

HIGH COURT OF CHHATTISGARH, BILASPURWrit Petition (C) No.6227 of 2007

(Arising out of order dated 19-1-2007 in Execution Case No.8-B/88 of the learned 3rd Additional District Judge (FTC), Raigarh)

Mahendra Kumar Moda, S/o Chhaganlal Moda, Aged about 62 years, Occupation Business, R/o Station Road, Raigarh, Tah. & Distt. Raigarh.

(Judgment Debtor No.3)
---- Petitioner

Versus

1. State Bank of India (Incorporated under the State Bank of India Act, 1955), Head Office Nariman Point, Madam Cama Road, Bombay, Local Head Office Hoshangabad Road, Bhopal, Branch Office Gandhiganj, Raigarh, Tah. & Distt. Raigarh.

(Decree Holder)
(Plaintiff)

2. Harvinderpal Singh, S/o Balwant Singh, aged about 49 years, Occupation Business, R/o Bus Stand Road, Patthalgaon, Tah. Patthalgaon, Distt. Jashpur Nagar.

(Defendant No.1)
(Judgment Debtor No.1)

3. Sinder Singh, S/o Balwant Singh (since deceased and represented through the LRs): -

3(a) Smt. Ved Kaur, Aged about – not known, Wd/o Sinder Singh,

3(b) Tejpal Singh, Aged about – not known, S/o Sinder Singh,

3(c) Ku. Hermit Kaur, Aged – not known, D/o Sinder Singh,

Note:- All R/o Patthalgaon, Tah. Patthalgaon, Distt. Jashpur Nagar (C.G.)

(Judgment Debtor No.2)
(Defendant No.2)

4. Pawan Kumar Agrawal, S/o Virakhbhan Agrawal, Aged about 49 years,

5. Smt. Ginni Devi, Wd/o Virakhbhan Agrawal, Aged about 49 years,

Note:- Both Respondents No.4 & 5 are R/o Nayaganj, Raigarh, Tah. & Distt. Raigarh.

(Defendants No.4 & 5)
---- Respondents

For Petitioner:	Mr. Amit Sharma, Advocate.
For Respondent No.1/SBI:	Mr. B.D. Guru, Advocate.

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

09/11/2017

1. Calling in question legality, validity and correctness of order dated 19-1-2007 passed by the 3rd Additional District Judge (FTC), Raigarh in Execution Case No.8-B/88 by which the petitioner's application filed under Section 151 of the CPC has been rejected, this writ petition has been filed by the petitioner / judgment debtor No.3.
2. In the suit filed by the State Bank of India (SBI), the trial Court by its judgment and decree dated 22-11-1990 passed a decree in favour of the Bank against Harvinderpal Singh – borrower and Sinder Singh, Mahendra Kumar Moda, Pawan Kumar Agrawal and Smt. Ginni Devi – guarantors. The trial Court has passed decree holding that the decretal amount in question will be first recovered against the principal borrower and in case if he fails to make payment then it will be executed against the other judgment debtors / defendants No.2 to 5. In the impugned order, the trial Court has clearly held that despite all attempts, the decretal amount could not be recovered from judgment debtor No.1, therefore, the Court has issued warrant of attachment against the other judgment debtors who were guarantors and rejected the application filed by judgment debtor No.3 Mahendra Kumar Moda.
3. Learned counsel for the petitioner would submit that the impugned order is unsustainable and bad in law.

4. Learned counsel for the Bank would support the impugned order.
5. Since the order passed by the executing court is in accordance with the decree passed by the trial Court, I do not find any illegality in the impugned order. The writ petition deserves to be and is hereby dismissed. No order as to cost(s).

Sd/-
(Sanjay K. Agrawal)
Judge

Soma