

**HIGH COURT FOR THE STATES OF PUNJAB & HARYANA AT
CHANDIGARH**

**CR No.1112 of 2017
Date of decision:16.2.2017**

Mandeep Singh and others

...Petitioners

Versus

Gurwinder Singh

...Respondent

CORAM: HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present: Mr.Aman Bansal, Advocate for the petitioners.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of defendants-judgment debtors, is directed against the order dated 17.12.2016 passed by the learned executing court, whereby their application, seeking further extension in time to comply with the order dated 18.7.2014 passed by this Court, was declined, as numerous opportunities had already been granted to the judgment debtors-petitioners.

Heard learned counsel for the petitioners.

It is a matter of record and not in dispute that the plaintiff-respondent filed Civil Suit No.440 of 3.8.2006. It was a suit for recovery, which was decreed by the learned trial Court vide judgment and decree dated 10.11.2012, holding that the defendants-petitioners are liable severally and jointly to pay decretal amount to the plaintiff. Defendants-petitioners filed their first appeal bearing Civil Appeal No.73 dated 17.12.2012, which came to be dismissed by the learned first appellate court vide its judgment and decree dated 27.1.2014.

In the meantime, decree holder-plaintiff filed his execution

application vide Annexure P-3. Judgment debtors-petitioners filed their objections to the execution application vide Annexure P-4. When the execution application of the decree-holder was pending, judgment debtors-defendants approached this Court by way of Regular Second Appeal No.2126 of 2014 (Mandeep Singh and others vs. Gurvinder Singh), which came to be listed on 18.7.2014. Notice of motion was issued vide order dated 18.7.2014 and the relevant part thereof reads as under:-

“Notice of motion for 16.1.2015.

In the meantime, execution of the impugned decree shall remain stayed subject to furnishing of security to the satisfaction of the executing court.”

On the strength of above-said order dated 18.7.2014 passed by this Court, petitioners-judgment debtors filed an application dated 2.8.2014 (Annexure P-6) before the learned executing court for staying the proceedings of execution, as per the order dated 18.7.2014 passed by this Court. However, no security was furnished by the petitioners before the learned executing court along with their application dated 2.8.2014 (Annexure P-6).

On moving the above-said application dated 2.8.2014 by the petitioners-judgment debtors, learned executing court passed the following order on 2.8.2014:-

“Arguments not advanced. Rather an application for staying the executing proceedings has been filed on the ground that the Hon'ble High Court has stayed the execution petition subject to furnishing of security to the satisfaction of this Court. In view of the order of Hon'ble High Court dated 18.7.14 passed in RSA No.2126 of 2014 the JDs are directed to furnish bank guarantee of Rs.4 lacs within a period of 30 days from today from some nationalised bank or before 6.9.2014.”

Petitioners-judgment debtors did not comply with the above-said order by furnishing the bank guarantee, as directed by the learned executing court. Instead, they made a prayer before the learned executing court to release the attached property to enable the judgment debtors to sell the same privately, so that they may furnish the bank guarantee, in compliance of the above-said order dated 2.8.2014. Said request of the petitioners was allowed by the learned executing court by passing the order dated 29.11.2014 (Annexure P-8), which reads as under:-

“Arguments heard. It has been contended by learned counsel for the JD that he want to furnish the Bank Guarantee after taking loan or by way of private sale of the property. He has also contended that entire property measuring 27K-16M has been attached by the Revenue Official vide rapat no.54 dated 14.10.2013 and under these circumstances, the JD are unable to raise any loan on the property in question. Keeping in view the factual matrix of the case, the objection petition of the JD deserves to be allowed so as to enable him to secure Bank Guarantee by way of private sale of the property or mortgage the same with the Bank. Accordingly, in view of the provision U/o 21 Rule 83 CPC, the entire property of the JD under attachment is released forthwith. Copy of this order be sent to the revenue official so as to delete the entry of attachment in the revenue record for a period of two months from today. The JD is directed to privately sale the property in question to the extent in which he shall be able to furnish the Bank Guarantee of Rs.4 lacs vide order dated 12.8.2014 in terms of Order 21 Rule 83 CPC. Certificate in this regard is also to be given to the JD by the Ahlmad of this Court for sale of the immovable property under attachment in terms of Order 21 Rule 83 CPC. It is made clear that in case JD failed to sale the property in question privately or failed to raise any loan there upon the property in question shall automatically be

attached in accordance with order 21 rule 83 CPC. Adjourned to 21/2/2015 for compliance of the order.”

In spite of the above-said order having been passed by the learned executing court, petitioners-judgment debtors did not furnish the security by way of bank guarantee to the satisfaction of the learned executing court. They moved yet another application for granting further time for furnishing bank guarantee. Application (Annexure P-9) was moved by the petitioners after more than one year of passing of the above-said order dated 29.11.2014 by the learned executing court. Plaintiff-decree holder submitted his reply to the above-said application of the judgment debtors-petitioners vide Annexure P-10. Thereafter, the impugned order dated 17.12.2016 came to be passed by the learned executing court vide Annexure P-11.

