IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Civil Revision No.7754 of 2013 (O&M)
Date of decision: 29.07.2015

Jitender Singh ... Petitioner

versus

Indus Ind Bank Limited and another .... Respondents

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. Pankaj Middha, Advocate,
for the petitioner.

Mr. Ashwani Talwar, Advocate, and
Ms. Sanamjeet Kaur and Ms. Aparna Kaur, Advocates,
for respondent No.1.

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1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. *(Oral)*

1. The revision is against an order of arrest ordered by the Executing Court attempting to enforce an award of the Arbitrator. The claim is over ₹ 35 lakhs. It is an admitted fact that the petitioner is a guarantor for a loan availed by the principal debtor. The principal debtor appears to have been proceeded with originally and since even the resort to coercive processes by arrest did not yield necessary results, the execution is sought against the present petitioner, who is co-obligant of the loan.

2. It is at all times the burden on the decree holder to show the means of the judgment debtor before he can apply for arrest. The contention was that the judgment debtor is a wealthy transporter and he owns 3 vehicles. The decree holder sought to place reliance on the documentary evidence available for proof of possession of vehicle which was a truck bearing registration No.GJ10X-8283. It is also the contention that he has agricultural lands and he has the necessary means to make the payments. The petitioner-judgment debtor has applied for insolvency before the Insolvency Court.

3. The provision for arrest is dealt with under Section 55 of the Civil Procedure Code. Section 55(4) allows for judgment debtor to express his intention to apply to be declared an insolvent and if he furnishes security to the satisfaction of the court that he will, within one month so apply, he can be released. The provision contained in the section makes it clear that a right which the judgment debtor can obtain to spare himself of being arrested is accompanied with obligation to offer security to the satisfaction of the court before he can be so released. Even the provision of the Insolvency Act does not make possible an absolute immunity. Section 31 of the Provincial Insolvency Act empowers an Insolvency Court to issue an order of protection with conditions. The counsel for the decree holder says that he had applied for protection and it was declined. The proviso to sub-section 3 of

Section 31 and 31 (4) allow a creditor to even oppose any protection order from being granted and the court is bound to make an appropriate adjudication thereon. This is only to elicit a legal proposition that an insolvency proceeding does not give an absolute immunity and it shall be always subject to the control of the court to pass appropriate orders either rejecting a protection or imposing appropriate conditions to allow for such protection.

4. At a previous hearing on 08.07.2015 after hearing the counsel from both sides and making reference to the documents which the decree holder was relying on particularly with reference to the possession of a truck and also with reference to some documents showing the possession of huge mansion in Jind where the petitioner was said to be residing, I had directed the counsel for the petitioner to take appropriate instructions of furnishing requisite security for being released. This was also taking note of the assets declared by the petitioner in the insolvency proceedings that he had a share along with his father in relation to an ancestral property of over 100 kanals of land. After taking three weeks, the counsel merely seeks for further time and says it is not possible for him to offer security. He says that he is only a guarantor and he shall not be burdened with any liability and the bank must await the adjudication rendered in insolvency proceedings and take the recourse under such insolvency law.

5. I find the conduct of the petitioner to be not bona fide. The failure to avail of the liberty given to the petitioner to furnish security, I would reckon to be a manner of showing defiance to do what is appropriate and just. The petitioner requires no protection and the Executing Court will cause arrest and detain him in civil prison in accordance with law.

6. Civil revision is dismissed with costs determined at ₹3,500/-.

(K.KANNAN)
JUDGE

29.07.2015
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