

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

257

CR-1212-2016

Date of Decision:24.05.2017

Jaskaran Singh

.....Petitioner

Versus

Joginder Singh and another

.....Respondents

CORAM: HON'BLE MR.JUSTICE RAMESHWAR SINGH MALIK.

Present: Mr.B.S.Jatana, Advocate,
for the petitioner.

Mr.Parveen Kumar Garg, Advocate,
for respondent No.1.

RAMESHWAR SINGH MALIK, J.(Oral)

Instant civil revision petition filed under Article 227 of the Constitution of India, is directed against the order dated 06.01.2016 (Annexure P-1) and order dated 18.01.2016 (Annexure P-2), whereby petitioner was sentenced to undergo civil imprisonment under Order 21 Rules 37 and 38 of the Code of Civil Procedure, for a period of 30 days, despite the undisputed fact that petitioner was not judgment debtor.

Notice of motion was issued.

Heard learned counsel for the parties.

It is admitted between the parties that the present petitioner was not defendant in the suit filed by respondent No.1 against respondent No.2, which was a suit for recovery. Suit for recovery was decreed by the learned trial Court vide its judgment and decree dated 05.02.2011 (Annexure P-4).

This decree dated 05.02.2011 passed by the learned trial Court has attained

finality between the parties. During execution of the decree at the hands of plaintiff-decree holder-respondent No.1, property was attached by the learned executing Court. Consequently, property owned by the petitioner who stood surety of proforma respondent No.2-judgment debtor was also put to auction for the purpose of selling it so as to satisfy the decree. However, suit property could not be sold.

Learned counsel for the petitioner has been found justified in contending that the petitioner is not backing out from his surety bond (Annexure P-3). He did not raise any objection qua the auction/sale of his property so that the decree may be satisfied. Once, the petitioner did not raise any objection qua auction proceedings, the learned executing Court exceeded its jurisdiction, while committing the petitioner to civil imprisonment which is beyond the object and scope of Order 21 Rules 37 and 38 CPC. Having said that, this Court feels no hesitation to conclude that the learned executing Court exceeded its jurisdiction, while passing the impugned orders (Annexures P-1 and P-2) and the same cannot be sustained.

Object of surety bond would never be construed that the surety shall be liable to suffer civil imprisonment even if he is not causing any kind of hindrance in the auction proceedings for selling his property to satisfy the decree. When confronted with the above-said legal as well as factual aspect of the matter, learned counsel for the contesting respondent No.1 had no answer and rightly so, it being a matter of record. Under these undisputed facts and circumstances of the case, it can be safely concluded that the learned executing Court acted without jurisdiction and the impugned orders cannot be sustained, for this reason also.

No other argument was raised.

Considering the peculiar facts and circumstances of the case noted above, coupled with the reasons aforementioned, this Court is of the considered opinion that since the impugned orders (Annexures P-1 and P-2) have been found suffering from patent illegality, the same cannot be sustained. Accordingly, impugned order dated 06.01.2016 (Annexure P-1) and dated 18.01.2016 (Annexure P-2) are hereby set aside.

Resultantly, with the above-said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

May 24, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned: Yes/No

Whether Reportable: Yes/No