

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

% **Date of Decision: 11<sup>th</sup> January, 2016**

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EX.P. 275/2012

M/S BHANDARI ENGINEERS  
& BUILDERS PVT LTD

..... Decree Holder

Through: Mr. S.S. Jauhar, Adv.

versus

M/S MAHARIA RAJ  
JOINT VENTURE & ORS

..... Judgement Debtors

Through: Mr. Sanjay Agnihotri, Adv. for JD 4.  
Mr. Ajit Sharma and Mr. Mayank  
Aggarwal, Adv. for Objector Brij  
Bhushan.

**AND**

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M/S BHANDARI ENGINEERS  
& BUILDERS PVT LTD

..... Decree Holder

Through: Mr. S.S. Jauhar, Adv.

versus

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..... Judgement Debtors

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**CORAM:**

**HON'BLE MR. JUSTICE J.R. MIDHA**

**JUDGMENT (ORAL)**

1. Delays and difficulties in execution of decrees erode public confidence and trust in justice delivery system. To prevent such delays, the executing Courts can exercise inherent powers to direct the judgment debtor

to be present in Court (and even ensure his presence by coercive process) to receive such information or documents as will aid in the execution of the decree. The executing Court may examine the judgment debtor orally or direct him to file an affidavit detailing how he wishes or proposes to satisfy the decree.

2. In cases for execution of decree for recovery of money, an important step is to ascertain the assets/means of the judgement debtor to satisfy the decree. Order XXI Rule 41(2) of the Code of Civil Procedure empowers the executing Court to direct the judgement debtor to disclose his assets on affidavit in Form 16A, Appendix E to ascertain his assets/means to satisfy the decree. Order XXI Rule 41(2) of the Code of Civil Procedure is reproduced herein below:-

**“Order XXI Rule 41**

*(2) Where a decree for the payment of money has remained unsatisfied for a period of thirty days, the Court may, on the application of the decree-holder and without prejudice to its power under sub-rule (1), by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof, to make an affidavit stating the particulars of the assets of the judgment-debtor.”*

3. Order XXI Rule 41(1) of the Code of Civil Procedure empowers the executing Court to orally examine the judgment debtor. Order XXI Rule 41(1) of the Code of Civil Procedure is reproduced hereunder: -

**“Order XXI**

**Rule 41. Examination of judgment-debtor as to his property.-**

*(1) Where a decree is for the payment of money the decree-holder may apply to the Court for an Order that—*

*(a) the judgment-debtor, or*

*(b) where the judgment-debtor is a corporation, any officer thereof, or*

*(c) any other person,*

*be orally examined as to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has*

*any and what other property or means of satisfying the decree; and the Court may make an order for the attendance and examination of such judgment -debtor, or officer or other person, and for the production of any books or documents.”*

4. In the event of the judgment debtor’s default to file the affidavit of assets, Order XXI Rule 41(3) of the Code of Civil Procedure empowers the Court to detain the judgment debtor in civil prison for a term up to three months. Order XXI Rule 41(3) of the Code of Civil Procedure is reproduced below:-

**“Order XXI Rule 41**

*(3) In case of disobedience of any order made under sub-rule (2), the court making the order, or any court to which the proceeding is transferred, may direct that the person disobeying the order be detained in the civil prison for a term not exceeding three month unless before the expiry of such terms the court directs his release.”*

5. Form 16A of Appendix E of the Code of Civil Procedure prescribes the format of the affidavit of assets to be filed by the judgment debtor which is reproduced hereinbelow:-

*“[No. 16A  
Affidavit of Assets to be made by a Judgment-debtor  
[O. XXI, r.41(2)]*

*In the Court of*

*A.B..... Decree-holder.*

*Versus*

*C.D..... Judgment-debtor.*

*I..... of .....state on Oath/solemn affirmation as follows:-*

- 1. My full name is .....(Block Capitals)*
- 2. I live at*
- 3. I am\*..... married/single/widower (widow)/divorced*
- 4. The following persons are dependant upon me:-*
- 5. My employment, trade or profession is that of .....carried on by me at .....*

*I am a director of the following companies:-*

*6. My present annual/monthly/weekly income, after paying income-tax, is as follows:-*

*(a) From my employment, trade or profession Rs.....*

*(b) From other sources Rs.....*

*7. \*(a) I own the house in which I live; its value is Rs.....*

*I pay as outgoings by way of rates, mortgage, interest, etc., the annual sum of Rs.....*

*(b) I pay as rent the annual sum of Rs.....*

*8. I possess the following:-*

*(a) Banking accounts;*

*(b) Stocks and shares;*

*(c) Life and endowment policies;*

*(d) House property;*

*(e) Other property;*

*(f) Other securities;*

*Give particulars*

*9. The following debts are due to me:-*

*(give particulars)*

*(a) Form ..... of .....  
Rs.*

*(b) From .....of .....  
Rs..... (etc.)*

*Sworn before me, etc.]”*

6. In order to satisfy whether the judgment debtor has the means to satisfy the decree and further that the judgment debtor has disclosed all his assets, the judgment debtor has to be directed to give a declaration and verify the aforesaid affidavit under Order XXI Rule 41(2) of the Code of Civil Procedure in the following format:

