

1
**IN THE HIGH COURT OF MADHYA PRADESH
AT INDORE**

**BEFORE
HON'BLE SHRI JUSTICE SUBODH ABHYANKAR**

ON THE 3rd OF JULY, 2023

MISC. PETITION No. 2469 of 2023

BETWEEN:-

**RITESH DATA S/O SHRI O P DATA, AGED ABOUT 47
YEARS, OCCUPATION: BUSINESS R/O 34-A LAXMIBAI
NAGAR INDUSTRIAL AREA KILA MAIDAN ROAD
INDORE (MADHYA PRADESH)**

.....PETITIONER

(BY SHRI AMIT BHATIA, ADVOCATE)

AND

**FOSSIL FASHION FABRICS A UNIT OF R K RASAYAN
PVT. LTD THROUGH POWER OF ATTORNEY PRADEEP
S/O PANDURANG PATHAK, AGED ABOUT 62 YEARS,
OCCUPATION: SERVICE R/O 448 KEWAL INDUSTRIES
ESTATE B WINGH SENAPATI BAPAT MARG LOWER
PREL WEST MUMBAI AND 130 SHRIKANT PALACE
KANADIA ROAD INDORE (MADHYA PRADESH)**

.....RESPONDENTS

(BY SHRI SANDEEP JAIN, ADVOCATE)

*This petition coming on for admission this day, the court passed the
following:*

ORDER

This petition has been filed by the petitioner under Article 227 of the Constitution of India in the form of a mercy petition, seeking the following reliefs:-

7.1 Issue an appropriate writ, order or direction to set aside the impugned order dated 10.04.2023 passed by the JMFC, Indore in MJCR No.2819/2022.

7.2 Issue an appropriate writ, order or direction to condone the late payment of the outstanding installments by the Petitioner as there is

no amount outstanding to be paid as on date in accordance with the Judgment dated 14.07.2022.

7.3 Issue any other Writ, Order or direction as may be deemed fit in the circumstances of the case."

By the impugned order dated 10.04.2023, arrest warrant has been issued against the petitioner.

The grievance of the petitioner is that as per the final order dated 14.07.2022, a settlement was arrived at between the parties after plea bargaining under Section 265A of Cr.P.C. and the petitioner was directed to pay a sum of Rs.5,82,000/- to the respondent in 28 installments of Rs.20,000/- each, and one installment of Rs.22,000/-. The first installment was to start from 25.08.2022, however, the petitioner, due to financial difficulties could not keep up with the installments prescribed in the aforesaid order and defaulted to pay a sum of Rs.80,000/-, which is the amount of four installments.

Counsel for the petitioner has submitted that after filing of this petition, he has already made good the default made by him and as of date, there are no dues. It is submitted that the last installment was paid by the petitioner yesterday only. It is further submitted that since the petitioner is ready to abide by the judgement dated 14.07.2022, and undertakes to pay the amount regularly, the impugned order dated 10.04.2023 be set aside and petition be allowed.

Counsel for the respondent, on the other hand, has opposed the prayer and it is submitted that no case for interference is made out as the petitioner has clearly defaulted in making the payment as settled between the parties, however, it is not denied that as on date, there are no dues.

On due consideration of submissions and on perusal of the documents filed on record as also the provisions of Section 265G of Cr.P.C. which reads as under:-

"265G. Finality of the judgment.—The judgment delivered by the Court under section 265G shall be final and no appeal (except the special leave petition under article 136 and writ petition under articles 226 and 227 of the Constitution) shall lie in any Court against such judgment."

It clearly reveals that although the order passed under Section 265G of Cr.P.C. would be final, however, a petition under Article 227 of the Constitution of India can certainly be maintained before this Court and since the petitioner herein is also ready to comply with the judgement of the Trial Court, this Court finds it expedient to allow the petitioner to continue to pay the installments as prescribed by the Trial Court, as it would not prejudice any of the parties concerned, and would also serve the purpose for which Section 265G of Cr.P.C. has been enshrined in the Cr.P.C.

Accordingly, the petition stands **allowed**, the impugned order dated 10.04.2023 is set aside, and it is directed that henceforth, the petitioner shall abide by the conditions as enumerated in the final judgement dated 14.07.2022. Needless to say, the delay caused by the petitioner in paying the installments earlier stands condoned. सत्यमेव जयते

It is made clear that any default made by the petitioner shall entail the liability as provided under the law.

(SUBODH ABHYANKAR)
JUDGE