

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

**CR No.7273 of 2014 (O&M)
Decided on: March 23, 2015.**

Onkar

.... Petitioner

Versus

Vijay Kumar and another

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Jitender Malik, Advocate,
for the petitioner.

Mr. Shailendra Mohan, Advocate,
for respondent No.1.

L.Rs of respondent No.2 not impleaded.

M.M.S. BEDI, J (ORAL)

The present revision petition has been filed by Onkar defendant/judgment debtor in a case where Vijay Kumar and Vinod Kumar plaintiffs-respondents had obtained a decree against the defendant-petitioner restraining the defendant-petitioner from interfering in the possession of the plaintiffs-respondents. An execution application was filed by the plaintiffs-respondents claiming that the defendant-petitioner had been interfering in the peaceful possession of the plaintiff-respondent.

Vide impugned order dated 20.08.2014 the Executing Court has issued warrants of arrest against the petitioner.

Grievance of the defendant/judgment debtor/petitioner is that he had made a statement before the trial Court to the effect that plaintiffs were not owner of the property and that the owner of the property was his brother Ranjit Singh and that he had no concern with the suit property.

I have considered the facts and circumstances of the case.

Perusal of the order dated 20.08.2014 indicates that the order runs contrary to the mode of execution prescribed under law for execution of a decree for injunction. Order 21 Rule 32 (1) CPC deals with the mode of execution of a decree for injunction. As per said provision, if a judgment debtor having an opportunity of obeying the decree for injunction willfully failed to obey the decree may be enforced by attachment of the property of the judgment debtor or by detention of judgment debtor in civil prison or by both.

The impugned order seems to have been passed in a hurried manner without determining whether the judgment debtor had actually violated the injunction order or that he had an opportunity to obeying the decree of injunction. It is only after he had willfully disobeyed the order of injunction, that the order of attachment of his property or his civil detention in the civil prison can be passed. The order dated 20.08.2014 issuing warrants of arrest against the petitioner/judgment debtor is accordingly set aside. However, a direction is issued to the Executing Court to form an opinion on the basis of material before it as to whether there has actually been violation of an injunction order and that whether the judgment debtor had an opportunity of obeying the decree or that he had willfully failed to obey the same. In case the Executing Court is satisfied that there has been sufficient evidence in this regard, it will be open to the Executing Court to

first pass attachment order of the property of the petitioner/judgment debtor and thereafter if the circumstances so warrant, order detention of the petitioner/judgment debtor in the civil prison.

Disposed of in the above terms.

(M.M.S. BEDI)
JUDGE

March 23, 2015
harsha