

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

Date of Reserve: 24th February, 2010
Date of Order: 9th March, 2010

CM (M) No. 1066/2009 & CM No. 14000/2009

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09.03.2010

Raman Kumar Gambhir & Ors.

... Petitioners

Through: Mr. P.L.Malik, Advocate

Versus

Sangee Communications Pvt. Ltd.

... Respondent

Through: Mr. Manish Makhija, Advocate

JUSTICE SHIV NARAYAN DHINGRA

1. Whether reporters of local papers may be allowed to see the judgment? Yes.
2. To be referred to the reporter or not? Yes.
3. Whether judgment should be reported in Digest? Yes.

JUDGMENT

By this petition the petitioner has assailed orders dated 26th August, 2009 and 18th September, 2009 passed by the learned ADJ. At the time of admission, this Court by speaking order dismissed the petition as against order dated 26th August, 2009 however, the petition was admitted only in respect of order passed on 18th September, 2009 whereby the Executing Court had issued warrants of arrest against the petitioners.

2. The petitioners suffered a decree under Order 37 CPC for sum of Rs.17,98,383.30 on 28th July, 2007. On 3rd November, 2007 petitioners preferred an appeal against this decree before this Court. This Court vide order dated 14th December, 2007 directed petitioners to deposit amount of Rs.18 lac within eight weeks. The petitioners did not deposit this amount and rather withdrew the appeal. After withdrawing the appeal the petitioners preferred an application under Order 37 Rule 4 CPC before the trial Court. This application was dismissed by the Court vide order dated 26th August, 2009. The Decree Holder had filed an execution of the decree and sought warrants of attachment of movable and immovable assets of the petitioners. These warrants of attachment could not be executed as the petitioners took stand that they had no movable or immovable assets and the company had

closed down. The learned ADJ thereafter passed the impugned order dated 18th September, 2009 issuing warrants of arrest of the petitioner.

3. The order passed by the Court shows that the Court had asked petitioners to file affidavits of their assets and the petitioners filed affidavit of Directors of the Judgment Debtor Company and also affidavits of individual Directors, who suffered decree being guarantors. In the affidavits it was disclosed that the company had already closed down. However, nothing was mentioned in respect of the factory premises A-27, Flatted Factories, Jhandewalan, New Delhi. The learned trial Court observed that the affidavit filed by the petitioners were vague, the details of bank accounts and other movable and immovable properties were not furnished deliberately, only to frustrate the execution petition. The trial Court found that the Judgments Debtors were not inclined to make payment to the Decree Holder issued warrants of arrest of JDs No. 2 & 3.

4. Order 21 Rule 37 CPC prescribes the procedure where the Court intends to execute decree by way of civil imprisonment. This order provides that where the Decree Holder makes an application for execution of decree by arrest and detention of JD in civil imprisonment, the Court, before issuing warrants of arrest shall issue a notice calling upon Judgment Debtor to appear in the Court to show-cause as to why he should not be committed to civil imprisonment and after considering the reply given by the Judgment Debtor the Court has to pass an order whether non-payment of decretal amount was willful or there was a financial incapacity on the part of Judgment Debtor which resulted into his non-payment of the decretal amount. The Court for considering this can record statement of Judgment Debtor and can also ask Judgment Debtor to file affidavit declaring his assets movable and immovable. The Court has to give a finding after considering the entire material that non-payment of the decretal amount by JD was a willful act. The Court can take into account all factors which are necessary to arrive at this conclusion and where the Court comes to conclusion that the defiance was willful, the Court can order execution of decree through civil imprisonment. Before ordering for civil imprisonment and issue of warrants of arrest of the Judgment Debtor, the Court has to ensure that the diet money/monthly allowance as per Jail Rules for keeping the Judgment Debtor in jail are deposited by the Decree Holder. It is apparent from the order that the Court below had not followed this procedure.

5. The petition is therefore allowed. The order of trial Court shall be considered as a show-cause notice. The petitioners are directed to appear before

the Executing Court on 8th April, 2010. The petitioner shall file, within two weeks from today, a detailed affidavit about their assets movable and immovable giving details of the bank accounts, shares held by them in various companies either in their own name or in the name of their wife or dependent children. They shall also, in the affidavit, disclose where the children are studying, if they are students, how many cars they were maintaining how many times they had gone abroad and their visits in India at different stations in the last two years, so as to give a true picture of their financial capacity. The trial Court after considering affidavit shall decide about the willful non-payment or incapacity of the petitioners and then pass an order about civil imprisonment, if necessary. If the above affidavits are not filed within two weeks, the order dated 18th September, 2009 of the trial Court shall stand restored.

March 09, 2010
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SHIV NARAYAN DHINGRA, J.