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

\+ **EX.P. 161/2014 & EX.APPLs.(OS) 170/2016, 249/2016**

YOGESH C SAGAR ..... Decree Holder

Through: Mr. Uddyam Mukherjee, Advocate (M-9818806366)

versus

MODERN NEW KAPOOR JEWELLERS PVT & ANR ..... Judgement Debtors

Through: Mr. A.S. Kulshreshtha, Mr. K.K. Sharma & Mr. Lalit Kumar, Advocates (M-9811166164)

CORAM:
JUSTICE PRATHIBA M. SINGH

<u>O R D E R</u>

% 18.01.2019

1. The present petition has been filed seeking execution of a decree dated 25th September, 2013 for a sum of Rs.1,97,00,000/- along with interest @ 9% from the date of filing of the suit i.e. 7th August, 2012 till the date of realisation. The petition was first listed on 13th May, 2014. On the said date, notices were issued to the Judgment Debtors. Judgment Debtor No.2, at that time was in judicial custody and thereafter, vide order dated 14th May, 2015, the Court had directed the Judgment Debtors to furnish the following information:

i. Personal information
ii. Assets, including immovable and movable properties, and other investments
iii. Income, liabilities, expenditure, general information and other details

2. It was also directed in the said order that the Judgment Debtors would inform as to the status of immovable property bearing No.A-5/25, Krishna Nagar, New Delhi, owned by them. It was informed to the Court on 21st January, 2016 that the said property was mortgaged with Barclays Bank, Nehru Place Branch, New Delhi, which account had been declared as a non-performing asset, and that the proceedings are pending before the Debt Recovery Tribunal (*hereinafter 'DRT'*). The DRT had passed order dated 15th January, 2016 in which it was recorded that a sum of Rs.12 crores has been recovered from the sale of the property, which was mortgaged. On 29th February, 2016, this Court had accordingly directed the Registrar, DRT not to disburse any amount to the Judgment Debtors which was lying in the DRT account, over and above the amount receivable by Barclays Bank. Apart from this, the Decree Holder had also learnt that a sum of Rs.1,48,50,000/- was lying deposited with the State Bank of India, Krishna Nagar Branch, New Delhi in account no.30039544692. On 23rd March, 2016, the following order was passed:

> *"5. Having heard the learned counsel for the decree holder, issue warrant of attachment qua account No. 30039544692 for an amount of Rs. 1,48,50,000/-, maintained with State Bank of India, F-3/25, Krishna Nagar, Delhi - 110051. If Mrs. Rama Kapoor, has withdrawn the amount of Rs. 1,48,50,000/- from the aforesaid account maintained with the State Bank of India, the same shall be deposited before the Court within 10 days from today."*

3. The said order was served *dasti* on the Manager, State Bank of India as mentioned in the order dated 25th April, 2016. However, by that date, the outstanding balance in the said account was only Rs.1 lakh. Repeated orders

were passed by this Court directing the Judgment Debtors to disclose as to how the amount of Rs.1,48,50,000/- was disbursed by Judgment Debtor 1 company to Judgment Debtor 3.

4. On 30th November, 2016, the General Manager, Barclays Bank had appeared and informed the Court that sum of Rs.50,50,000/- is lying in the credit of the account of Judgment Debtor No.1, though, a sum of Rs.20,03,653/- is subject to the order passed on 13th January, 2016, by DRT-III. On the said date, the balance amount lying in Barclays Bank was attached by this Court. Thereafter, on 23rd February, 2017, a sum of Rs.35,50,000/- which was lying in Barclays Bank was directed to be deposited with the Registrar General of this Court.

5. The said amount was thereafter released to the Decree Holder subject to furnishing of indemnity bond vide order dated 25th April, 2017. The indemnity bond was then accepted and the sum was released to the Decree Holder.

6. An affidavit was filed by Mrs. Rama Kapoor – Judgment Debtor No.3 and wife of Judgment Debtor No.2 attempting to explain how the money was withdrawn. Since the affidavit was cryptic and Judgment Debtor No.2, had already passed away by that time, vide order dated 27th August, 2018, Mrs. Rama Kapoor was directed to be present in Court.

7. Her statement was recorded on 3rd October, 2018. The same now reveals clearly that both the sons of Judgment Debtors No.2 and 3 have now started their own independent businesses. Both of them are in the jewellery trade. She admitted to have withdrawn the entire sum of Rs.1.48 crores in cash and further claims to have paid to persons who she could not name at the time, the entire cash amount. A perusal of her statement clearly shows

that there is no proof as to what Mrs. Rama Kapoor did with the entire amount. Despite having knowledge of the orders of attachment passed by this Court, there has been a clear attempt to ensure that the decree and the execution thereof is completely defeated.

8. Under these circumstances, issue show cause notice to Mrs. Rama Kapoor as to why she should not be committed to civil prison.

9. Court notice be issued for appearance of Mr. Ajay Kapoor and Mr. Sachin Kapoor, both sons of Judgment Debtors No.2 and 3 for the next date of hearing.

10. Judgment Debtor No.3 shall also file an affidavit giving the details of DRT/DRAT proceedings and any amounts which may be lying under orders of the DRT/DRAT. The Decree Holder is also permitted to obtain the said information from DRT/DRAT and bring the same to the knowledge of the Court on the next date of hearing.

11. List on 8th March, 2019.

PRATHIBA M. SINGH, J

JANUARY 18, 2019
Rahul