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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**
+ **EX.P. 267/2001 & EA(OS) 860/2016 (U/s 151 CPC)**

SURESH SGARODIA

..... Decree Holder

Through: Mr. Harpreet Singh, Advocate.

versus

OM PARKASH

..... Judgement Debtor

Through: (appearance not given)

CORAM:

HON'BLE MR. JUSTICE VALMIKI J. MEHTA

ORDER

% **13.03.2018**

1. This execution petition is filed for execution of the judgment and decree dated 13.6.2000 passed by the court of the Civil Judge, Senior Division No.3, Kamrup, Guwahati. In terms of the subject judgment and decree the plaintiff's/decreed holder's suit was decreed against the Judgment Debtors (JD) No. 1 and 2 for a sum of Rs.10,37,500/- with interest at 15% per annum simple *pendente lite* and future till recovery.

2. Today, counsel for JD No.1 seeks adjournment on the ground that the JD No.1 is out of station as he is attending the last rites of a close relation.

3. In my opinion, the reason for seeking adjournment by non-compliance of earlier orders passed by this Court is not justified and



hence refused. The reasons as to why adjournment is refused are stated hereinafter especially because issue is not of non-compliance of JD No.1 for today but is of repeated non-compliance by JD No.1 of the earlier orders passed in this execution petition.

4. In this execution petition vide, directions issued on 23.9.2016 the JD No.1 appeared in Court on 18.11.2016. The statement of JD No.1 was recorded that he will clear the decretal amount within one month. JD No.1 therefore agreed to clear decretal amount by 18.12.2016. Today we are in March 2018 but except an amount of Rs.10 lacs no amount has been paid for satisfaction of the dues of the JD Nos. 1 and 2 under the subject judgment and decree dated 13.6.2000.

5. It may be noted that the learned Single Judge who passed the order on 18.11.2016 has specifically recorded not only the time of one month being granted to the JD No.1 to pay the decretal amount but also the fact that JD No.1 was explained the consequences of breach of an undertaking given to the Court.

6. Thereafter the order passed on 21.12.2016 records that JD No.1 in spite of his undertaking had not paid the decretal amount and therefore JD No.1 being in breach of undertaking given to the Court was liable to be



penalized accordingly. JD No.1 was directed to be present on the next day 22.12.2016.

7. On 22.12.2016, two cheques of Rs.5 lacs each were given which were dishonoured but subsequently this amount of Rs.10 lacs has been paid to the decretal holder by the JD No.1. The Court on 22.12.2016 recorded that in case JD No.1 did not appear on the next date warrants of arrest would be issued.

8. Vide order dated 28.3.2017 since JD No.1 who was required to be present in person had not appeared, therefore, opportunity was given to JD No.1 to appear before issuing warrants for his production.

9. The order dated 10.4.2017 records that no one appears for JD No.1 and approximately a sum of Rs.27 lacs would be due under the subject judgment and decree.

10. The order dated 18.7.2017 records that judgment debtor no.1 was present in person and opportunity was given to JD No.1 to file his affidavit so as to explain why he had not complied with his undertaking dated 18.11.2016 to make payment of the complete decretal amount within one month from 18.11.2016. The order dated 18.7.2017 records that about an amount of Rs.29 lacs was still outstanding under the subject judgment



and decree.

11. The order dated 30.11.2017 records the statement of counsel for the JD No.1 that JD No.1 will make payment to the decree holder in terms of the order dated 18.11.2016, and therefore the matter was listed on 8.1.2018. On 8.1.2018 the matter was directed to be listed today.

12. In view of the aforesaid facts and the brazen non compliance by the JD No.1 of his undertaking to clear the decretal amount before 18.12.2016, and the fact that JD No.1 is also not present today, therefore merely because JD No.1 is attending a funeral out of Delhi would not mean that he is entitled to adjournment without having complied with the various earlier directions for making payment of the decretal amount.

13. In view of the fact that show cause notice has already been issued to the JD No.1 vide order dated 18.7.2017, and no affidavit is filed by the JD No.1, and since as on date amount remains due and payable to the decretal holder of at least around Rs.29 lacs, thereforeailable warrants of arrest are issued against the JD No.1 for his production before the Court on the next date of hearing and it is only if the JD No.1 pays to the decree holder the balance decretal amount before execution of the warrants that the warrants of arrest for production of JD No.1 would not be effectuated.



14. Let bailable warrants of arrest for an amount of Rs. 29 lacs be issued against the JD No.1 for his production on the next date on the decree holder filing process fee returnable on 16th July, 2018. Dasti.

VALMIKI J. MEHTA, J

MARCH 13, 2018
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