



2024 : DHC : 1082



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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ EX.F.A. 50/2023, CM APPL. 64694/2023 and CM APPL. 5230/2024

RAJNI SHARMA Appellant
Through: Mr. Hemant Gulati, Adv.

versus

DES RAJ SETHI Respondent
Through: Mr. Kamal Sethi, Ms. Nidhi Bhatia, Adv.

CORAM:
HON'BLE MR. JUSTICE C. HARI SHANKAR

J U D G M E N T (O R A L)
12.02.2024

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1. This appeal challenges orders dated 30 September 2022, 27 October 2022 and 1 December 2023, passed by the learned Additional District Judge (the learned ADJ) in Execution Civil No. 164/2021 (*Des Raj Sethi v. Rajni Sharma*). By the impugned order, the learned ADJ has directed warrants of attachments to be issued against the property of the appellant.

2. The appeal also contains a separate prayer for setting aside of the arbitral award dated 3 January 2020. That, however, is obviously not permissible in an appeal filed in execution proceedings.

3. Mr. Hemant Gulati, learned Counsel for the appellant, fairly



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does not press the said prayer.

4. Insofar as the main relief is concerned, this Court, *vide* order dated 14 December 2023, noted the contention of the appellant that he was raising funds to ensure payment of the amount which was agreed to be paid to the respondent decree holder before the learned ADJ on 6 January 2023.

5. The order dated 6 January 2023 reads as under:

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EX CIVIL 164/21

DES RAJ SETHI Vs. SMT. RAJNI SHARMA

06.01.2023

Present: Ms. Nishtha Chawla, Id. Proxy Counsel for DH,
alongwith DH Sh. Des Raj Sethi in person.

Sh. Ravinder Kumar, Id. Counsel for JD alongwith
son of JD Sh. Akshay.

Both the parties have settled the matter in the court today for a sum of Rs.12,00,000/-. It is submitted by Id. Counsel for JD that the first installment of Rs.2,50,000/- is to be paid by the JD to DH within a span of two months and the remaining installments would be paid as per the dates fixed by this court.

In view of the settlement, put up for payment of first installment of Rs.2,50,000/- by the JD on 17.03.2023.

(DIVYANG THAKUR)
ADJ-03/ SOUTH-WEST
DWARKA/ NEW DELHI
06.01.2023”

6. As per the order dated 6 January 2023, therefore, the amount payable by the appellant to the respondent was ₹ 12 lakhs.



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7. Mr. Hemant Gulati, learned Counsel for the appellant, seeks to deduct, from the said amount, an amount of ₹ 1.5 lakhs paid before this Court within four weeks of the order dated 14 January 2024, an amount of ₹ 50,000 separately paid by the appellant to the respondent and an amount of ₹ 96,000/-, recovered from the salary of Judgment Debtor 2, who had stood guarantee for the said transaction, which was stated to have been deposited before the learned trial court.

8. Mr. Kamal, learned Counsel for the respondent, agrees that, from the amount of ₹ 12 lakhs, ₹ 1.5 lakhs would be liable to be deducted, as it was paid before this Court on 14 January 2024. However, he submits that the amount of ₹ 50,000/-, to which Mr. Gulati alludes, cannot be deducted, as the said amount was paid on 25 November 2022, prior to the order dated 6 January 2023, whereby the parties, in settlement, worked out the amount due and payable to be ₹ 12 lakhs.

9. Mr. Gulati, while initially joining issue on this aspect, ultimately agreed, on instructions, to include the said amount of ₹ 50,000/- in the amount which was payable by his client to the respondent.

10. Apropos the amount of ₹ 96,000/- which, according to Mr. Gulati, was recovered from the salary of Judgment Debtor 2 and deposited before the learned trial court, Mr. Kamal submits that his client has received only ₹ 46,000/-.



11. Mr. Gulati, thereupon, agrees to add the remaining amount of ₹ 50,000/- to the amount due from the appellant to the respondent, subject to his right to be released the said amount of ₹ 50,000/-, if it has been deposited by the Judgment Debtor 2 before the learned trial court.

12. Mr. Gulati also prays for being permitted to make the aforesaid payment in four bi-monthly instalments.

13. Mr. Kamal, learned Counsel for the respondent, on instructions, is agreeable to this suggestion.

14. As such, the present appeal stands disposed of in the following terms:

(i) The appellant would pay, to the respondent, an amount of ₹ 10,04,000/- in four equal bi-monthly instalments of ₹ 2,51,000/. The first instalment shall be paid on or before 31 March 2024 and the remaining three instalments would be paid on or before 31 May 2024, 31 July 2024 and 30 September 2024.

(ii) In the event that any amount still remains deposited by Judgment Debtor 2 with the learned trial court, the appellant shall be entitled to be released the said amount by the trial court registry along with any interest that may have accrued thereon.



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(iii) Subject to compliance with the above directions, the impugned orders dated 30 September 2022, 27 October 2022 and 1 December 2023 passed by the learned ADJ in Ex. Civil 164/2021 are quashed and set aside.

(iv) Strict failure to comply with the aforesaid directions shall result *ipso facto* in dismissal of this appeal without any further notice to the appellant, thereby reviving the impugned orders as well as the execution proceedings before the learned ADJ.

(v) No request for extension of time for making payment shall be entertained.

15. The appeal stands disposed of in the aforesaid terms.

C. HARI SHANKAR, J.

FEBRUARY 12, 2024

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Click here to check corrigendum, if any