

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

**CR No.4862 of 2016 (O&M)
Date of Decision: 06.09.2016**

Dewan Singh

... Petitioner

Versus

Rajwinder Singh

... Respondent

CORAM:-HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.Gaurav Sharma, Advocate
for the petitioner.

Mr. Vishal Munjal, Advocate
for the respondent.

RAJ MOHAN SINGH, J. (Oral)

In the present revision petition, petitioner has impugned the order dated 25.03.2015 passed by the Additional District Judge, Sangrur. Motor Accident Claims Tribunal, Sangrur passed an award against driver and owner of the offending vehicle i.e. the petitioner- Dewan Singh, driver and Amarjit Singh-owner. Both the driver and owner have already filed their separate appeals in the High Court against the award of the Tribunal.

The petitioner has filed an appeal i.e. FAO No.4338 of 2013 in which an order dated 05.12.2014 was passed in the following manner:-

“ Notice in the application for 10.2.2015.

This is an appeal filed by owner of the offending vehicle who was saddled with the liability along with Amarjit Singh Owner, as the vehicle was not insured. It is submitted that after attaching the property

of the driver and owner both, the executing court has issued warrant regarding sale and the date of actual sale is 11.12.2014.

Learned counsel for the applicant- appellant has pointed out that from the copy of site plan (Annexure A.1), it is seen that where the offending vehicle has shown to be going on the correct side of the road, he submits that at best it could be a case of contributory negligence and only 50% of the liability should have been saddled on the appellants, i.e., the driver and the owner in both the appeals. It is further submitted that Rs.25,000/- has been deposited in each appeal as statutory amount and on payment of half of the remaining amount, recovery of the other half may be stayed.

On deposit of Rs.2 lacs, i.e. one lac by the owner and one by the driver or Rs.2 lacs together by any of them in the executing court, recovery of the remaining amount shall remain stayed. “

Similarly, owner of the vehicle, namely, Amarjit Singh has also filed an appeal bearing FAO No. 3799 of 2013 in which similar order was passed on 05.12.2014.

The High Court stayed the recovery of remaining amount on depositing of Rs.2,00,000/- lacs i.e. Rs.1,00,000/- each by the driver and the owner in the executing Court. The petitioner, thereafter, moved an application for deleting the note of attachment in respect of his entire land measuring 7 Bighas, 16 Biswas and 10 Biswas on the ground that market value of the land as on date is Rs.4,00,000/- per Bigha and, therefore, the note

of attachment does not commensurate to the joint liability of the petitioner. Prayer of the petitioner was declined by the Additional District Judge, Sangrur vide order dated 25.03.2015 on the ground that the High Court has stayed the auction proceedings, subject to deposit of Rs.2,00,000/- by the judgment debtor and the appeal is still pending in the High Court. During the pendency of the appeal, it was not thought appropriate by the trial Court to release the property of judgment debtor from attachment.

I have considered the submissions made by learned counsel for the parties.

Apparently, total award was to the tune of Rs.4,46,000/- and interest would increase for the aforesaid amount with the passage of time. The remaining liability of the petitioner as on date is Rs.1,23,000/- with interest from time to time. Against the aforesaid liability, 7 Bighas, 16 Biswas and 10 Biswasis land of the petitioner has been attached by the Executing Court. It will be just and appropriate to attach the proportionate land, which would satisfy the liability of the petitioner.

Keeping in view the valuation as projected by the learned counsel for the petitioner, it would be appropriate to keep 2 Bighas, 16 Biswas and 10 Biswasis of land attached, which would ultimately satisfy the claim against the petitioner. The remaining 5 bighas may be released from attachment so as to allow the petitioner to meet his contingencies.

In view of the aforesaid, this revision petition is partly allowed to the extent of ordering release of 5 Bighas of land, out of total 7 Bighas, 16 Biswas and 10 Biswasis, so attached by the Executing Court. Accordingly, note of attachment be deleted in respect of land so released.

The revision petition is accordingly disposed of.

(RAJ MOHAN SINGH)
JUDGE

September 06, 2016
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Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No