

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH

CR No. 5210 of 2015
Date of decision : March 10, 2016

Darshan Lal Gaba

..... Petitioner

Versus

Mahindra & Mahindra Financial Services Ltd.and another
..... Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr. V. B. Aggarwal, Advocate
for the petitioner.

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

Amit Rawal, J (oral).

Notice of motion.

Mr. Nitin Thatai, Advocate who is present in Court accepts notice on behalf of the respondents.

Learned counsel for the petitioner submits that in pursuance to the award passed by the arbitrator the investor and respondent are seeking execution of the same by resorting to the provisions of Order 21 Rule 37 CPC. He further submits that before resorting to the aforementioned provisions, attachment of the immovable property by putting it to auction for realizing the amount should be made and thereafter as per the provisions aforementioned.

Learned counsel appearing on behalf of the respondents-decree holder submits that already a compromise has

been effected before the Lok Adalat and the judgment debtor had undertaken to pay the amount but despite numerous opportunities, he had not paid the amount and therefore the occasion arose for resorting to the provisions of Order 21 Rule 37 CPC.

I have heard learned counsel for the parties and appraised the paper book.

During the course of hearing, learned counsel for the petitioner has shown the zimni order dated 6.2.2006 whereby proclamation as per the provisions of Order 21 Rule 66 CPC was drawn with regard to sale of immovable property. The same reads thus:-

“As a result of notice issued by this Court, Naib Tehsildar Ismailabad Hawa Singh has appeared and submitted that due to death of his mother he could not do the needful and he has never disrespected the court orders. He has made a prayer for issuance of warrant of sale whereupon he shall take further necessary steps for execution thereof.

In view of the above, explanation tendered by Naib Tehsildar, Ismailabad Hawa Singh is accepted. Fresh warrant of sale be issued as per following program:-

<i>Court Notice</i>	<i>spot</i>	<i>auction</i>	<i>Report</i>
<i>18.2.2016</i>	<i>1.3.2016</i>	<i>9.3.2016</i>	<i>19.3.2016.”</i>

I am in agreement with the submission of Mr. V. B. Aggarwal, learned counsel for the petitioner, for the reason that the decree holder cannot straight away resort to arrest of the judgment debtor, in case

the amount sought to be recovered can be realized in the manner and mode adopted by the trial court.

Keeping in view the aforementioned facts, the order under challenge is hereby set aside. Liberty is granted to the decree holder to realize the amount as noticed in the order dated 6.2.2016.

The civil revision is allowed.

(AMIT RAWAL)
JUDGE

March 10 , 2016
archana