

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

COCP No.2740 of 2013

Date of Decision :16.11.2015

Gobinder Dass Dahiya

...Petitioner

Versus

Attar Singh

...Respondent

CORAM : HON'BLE MR.JUSTICE MAHESH GROVER

....

Present: Mr.Ajay Dahiya, Advocate
for the petitioner.

Mr. Sudhir Aggawal, Advocate
for the respondent.

.....

MAHESH GROVER. J.

These proceedings arise out of a reference made by the
Court of Civil Judge (Sr.Division), Sonapat dated 17.8.2013.

To understand the controversy brief factual matrix
needs to be noticed.

The petitioner filed a civil suit for recovery under
Order 37 CPC which was decreed on 5.3.2003. An execution
petition was filed by the petitioner bearing No.406 dated
22.7.2003. Amongst other prayers a prayer for execution by
attachment and sale of moveable and immoveable property of the
respondent-judgment debtor and his arrest, was also made. The
petitioner had annexed the particulars of moveable assets owned

by the respondent and vide order dated 23.8.2003 the court below restrained the judgment-debtor from alienating, transferring or creating any charge on the property detailed in Annexure P-1 of the execution petition. It is pertinent to mention here that this order was passed by the court during pendency of the suit upon an application under Order 38 Rules 5 and 6 of the Code of Civil Procedure. In this application details of the property including the one which the respondent has sold in violation of the order of the court were also given. For the purpose of reference the relevant particulars of the property which the respondent has sold in contravention of the order of the court are given below :

“1/3rd share in 3 kanal,7 marlas (which is 67/353 share of total land measuring 17 kanal & 13 Marla in Khewat No.393, Murba & Killa No.34/24/2(3-7), 36/1 (7-11), 37/5(6-15), situated in the revenue estate of village Nahri,Distt. Sonapat, Haryana.”

The court vide two separate orders passed prior to the passing of the decree restrained the respondent from alienating the property or creating any charge thereon with the first order passed on the concession made by the respondent himself upon recording of his statement and continued subsequently after the passing of the decree and dismissal of the objections filed by the respondent. The court vide order dated 27.1.2004 ordered attachment of the properties owned by the respondent including

the one the particulars of which have been given above. The relevant extract of the order dated 27.1.2004 is reproduced as under :-

“...This is a method found out by objector to avoid the execution of the decree dated 5.3.2003 and both the sets of objections being devoid of any merits, are dismissed while ordering the agricultural land mentioned in the 'Fird Talika' annexure P-1 to be attached for 20.3.2004.”

When the attachment was carried out by the revenue authorities, the aforesaid property indicating 1/3rd share of the respondent, as noticed above, was conveniently left out ostensibly at the behest of the respondent who manipulated the exercise of attachment. There can be no other inference except the one which reflects adversely on the bona fides of the respondent for the simple reason that this property was sold by him under an assumed name of Bharat Singh whereas the respondent is known by the name of Attar Singh. For some strange reason the sale deed was also registered despite this unexplained discrepancy. It is then that the petitioner moved an application before the learned Executing Court praying for initiation of contempt proceedings against the respondent.

The application though misconceived was entertained

by the executing court who permitted the proceedings and

evidence to come on record.

The respondent does not dispute the sale at all. During the hearing of the instant contempt petition he made a specific statement on 15.7.2014, while praying for time to enable him to discharge his liability towards the petitioner-decree holder. This court had further noted that the observation made by the learned Executing Court were neither unwarranted nor unsustainable, but before taking the matter further the court deemed it appropriate to give an opportunity to the respondent-contemner to satisfy the decree. But within one month thereafter he took a complete somersault to state before the court that he is unable to satisfy the decree. It is surprising to note that the stand of the respondent changed within one month of the passing of the order dated 15.7.2014.

The court is now confronted with three facts. One, that the restraint order passed by the learned trial court during the course of the suit was on the statement made by the respondent himself and continued thereafter, and secondly, when the attachment order was passed on 27.1.2004 one particular property was deliberately left out by the revenue authorities even when the details were given by the petitioner in his execution application. It is this very property which has been sold of under an assumed name of Bharat Singh which clearly indicates a fraud played by the respondent not only to defeat the decree but on the entire

proceedings with a solitary purpose of deriving an undue advantage for himself to wriggle out of lawful decree. There can be no other inference other than the one which points out to manipulative tactics adopted by the respondent to collude with the revenue authorities and then effect a sale under an assumed name.

Evidently, the respondent comes across a dishonest person. The third aspect is that he himself bound himself to satisfaction of the decree only to retract it a month thereafter.

Learned counsel for the respondent would raise an issue about maintainability of the contempt proceedings and the reference made to this court.

Evidently, the proceedings under Section 12 of the Contempt of Courts Act before the Executing Court were not maintainable but it did not preclude that court to make a reference in terms of the High Court Rules and Orders Vol.5 Chapter 7 Part -H Rule 9 and even if it is assumed for the sake of argument that the objection of the respondent is justifiable, it still does not preclude the court from taking cognizance of the same once it is brought to its notice. It is the settled proposition of law that when a contempt is brought to the notice of the court at the behest of any person, the court is well within its jurisdiction to act upon it for the simple reason that upholding the majesty of law is the prime concern of the court and in the given set of

circumstances the respondent has shown disregard and disdain to the entire process of law to defeat a just and valid decree in favour of the petitioner even when his objections stands dismissed. The fact that he was aware of the restraint order is borne out from the statement that he himself suffered and it cannot be said or assumed that the respondent was in any way ignorant of the proceedings or the decree passed by the court. The restraint order passed under Order 38 Rules 5 and 6 CPC was never varied and thus property of the respondent was never liberated from attachment. The very purpose of such orders, prior to decree is to safeguard the interest of the plaintiff in the event of his success in earning a decree.

The factum of sale has been admitted by the respondent. The sale deed is on record which bears out the contention of the learned counsel that it was done under an assumed name. The order of the restraint is also on record. All these clearly indicate that the respondent not only violated the orders of the court but has also defeated the process of law.

During the course of hearing the court put it to the respondent as to whether he is willing to satisfy the decree on affordable terms such as payment of Rs.5,000/- per month. This offer the respondent has spurned with promptitude which further betrays his utter contempt for the court and the process of law. A sum of Rs.2 lacs has however been paid in Court.

The court finds him guilty of contempt for alienating property and violating an order to which he had bound himself on a statement and chooses to put him on notice as to whether he has anything to say with regard to sentence.

Except for offering an hollow apology the respondent has nothing to state. Therefore, the court directs that he be imprisoned for a period of six months. He be taken into custody forthwith and sent to jail to carry out the sentence as imposed upon him.

Prayer for time to file an appeal is categorically rejected.

Petition stands disposed of.

Copy of this order be given to the respondent under the signatures of the Special Secretary of the Bench.

16.11.2015
dss

(MAHESH GROVER)
JUDGE