Before proceeding further, relevant observations made by the learned executing court in paras 5 and 6 of the impugned order, deserve to be noticed and the same read as under:-

“Perusal of file reveals that the decree holder has filed present application for execution of decree dated 10.12.2012 passed by the court of Ms. Vipindeep Kaur, PCS, the then Ld. ACJ(SD), Samrala on 30.03.2013. Thereafter on 02.08.2014, the judgment debtors have filed an application for staying the execution proceedings on the ground that the JDs are ready to furnish the security in compliance with the order dated 18.07.2014 passed by the Hon'ble Punjab and Haryana High Court in Regular Second Appeal No. 2126 of 2014 whereby the Hon'ble High Court has stayed the execution of decree subject to furnishing of security to the satisfaction of the executing Court. The said application was allowed by my learned predecessor Court on 02.08.2014 whereby the JDs were directed to furnish bank guarantee of Rs. 4 lacs within a period

of 30 days from the date of order i.e. 02.08.2014 from some Nationalized Bank or before the next date i.e. 06.09.2014. Thereafter, JD's have filed another application on 06.09.2014 for staying the execution proceedings as per order dated 18.07.2014 passed by the Hon'ble Punjab and Haryana High Court in Regular Second Appeal No. 2126 of 2014 by taking security by attaching the land measuring 1K-0M out of land attached by the Court and to redeem the remaining property with the averments that security is not ready with the applicants/JDs then and the Court has already attached more than 27 kanals which is more valuable than the decretal amount. The value of the land was mentioned as Rs.40 lacs acre and for security of Rs. 4 lacs only, land measuring 1 K-10M is liable to be attached. During the course of arguments on above said application dated 06.09.2014 on 29.11.2014, the learned counsel for the JDs contended that JDs want to furnish the Bank Guarantee after taking loan or by way of private sale of property. He has further contended that entire property measuring 27K-16M has been attached by the Revenue officials vide rapat No. 54 dated 14.10.2013 and under said circumstances, the JDs are unable to raise any loan on the property. Keeping in view abovesaid contentions, vide order dated 29.11.2014, objection petition filed by JD's was allowed by my Ld. Predecessor court so as to enable JD's to secure Bank Guarantee by way of private sale of property or mortgage the same with the bank. Accordingly, in view of Order 21 Rule 83 CPC, the entire property of the JDs under attachment was released by my Ld. Predecessor court vide order dated 29.11.2014. Further, a direction was given to the JDs to privately sale the property in question to the extent in which they should be able to furnish the Bank Guarantee of Rs.4 lacs vide order dated 12.8.2014 in terms of Order 21 Rule 83. Further it was also made clear that in case the judgment debtors fail to sell the property in question privately or fail to raise any loan thereupon, the property in question shall

automatically be attached in accordance with Order 21 Rule 83 CPC. And the case was adjourned to 21.02.2015 for compliance of the order. However, till 21.02.2015, the Jds have failed to sell the property in question. Accordingly, the property of JDs was again ordered to be attached by my Ld. Predecessor court vide order dated 21.02.2015. Thereafter on 03.10.2015, application filed under Order 21 Rule 66 CPC by the decree holder was allowed by my Ld. Predecessor court and property of JD's was ordered to be put on sale. Now on 05.12.2015, the judgment debtors have again filed present application for granting them time to furnish the bank guarantee as security.

A perusal of the file clearly shows that sufficient time as well as sufficient opportunities have been granted to the judgment debtors to furnish the bank guarantee but they did not bother to comply with the orders of my Ld. Predecessor court and till date, no bank guarantee has been filed. Now also, the judgment debtors have filed another application seeking time to furnish the bank guarantee to the satisfaction of this Court in compliance with order dated 18.7.2014.”

During the course of hearing, when confronted with the above-said numerous orders passed by the learned executing court and also the glaring non compliance of the order dated 18.7.2014 passed by this Court in spite of passing of time of more than 2½ years, learned counsel for the petitioners had no answer and rightly so, it being a matter of record.

Petitioners have not been found *bona fide* litigants. It is so said because they have been found misusing the process of law, while not complying with the above-said order dated 18.7.2014 passed by this Court and that too for no good reasons, as if the petitioners were not supposed to ensure strict compliance of the orders passed by this Court. Having said that, this Court feels no hesitation to conclude that the learned executing

court committed no error of law by passing the impugned order and the same deserves to be upheld.

A bare reading of the above-said observations made by the learned executing court would make it crystal clear that more than sufficient opportunities had already been granted to the judgment debtors-petitioners to ensure compliance of the order passed by this Court, however, petitioners were least bothered. They had been trying their level best to defeat the execution application of the decree-holder on one or the other baseless grounds. Petitioners had been taking the Court as well as justice delivery system for a ride as if they were above the law.

