

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

-.-

Civil Revision No. 1838 of 2016

Date of decision: 09.08.2016

Sardara Singh

..... *Petitioner*

Versus

M/s Rameshwar Dass Sham Lal

.....*Respondents*

Coram: Hon'ble Mrs. Justice Rekha Mittal

-.-

Present: Mr. Arun Jindal, Advocate
for the petitioner

-.-

Rekha Mittal, J. (Oral)

The present petition lays challenge to order dated 28.01.2016 (Annexure P7) whereby the objections petition preferred by the petitioner/JD against execution of decree dated 06.05.2006 (Annexure P1), has been dismissed and attached property is ordered to be put to auction.

Counsel for the petitioner would submit that on an earlier occasion, an application for execution of aforesaid decree dated 06.05.2006 was filed in which property of the petitioner/JD was attached but later said application was dismissed in default on 06.02.2010 (Annexure P2). The application for restoration of execution application was also dismissed on 20.05.2011 (Annexure P3). While dismissing the earlier execution application vide order dated 06.02.2010, the Court did not make an order in compliance with the provisions of Order 21 Rule 57 (1) of the Code of Civil Procedure for keeping the attachment intact for any period whatsoever. It is further submitted that later a fresh application for execution was filed which was ordered to be registered on 17.03.2012. In the fresh execution application, no

order for attachment of the property of the petitioner/JD has been made nor his property has been attached afresh and the executing Court has proceeded from the stage of filing an application under Order 21 Rule 66 CPC. It is further argued that keeping in view provisions of Rule 57(2), Order 21 CPC, earlier attachment of property of petitioner/JD ceases to exist, therefore, the decree holder is not entitled to proceed with the execution on the basis of attachment made in the earlier execution.

Photo copies of the zimini orders filed for perusal have taken on record.

I have heard counsel for the petitioner/JD and perused the records.

A plain reading of the objections preferred by the petitioner/JD would manifest that this objection was not raised before the executing Court. Nevertheless, as the objection sought to be raised before this Court is a legal objection, without commenting upon merits of the controversy, the present petition is disposed of with liberty to the petitioner to file a fresh objection petition raising only the legal issue before the executing Court. In case, such an objection petition is preferred by the petitioner within a period of fifteen days, the same shall be disposed of by the Court concerned within a period of two months from the date of its filing.

In the meanwhile, the executing Court shall not proceed with sale of attached property, if not already conducted.

Disposed of accordingly.

(Rekha Mittal)
Judge

09.08.2016
mohan bimbura

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No