tis Hazari Courts Complex, Delhi has been pleased to issue warrant of arrest against the Judgment Debtor, purportedly in exercise of its power under Order 21 Rule 38 of the CPC.

5. The respondent/Decree Holder is present in the Court and his counsel is also appearing through video conferencing on advance notice.

6. Learned counsel for the petitioner/Judgment Debtor has urged that the learned Court has not issued any show cause notice to the Judgment Debtor to explain his financial status and to show cause why he should not be committed to civil imprisonment. Further, the Court has not arrived at any satisfaction that the Debtor since the date of the decree, has been having means to pay the amount or substantial part thereof and yet deliberately refusing or neglecting to pay the decretal amount. In his submission, learned counsel for the petitioner/Judgment Debtor has relied on decision by the Division Bench of this Court in **Mohiet Anand v. Parul Anand** in MAT.APPL.(F.C.) 172/2022.

7. Learned counsel for the respondent/Decree Holder has urged that the petitioner/Judgment Debtor has not been physically appearing in the proceedings for very long time and deliberately avoiding to file a reply. It is also submitted that there have been several transactions



entered into by the petitioner/Judgment Debtor whereby crores of amount has been credited in his account/benami accounts, but the funds have been siphoned off, so much so, that certain properties at Gurgaon have also been sold.

8. For now, this Court is not considering the merits of the case propounded by the petitioner/Judgment Debtor. Evidently, the learned Executing Court has not issued any show cause notice and the satisfaction in the manner as provided by law has not been arrived at.

9. Hence, the impugned order dated 27.03.2024 is hereby set aside. The matter is remanded back to the learned Executing Court/ADJ-07, Central District, Tis Hazari Courts, Delhi, with direction to proceed with the matter as per law.

10. Learned counsel for the petitioner/ Judgment Debtor makes a statement at Bar that the matter is listed before the executing Court on 01.05.2024 and the petitioner/Judgment Debtor shall appear on that day in person.

11. The respondent shall be at liberty to place on record all relevant documents in order to show that the petitioner/ Judgment Debtor has been deliberately evading making payment of the decretal amount and/or has since the date of passing of the decree has diverted funds. This order is passed without prejudice.

12. In any case, the petitioner/Judgment Debtor shall file a reply before the concerned Court on or before the next date of hearing after supplying advance copy to the respondent/Decree Holder.

DHARMESH SHARMA, J.

APRIL 25, 2024

sp