
(2000) 05 DEL CK 0052

In the Delhi High Court

Case No : Execution Petition No. 69 of 1980

Bank of India

APPELLANT

Vs

M/s. Hindustan Super lights and Others

RESPONDENT

Date of Decision : 26-05-2000

Acts Referred:

Citation : (2000) 2 AD 361 : (2000) 83 DLT 284

Hon'ble Judges : Manmohan Sarin, J

Bench : Single Bench

Judgement

Manmohan Sarin, J.—The Decree Holder, Bank of India, had filed this execution petition against the judgment debtors for recovery of the sum of Rs. 2,49,296.96 together with interest @ 9% from 29.10.1976 till realisation. This was pursuant to the compromise decree passed on 17.8.1977, providing for payment of the decretal amount in monthly installments of Rs. 5,000/- each. In case of default in payment of any three installments, the balance decretal amount was recoverable at once.

2. The Execution Petition was filed on 21.5.1980. Appearance was entered on behalf of the judgment debtors by Shri S.P. Manga and Shri P.R. Monga. Warrants of attachment had been issued. Bailable warrants to ensure presence of the judgment debtors were also issued. Initially the warrants of attachment were not effected due to change of residence and of the factory. The proceedings in the execution continued with some payments being made from time to time.

3. On 15.7.1985, the statement of Shri Narender Kumar, Judgment Debtor, was recorded to the effect that he did not own any immovable property and was carrying on business of auto bulbs from his residence. The assets of the judgment debtors in the factory were also attached and sold and the proceeds of Rs. 6,675/- were deposited. The statement of account filed by the decree holder shows that judgment debtors have paid a total sum of Rs. 1,72,446.75 (rupees one lakh seventy two thousand four hundred sixty six and paise seventy five only) from 22.8.1977 to 26.6.1982 and as on September, 1977 a sum of Rs.

3,22,4563/- was still due.

4. On 19.12.1990 warrant of arrest of Mr. Narender Kumar, Judgment Debtor No. 2, for detention in civil prison for a period of one month on deposit of subsistence allowance by the decree holder were issued. The decree holder was directed to deposit Rs. 600/- as subsistence allowance. The subsistence allowance and other formalities for issue of warrant of arrest were completed only by March, 1994. Vide order dated 11.7.1997, fresh warrants of arrest for detention of judgment debtor No. 2 in civil prison were directed to issued in terms of order dated 19.12.1990, returnable on 19.9.1997. The decree holder failed to file the process fee. Fresh warrants were directed to be issued again on 18.2.1998. Warrants of arrest against judgment debtor No. 2 were issued on 15.5.1998, returnable on 26.8.1998. The warrants provided that the judgment debtor was not to be arrested in case he deposited the balance decretal amount. The warrants of arrest remained unexecuted as the office report was that judgment debtor had left the address.

5. The decree holder was then directed to furnish the fresh address of the judgment debtor No. 2 vide orders dated 26.8.1998, 6.11.1998, 22.1.1999, 20.4.1999 and 17.8.1999. The decree holder has so far failed to furnish the fresh address despite numerous opportunities given and the warrant of arrest ordered on 19.12.1990 has remained unexecuted. There was no appearance on behalf of the decree holder on 17.8.1999 and 14.9.1999. The matter was, however, deferred in the interest of justice. On the last date of hearing also i.e. 28.9.1999 there was no appearance on behalf of the decree holder.

6. In view of the foregoing narration, the execution petition is liable to be dismissed for non-prosecution and in default. The petition is accordingly so dismissed.