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

% ***Date of decision: 19th September, 2024***

\+ CM(M) 731/2017 & CM APPL. 25136/2017

ASHU SHARMA & ANR .....Petitioner

Through: Mr. R. Ramachandran, Advocate

versus

FRAMEWORK INTERIORS .....Respondent

Through: Mr. Rohit Puri and Mr. Georgey V.Mathew, Advocates

\+ CM(M) 738/2017 & CM APPL. 25390/2017

KAPIL KUMAR .....Petitioner

Through: Mr. R. Ramachandran, Advocate

versus

M/S FRAMEWORK INTERIORS .....Respondent

Through: Mr. Rohit Puri and Mr. Georgey V. Mathew, Advocates

\+ CM(M) 739/2017 & CM APPL. 25394/2017

BURHSMAN (INDIA) LTD .....Petitioner

Through: Mr. R. Ramachandran, Advocate

versus

FRAMEWORK INTERIORS .....Respondent

Through: Mr. Rohit Puri and Mr. Georgey V. Mathew, Advocates

CORAM:
HON'BLE MR. JUSTICE MANOJ JAIN

JUDGMENT *(oral)*

1. Respondent Framework Interiors, on the basis of decree, which they had obtained in relation to one suit filed by them against M/s Burshman (India) Ltd., filed an execution petition before the concerned Court of learned District Judge, Patiala House Court, New Delhi.

2. Such execution was registered as Ex. No. 5581/2016.

3. When the above-said execution petition was taken up by learned Executing Court on 02.06.2017, it had observed that besides JD company, all the Directors were also required to submit affidavits of movable and immovable properties and since there was no compliance and the time being sought, instead of filing any affidavit, learned Executing Court issued show cause to Managing Director and the other two Directors as to why they should not be sent to civil prison for three months. Simultaneously, JD company was also burdened with cost of Rs. 45,000/- to be paid to National Relief Fund of NDBA.

4. Such order has been challenged by the Directors as well as by the JD company.

5. Learned counsel for decree holder is also present.

6. During course of consideration, it was informed that in connection with the proceedings pending before the Debt Recovery Tribunal-III, New Delhi, a recovery certificate had been issued against the JD company and in favour of State Bank of India for a sum of more than Rs. 71 crores and DRT had also ordered that upon failure to pay, such amount shall be recovered from the sale of stocks of the JD company and, resultantly, even a '*sale*

proclamation' of the immovable property and plant & machinery etc. of the JD company had been issued.

7. According to learned counsel for the petitioner/JD company, entire assets of the JD company have already been taken over in relation to such sale proclamation.

8. Learned counsel for JD company has also informed that at one point of time, Mr. R.N. Suri was also one such Director and CM(M) 731/2017 was filed by him with one Co-Director-Mr. Ashu Sharma but fact remains that Mr. R.N. Suri has already expired in the interregnum.

9. Learned counsel for DH, after hearing arguments for some time, states that he does not wish to prolong his execution and let there be a direction to the Managing Director Mr. Kapil Kumar to, at least, appear before the learned Executing Court and to participate in the execution petition and in case he wants to move any application, he may move any such application but the JD company cannot be permitted to run away from the execution, in the garb of the aforesaid sale proclamation. It is also stated that information, which had been earlier submitted before the learned Executing Court by the JD company, is also false and incomplete.

10. During course of the arguments, learned counsel for petitioner company states that the company has no intent to run away and rather JD company is very much keen in participating the proceedings before the learned Executing Court and to apprise the learned Executing Court about the vital facts and aforesaid development and also that in the given facts, when the judgment debtor was the company only, no coercive steps could have been issued against its Directors, in absence of any justifiable reason.

11. It is noticed that execution petition was filed way back in the year

2016 and everything is, virtually, at the standstill.

12. Keeping in mind the averments made today by the learned counsel for both the sides and the impugned order dated 02.06.2017, only to the extent whereby show cause notice was directed to be issued against the Directors stand set aside, all the three petitions are disposed of with the following directions: -

(i) Ex. No. 5581/2016 is fixed before the learned Executing Court on 20.12.2024. On that day, the authorized representative of the JD company as well as said Managing Director i.e. Mr. Kapil Kumar would appear before the learned Executing Court.

(ii) It would be also open to the DH to move an application seeking preponement in the date with due intimation to the JD company.

(iii) If decree holder company has already filed any application, the learned Executing Court would hear arguments from both the sides and would dispose of the same in accordance with law.

(iv) Judgment debtor would also be at liberty to move any application in this regard and if any such application is moved, learned Executing Court would consider the same in accordance with law, after giving due opportunity to both the sides.

(v) Needless to say, if the learned Executing Court feels that any further affidavit is required to be filed either by the JD company or for that matter by its Directors, it would give due opportunity in this regard after passing reasoned order in this regard.

(vi) JD company shall file fresh affidavit before the learned Executing Court disclosing its assets in terms of Order XXI Rule 41 CPC.

(vii) JD company would be at liberty to move appropriate application before the learned Executing Court seeking waiver of cost of Rs. 45,000/-.

(MANOJ JAIN)
JUDGE

SEPTEMBER 19, 2024/*dr*