“Declaration:

1. *I declare that I have/do not have means to satisfy the decree.*

2. *I declare that I have made full and accurate voluntary disclosure of my income, expenditure, assets and liabilities from all sources. I further declare that I have no assets, income, expenditure and liabilities other than set out in this affidavit.*

3. *I undertake to inform this Court immediately upon any material change in my employment, assets, income, expenses or any other information included in this affidavit.*
4. *I understand that any false statement in this affidavit may constitute an offence under Section 199 read with Sections 191 and 193 of the Indian Penal Code punishable with imprisonment upto seven years and fine, and Section 209 of Indian Penal Code punishable with imprisonment upto two years and fine. I have read and understood Sections 191, 193 199 and 209 of the Indian Penal Code.*

*DEPONENT*

Verification:

*Verified at \_\_\_\_\_ on this \_\_\_\_ day of \_\_\_\_\_ that the contents of the above affidavit relating to my assets, income and expenditure are true to my knowledge, no part of it is false and nothing material has been concealed therefrom. I further verify that the copies of the documents filed along with the affidavit are the copies of the originals.*

*DEPONENT”*

7. If the judgement debtor does not truly or sufficiently disclose his assets in the aforesaid affidavit under Order XXI Rule 41(2) of the Code of Civil Procedure, the Court can exercise the inherent power under Section 151 of the Code of Civil Procedure by directing the judgment debtor to file a further affidavit of assets, income and expenditure in the format provided in **Annexure A** in ***Kusum Sharma v. Mahinder Kumar Sharma***, 2015 (217) DLT 706. The relevant portion of the said judgment is reproduced hereunder:

***“15. Affidavit of income and assets provided in Form 16A of APPENDIX-E under Order 21 Rule 41(2) of the Code of Civil Procedure***

*15.1 Order 21 Rule 41(3) of the Code of Civil Procedure empowers the Court, in execution of a money decree, to examine the judgment debtor to ascertain the properties owned by him. Order 21 Rule 41(2) further empowers the Court to direct the judgment debtor to file an affidavit stating the particulars of the assets of the judgment debtor. Upon*

*disobedience of such an order, Order 21 Rule 41(3) of the Code of Civil Procedure empowers the Court to send the judgment debtor to civil prison for a term not exceeding three months.*

*15.2 The form of the affidavit required to be filed by the judgment debtor under Order 21 Rule 41(2) of the Code of Civil Procedure is provided in Form 16-A in Appendix E.*

*15.3 Initially the Matrimonial Courts were directing the parties to file the affidavit in the format given in Form 16-A of Appendix E under Order 21 Rule 41 of the Code of Civil Procedure but the litigants were not truly disclosing their income in the said affidavit.*

*15.4 This Court is of the view that the format of affidavit of assets, income and expenditure provided in Form 16-A of Appendix E of the Code of Civil Procedure is not comprehensive to discover the complete income, assets and expenditure of the parties in matrimonial litigation and therefore, there is a need to formulate a comprehensive affidavit of assets, income and expenditure.”*

8. Where the judgment debtor is a company, the Court can direct all the directors of the judgment debtor to file their personal affidavit containing the particulars set out in para 14 below.

9. The statement of the judgement debtor as to his inability to satisfy the decree may invite the attention of the decree holder to Section 6(2) of the Provincial Insolvency Act, 1920 (as amended in 1978) which provides for an insolvency notice and the decree holder may invoke the same.

### **Conclusion**

10. This Court is of the view that in cases of execution of decree for recovery of money, it would be appropriate to direct the judgment debtor, at the initial stage itself, to file the affidavit of assets as on the date of the institution of the suit as well as of the current date i.e. date of swearing the affidavit in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the

last three years within 30 days of the receipt of the notice and to remain present for being orally examined under Order XXI Rule 41(1) of the Code of Civil Procedure. The judgment debtor be directed to verify the affidavit in terms of para 6 above. It is clarified that the application under Order XXI Rules 41(1) and (2) of the Code of Civil Procedure is not required to be in writing and such an order can be passed on oral prayer of the decree holder. In the event of the default of the judgment debtor to file the affidavit within the stipulated time, the judgment debtor be detained in civil prison for a term not exceeding three months under Order XXI Rule 41(3) of the Code of Civil Procedure. If the judgment debtor's affidavit does not truly or sufficiently disclose his assets, further affidavit be directed to be filed in terms of paras 7 and 8 above. The judgment debtor be also examined orally under Order XXI Rule 41(1) of the Code of Civil Procedure to receive such information or documents as will aid in execution of the decree.

