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

% ***Date of decision: 09th September, 2024***

+ CM(M) 3359/2024 & CM APPL. 52403-52404/2024

DIN DAYAL AGRAWALPetitioner

Through: Mr. Naresh Kaushik, Sr. Advocates with
Mr. Manoj Joshi, Mr. Vardhman
Kaushik and Mr. Vinay Kaushik,
Advocates.

versus

SIRI IN FIN LEASE PVT. LTD.Respondent

Through: Ms. Deepali Aggarwal, Advocate.

CORAM:

HON'BLE MR. JUSTICE MANOJ JAIN

J U D G M E N T (oral)

1. Learned counsel for respondent/Decree Holder appears on advance notice.
2. Petitioner herein has suffered an *ex-parte* decree and based on such decree, the Decree Holder has already filed one Execution Petition.
3. During the course of such execution proceeding when the Judgment Debtor had been asked to submit *affidavit of his movable assets* and reply to the pending applications, a new counsel on his behalf appeared on 14.08.2024 and sought some time to do the needful.
4. Such request was opposed by the learned counsel for the Decree Holder and keeping in view the various previous opportunities, which had been given to Judgment Debtor, learned Executing Court declined to give any fresh opportunity to Judgment Debtor and has also issued "warrants of arrest".
5. The petitioner/Judgment Debtor moved an application seeking cancellation of warrant of arrest and filed an objection application under



Section 47 read with Order XXI Rule 58 of CPC which were also disposed of by learned Executing Court on 27.08.2024. The requests regarding recalling of cancellation of warrants was dismissed and the objection application filed under Section 47 read with Order XXI Rule 58 of CPC was also held to be devoid of any merits.

6. Such orders are under challenge.

7. During course of consideration, learned counsel for the petitioner has restricted the scope of the present petition with respect to the issuance of warrants of arrest only and states that the petitioner would avail any other remedy as available under law with respect to the dismissal of objection under Section 47 read with Order XXI Rule 58 of CPC.

8. Sh. Naresh Kaushik, learned Senior counsel for petitioner states that though the Judgment Debtor should have placed on record the requisite affidavit and should have replied to the pending applications but the issuance of warrants of arrest, without following the mandatory protocol, was not warranted.

9. During the course of proceedings, learned counsel for petitioner states, on instructions, that the requisite affidavit and reply to the pending applications, if not already filed, would be filed within three days from today with an advance copy to Decree Holder/learned counsel for Decree Holder.

10. Keeping in mind the above, the order directing issuance of warrants of arrest is recalled. However, this will not debar the learned Executing Court to issue fresh warrants, in case, situation so arises. Needless to say, learned



Executing Court would adhere to the requisite mandatory procedure and protocol before issuance of any such coercive process.

11. Both the sides would appear before the learned Executing Court on 12.09.2024 at 2:00 P.M.

12. Learned Executing Court would be at liberty to proceed further with the matter in accordance with law.

13. Before parting, this Court would also observe that it was not appropriate for any such Judgment Debtor to have engaged a new counsel only a day before. If at all, he was interested engaging a new counsel, he should have made arrangements well in advance and, therefore, for causing delay in the Execution Petition, the petitioner is also burdened with a cost of Rs. 10,000/- which he shall clear on the aforesaid next date before the learned Executing Court.

14. As regards the dismissal of objection moved under Section 47 read with Order XXI Rule 58 of CPC, the petitioner is at liberty to explore other legal remedy.

15. Petition stands disposed of with the aforesaid terms.

16. Order *dasti* under the signatures of the Court Master.

(MANOJ JAIN)
JUDGE

SEPTEMBER 9, 2024/sw