

IN THE HIGH COURT FOR THE STATES OF PUNJAB AND HARYANA AT
CHANDIGARH

C.R. No.4938 of 2015

Date of Decision.06.08.2015

Tata Motor India Ltd. and anotherPetitioners

Versus

Manjit Singh and anotherRespondents

Present: Mr. V.B. Aggarwal, Advocate
for the petitioners.

CORAM:HON'BLE MR. JUSTICE K. KANNAN

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

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K. KANNAN J. (ORAL)

1. A money decree which has been obtained by the decree holder in the Appellate Court at Mohali is sought to be put in execution on an attachment issued by the Court at Chandigarh. The objection by the judgment debtor is that the execution application must be filed only before the Court at Mohali and later a transfer could have been taken at the Court at Chandigarh. The execution petition is not competent before the Court at Mohali in respect of the petitioner for properties situate at Chandigarh. The judgment debtor took an objection that the decree should have been only transferred to the Court at Chandigarh for further execution and could not have been let before the Court at Mohali. The counsel would refer to me Section 39 of the Civil Procedure Code and the counsel's objection would be with reference to Clause 4 which says nothing in this section shall be deemed to authorize the court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction. This, according to

him, would render invalid an order passed by the Court at Mohali. I have seen the order passed by the Court. It has rejected the petition filed by the judgment debtor saying that there is no list of properties of the judgment debtor filed yet and in the second appeal which is reported to be pending, judgment of the Appellate Court has not been stayed. The order has observed that even the list of properties are not given and there can be no objection to the further process in execution to be carried out.

2. The counsel appearing for the petitioner-judgment debtor would point out that the petition filed under Order 32 Rule 32 CPC was not competent. I find that a wrong provision of law has been stated and evidently the prayer made in the petition would make it clear that he is only asking for attachment as a mode of realization of money decree. I would invoke therefore the power of the Court to treat as an application under Order 21 Rule 11 CPC and further process in execution would, therefore, be taken considering whether the property is situate at Mohali or at Chandigarh. The Court has only observed that since the execution petition does not set out any particular property for attachment and the schedule has not been given, the jurisdiction of the Court cannot be lost. The counsel refers me to a judgment of the Supreme Court in **Mohit Bhargava Vs. Bharat Bhushan Bhargava 2007 (2) RCR (Civil) 843** that a decree could be executed either by the Court which passed it or by the Court to which it is sent for execution. Transferee Court to which the decree is transferred for execution would have the same powers in executing that decree as if it had been passed by itself. A decree could be executed by the Court which passed the

decree so long as it is confined to the assets within its own jurisdiction. As I have observed, the Court itself has made reference to the fact that details of properties are not yet given and therefore, it cannot be assumed that the Court did not have the jurisdiction. It must be taken as merely still at preliminary stage when the attachment has not been effected. In fact before passing an order, I asked the counsel to inform whether he would be willing to pay any amount which is granted in the decree. The counsel says that there is a second appeal pending and the case may be taken up along with the second appeal. I will give the judgment debtor no such liberty, for, it is always open to the judgment debtor to take appropriate order of stay in the second appeal which is pending. He cannot have such liberty, for, the order which is brought to this Court is an order which is capable of being subjected only to the revisional jurisdiction.

3. The judgment debtor has also an objection that the amount claimed in the execution petition is much more than what the decree holder is entitled to. If he has objection with reference to the amount claimed and according to him, the calculation is wrongly made, the judgment debtor is at liberty to give an appropriate memo of calculation and seek for further process in execution in accordance with law.

4. The revision petition is incompetent and I do not even find any bona fides on the judgment debtor in approaching the Court when he is not prepared to make any payment which is due under the decree. The revision petition is dismissed.

(K. KANNAN)
JUDGE

August 06, 2015

Pankaj*