Interestingly, the only reason pointed out by the petitioners in their application (Annexure P-9) for non furnishing of bank guarantee, in compliance of the orders dated 18.7.2014 passed by this Court and also the order dated 2.8.2014 and 29.11.2014 passed by the learned executing court, was that there was some family disturbance. However, what was that family disturbance has not been pointed out by the petitioners, proceeding on the presumption that every word stated by them should be treated as gospel truth. Petitioners were under seriously wrong impression because they are also governed by the law and cannot be permitted to flout the judicial orders passed by the courts of competent jurisdiction. Under these circumstances, it can be safely concluded that the learned executing court was well within its jurisdiction to pass the impugned order and the same deserves to be upheld, for this reason also.

Learned counsel for the petitioners could not point out any patent illegality or perversity in the impugned order, warranting interference at the hands of this Court, while exercising its revisional jurisdiction. In

this view of the matter, another question that falls for consideration of this Court is whether a litigant who has intentionally conducted himself in most irresponsible manner, showing no respect to the repeated orders passed by the courts of competent jurisdiction, deserve any sympathy, at the hands of this Court or not. After due consideration of the matter, it is unhesitatingly held that the petitioners are not entitled for any sympathy from this Court because they have repeatedly and intentionally ignored the above-said court orders dated 18.7.2014, 2.8.2014 and 29.11.2014, on more than one occasions.

The above-said view taken by this Court also finds support from the judgment of the Hon'ble Supreme Court in **M/s Teri Oat Estates (P) Ltd. Vs. U.T., Chandigarh and others, 2004 (2) SCC 130**. The relevant observations made by the Hon'ble Supreme Court in paras 36 to 39 of its judgment, which can be gainfully followed in the present case, read as under:-

“SYMPATHY :

We have no doubt in our mind that sympathy or sentiment by itself cannot be a ground for passing an order in relation whereto the appellants miserably fail to establish a legal right. It is further trite that despite an extra- ordinary constitutional jurisdiction contained in Article 142 of the Constitution of India, this Court ordinarily would not pass an order, which would be in contravention of a statutory provision.

*As early as in 1911, Farewell L.J. in **Latham v. Richard Johnson & Nephew Ltd. [1911-13 AER reprint p. 117]** observed :*

"We must be very careful not to allow our sympathy to affect our judgment with the infant plaintiff. Sentiment is

a dangerous will O' the wisp to take as a guide in the search for legal principles."

[See also Ashok Saha v. State of West Bengal & Ors. - CLT 1999(2) H.C. 1].

In Sairindhri Ddolui v. State of West Bengal [2000(1) SLR 803], a Division Bench of the Calcutta High Court (wherein one of us Sinha, J. was a Member), followed the aforementioned dicta.

This Court also in C.B.S.E. and Another v. P. Sunil Kumar and Others, 1998(2) S.C.T. 788 : [(1998) 5 SC 377] rejecting a contention that great injustice would perpetrate as the students having been permitted to appear at the examination and having been successful and certificates had been issued in their favour, held :

".....We are conscious of the fact that our order setting aside the impugned directions of the High Court would cause injustice to these students. But to permit students of an unaffiliated institution to appear at the examination conducted by the Board under orders of the Court and then to compel the Board to issue certificates in favour of those who have undertaken examination would tantamount to subversion of law and this Court will not be justified to sustain the orders issued by the High Court on misplaced sympathy in favour of the students....."

When learned counsel for the petitioners was asked by this Court to point out any genuine difficulty, which the petitioners might be facing for non-compliance of the above-said orders dated 18.7.2014, 2.8.2014 and 29.11.2014 passed by this Court as well as learned executing court, he had again no answer. In fact, petitioners have miserably failed to show any respect to the above-said orders passed by this Court as well as the learned executing court and that too for undisclosed reasons. It seems

that the petitioners were bent upon to defeat the genuine claim of the decree-holder, adopting one or other technical and super technical plea.

It is the settled proposition of law that the civil court decree has to be executed in its true letter and spirit. The learned executing court cannot be left at the mercy of the petitioners-judgment debtors. It is so said because long pendency of execution application and that too without any sufficient reasons, are bound to bring frustration amongst the *bonafide* decree holders, who are legally entitled for enjoying the actual fruits of litigation, instead of holding only the paper decree in their hands. In the instant case, petitioners have been found delaying the executing proceedings only because of their ulterior motives and malafide intentions. In this view of the matter, it is held that the learned executing court has rightly passed the impugned order and the same deserve to be upheld, for this reason as well.

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 view that the present revision petition is wholly misconceived, bereft of merit and without any substance, thus, it must fail. No case for interference has been made out

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

16.2.2017
mks

(RAMESHWAR SINGH MALIK)
JUDGE

Whether Speaking/reasoned : Yes/No
Whether Reportable : Yes/No