

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

**CR No. 2954 of 2016**

**Date of decision :28.04.2016**

**Ruby Jain and another**

**..... Petitioners**

**Versus**

**Punjab Wakf Board and others**

**.....Respondents**

**CORAM : HON'BLE MR. JUSTICE DARSHAN SINGH**

Present: Mr.Dinesh Rawat, Advocate  
for the petitioner.

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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.**

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**DARSHAN SINGH, J. (Oral)**

The present revision petition has been preferred against the order dated 11.03.2016 passed by the learned Civil Judge (Junior Division), Dera Bassi, vide which the application moved by the petitioners-plaintiffs under Order 38 Rule 5 of the Code of Civil Procedure, 1908 (for short 'CPC') has been dismissed.

2. Learned counsel for the petitioners contended that the learned trial Court has not taken into consideration the affidavit produced by the petitioners in support of the application, which is the evidence to show that respondents-

defendants is about to dispose of its property to obstruct the execution of the decree. He further contended that the defendants-respondents wants to lease out the property to other persons in order to defeat the execution of the decree. Thus, the petitioners had *prima facie* case in their favour. Defendants-respondents had played a fraud with the plaintiffs-petitioners as they have leased out the property to them, which was not in their possession. Thus, if the property of the respondents is not attached, it would be like giving it a license to commit similar frauds with the general public and will also frustrate the rights of the petitioners in case the decree is passed in their favour.

3. I have duly considered the aforesaid contentions.

4. As per the provisions of order 38 Rule 5 CPC, where, at any stage of a suit, the court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose of the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the court, the court may direct the defendant to furnish the security to produce and to place at the disposal of the court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree.

5. In order to exercise the powers under Order 38 Rule

5 CPC, the Court must be satisfied that defendants are about to dispose of whole or part of their property or are about to remove the whole or any part of their property from the local limits of the jurisdiction of the Court. Annexure P-5 is the copy of the application moved by the petitioner before the learned trial Court under Order 38 Rule 5 read with Section 151 CPC. In the application, the petitioners have simply mentioned that they have genuine apprehension that defendants would lease out the land mentioned in para no.2 of the application to other persons in order to defeat the execution and decree that is likely to be passed against the defendants for recovery of Rs. 94,17,500/-. So, it is nowhere pleaded in the application that the defendants-respondents are about to dispose of whole or any part of their property or they are about to remove the whole or any part of their property from the local limits of the jurisdiction of the Court. The necessary ingredients required to exercise the powers under Order 38 Rule 5 CPC are completely missing in the application. Mere leasing out of the property by the respondents will not amount to dispose of or to remove the said property from the local limits of the jurisdiction of the Court. Thus, there is nothing to satisfy the Court that defendant with intent to obstruct or delay the execution of any decree that may be passed in favour of the petitioners is about to dispose of or remove their whole or any part of the property

from the local limits of the jurisdiction of the learned trial Court.

6. Consequently, no fault can be found with the conclusion of the learned trial Court that no case was made out for the attachment of the property of the respondents-defendants.

7. Thus, the present revision petition having no merits, is hereby dismissed.

**28.04.2016**

S.khan

**(DARSHAN SINGH)  
JUDGE**