**Present case**

11. In the present case, vide order dated 03<sup>rd</sup> September, 2015, judgement debtors were directed to file the affidavits of their assets in Form 16A, Appendix E, under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days. Relevant portion of the order dated 03<sup>rd</sup> September, 2015 is reproduced hereunder:-

*“.....The Judgement debtors are directed to file the affidavit of their assets in Form 16A, Appendix E, under Order XXI Rule 41(2) of the Code of Civil Procedure along with statement of all their bank accounts for the last three years within 30 days. The judgement debtors shall remain present in Court on the next date of hearing.”*

12. On 16<sup>th</sup> November, 2015, the judgement debtors sought further one week time to file the affidavit in terms of the order dated 03<sup>rd</sup> September, 2015 whereupon further one week time was granted to them failing which

the managing partners/directors of the judgement debtors were directed to be detained for a period of three months upon deposit of the subsistence allowance by the decree holder. Relevant portion of the order dated 16<sup>th</sup> November, 2015 is reproduced hereunder:-

*“Learned counsel for the decree holder submits that the judgment debtors have not filed the affidavit of their assets in terms of order dated 03rd September, 2015, and, therefore, they should be detained in civil prison under Order XXI Rule 41(2) of the Code of Civil Procedure.*

*Learned counsel for the judgment debtors seeks one week’s time to file the affidavit in terms of order dated 03rd September, 2015. In the interest of justice, one week’s time is granted to the judgment debtors to file the affidavit in terms of order dated 03rd September, 2015, failing which the managing partners/directors of the judgement debtors No.1, 3 and 4 shall be detained in civil prison for a period of three months upon deposit of the subsisting allowance by the decree holder. The response to the affidavit be filed within four weeks thereafter....”*

13. Learned counsel for judgement debtors submit that judgment debtors have filed the affidavits but the same are not in the prescribed format. The judgement debtors have not filed statement of all their bank accounts in terms of the order dated 03<sup>rd</sup> September, 2015. The learned counsel for the judgement debtors submit that the requisite affidavits in terms of the order dated 03<sup>rd</sup> September, 2015 along with the application for condonation of delay shall be filed within one week. The same shall be considered as and when filed. The fresh affidavits to be filed by the judgement debtors shall be in Form 16A, Appendix E under Order XXI Rule 41(2) of the Code of Civil Procedure in which the judgement debtors shall declare their assets as on the date of the award as well as of the current date i.e. date of swearing of the affidavit. The affidavit shall be accompanied with statement of all the bank accounts of the judgement debtors for the last three years.

14. Considering nature of the companies and their business relationship, the managing partners of the judgment debtor 1 and all directors of judgment debtors 2 and 3 are directed to file their personal affidavits setting out the following particulars: -

- (i) All information and particulars with regard to their shareholding in judgment debtors 1, 3 and 4, their involvement in the affairs of said judgment debtors and the nature of steps taken by them with regard to the management of the judgment debtors 1, 3 and 4;
- (ii) The Profit & Loss Account and the Balance Sheets of judgment debtors 1, 3 and 4 for the last three years;
- (iii) The list of all the bank accounts of judgment debtors 1, 3 and 4;
- (iv) The names and residential addresses of the Directors of judgment debtors 1, 3 and 4 along with their PAN numbers and DIN numbers, as well as complete particulars of all moveable and immovable assets held in their personal names and the dates of their acquisition, and the nature of the right, title and interest therein;
- (v) The address of the Registered Office and the Corporate or branch offices, if any, of judgment debtors 1, 3 and 4;
- (vi) The location of the statutory records and books of account of judgment debtors 1, 3 and 4;
- (vii) The list of immovable assets, land and building etc. of judgment debtors 1, 3 and 4 as on the date of the award;
- (viii) The list of immovable assets, land and building of judgment debtors 1, 3 and 4 as on the date of filing the affidavit;
- (ix) The list of the movable assets of judgment debtors 1, 3 and 4, their location and value;
- (x) The details of the debtors and creditors of judgment debtors 1, 3 and 4 with their complete addresses; and

(xi) The details of workmen/employees and any amount outstanding to them.

(xii) Whether judgment debtors 1, 3 and 4 have assets/means to satisfy the decree.

15. The affidavits in terms of para14 be filed within a period of four weeks from today with advance copy to the counsel for the decree holder. The concerned directors of the judgement debtors shall remain personally present on the next date of hearing to enable this Court to examine them, if required.

16. The judgement debtors shall not dispose of, alienate, encumber either directly or indirectly or otherwise part with the possession of any assets of judgment debtor nos.1, 3 and 4 to the tune of Rs.4,00,00,000/- except in the ordinary course of business and payment of salary and statutory dues.

17. List for hearing on 26<sup>th</sup> February, 2016.

18. The objections of the objector shall be taken up on the next date of hearing.

**Post script**

19. It has come to the notice of this Court that the execution cases for recovery of money are unreasonably delayed before the Trial Courts as the Courts seldom exercise the power under Order XXI Rule 41 of the Code of Civil Procedure. This Court, therefore, considers it necessary to send the copy of this order to all the District Judges for circulating it to the Trial Courts for implementation of Order XXI Rule 41 of the Code of Civil Procedure in its true letter and spirit.

20. The copy of this order be sent to all the District Judges. The copy of this order be also sent to the Delhi Judicial Academy to sensitize the Judges about the implementation of Order XXI Rule 41 of the Code of Civil Procedure in execution cases.

21. Copy of this order be given *dasti* to counsels for the parties under signature of Court Master.

**J.R. MIDHA, J.**

**JANUARY 11, 2016**

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