

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

**Civil Revision No.1869 of 2012 (O&M)
Date of Decision: 13.12.2017**

Narinder Singh

.....Petitioner

Vs

Palwinder Singh

....Respondent

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

Present: Mr. Rajesh Bhateja, Advocate
for the petitioner.

Mr. G.S. Nagra, Advocate
for the respondent.

Mr. Amandeep Singh, Advocate
for the applicant in CM No.5900-CII of 2015.

RAJ MOHAN SINGH, J.

[1]. Petitioner has assailed the order dated 09.02.2012 passed by the Addl. District Judge, Amritsar and order dated 30.11.2011 passed by the Civil Judge (Jr. Divn.) Amritsar whereby objections filed by the judgment-debtor/petitioner were dismissed.

[2]. Brief facts are that the Judgment-debtor/petitioner filed objection in the execution on the ground that the plaintiff filed the suit on the basis of cheque alleged to have been issued by

the defendant with a condition that if the work of the plaintiff is not done, then the plaintiff can recover the amount of the cheque. Plaintiff failed to prove that defendant No.1 was doing the business of travel agent.

[3]. The executing Court dismissed the objections vide order dated 30.11.2011 and the appeal preferred against the same was also dismissed by the Court of Addl. District Judge, Amritsar vide order dated 09.02.2012.

[4]. On 27.03.2012 notice of motion was issued with the following observations:-

“Learned counsel for the petitioner places reliance upon Mohit Bhargava v. Bharat Bhushan Bhargava and others, (2007) 4 SCC 795 to submit that decree against the petitioner was passed by the court at Amritsar and in execution filed therein, the property, which is located at Patiala, was directed to be sold, which could not have been done as the execution was required to be transferred to the court where the property was situated.

Notice of motion for 20.4.2012.

Process Dasti only.

Liberty to serve through counsel in the trial court as well.

In the meantime, further proceedings before the learned court below shall remain stayed.”

[5]. Thereafter on 02.11.2017, following order was passed:-

“Learned counsel for the respondent, on the strength of Dr.K.P.Ranga Rao vs. K.V.Venkatesham and others 2015 (1) RCR (Civil) 301, contends that the decree passed by a Court having no territorial jurisdiction cannot be reversed unless the same has resulted in failure of justice to the judgment debtor.

Learned counsel for the petitioner seeks short adjournment to address arguments.

List again on 10.11.2017. ”

[6]. Learned counsel for the petitioner submitted that the executing Court has wrongly attached and sold the property of the petitioner which is situated in village Nagari, Tehsil Patran District Patiala which is not situated within the jurisdiction of the Court at Amritsar and, therefore, the executing Court at Amritsar was having no territorial jurisdiction to attach the property in District Patiala and to put the same to public auction.

[7]. Learned counsel further submitted that the public auction has been done while sitting in the office which is apparent from the *panchyatnama* placed on record by the Panchayat of the village. There was only one bidder, who was a close relative of the respondent. The Courts below have not taken into consideration the aforesaid facts. A decree can be executed either by the Court which passed it or by the Court to which it is sent for execution. In the present case decree was passed by the Civil Judge (Jr. Divn.) Amritsar and the same has

been executed by its successor Court. The objection was taken at a very belated stage, when the sale in public auction was done and the property has been attached. In **Mohit Bhargava vs. Bharat Bhushan Bhargava and others, (2007) 4 Supreme Court Cases 795**, the Hon'ble Supreme Court took the view that the decree can be executed by a Court which passes the decree if authorised by Order 21 Rule 48 CPC or the judgment-debtor is within its jurisdiction if it is a decree for personal obedience by the judgment-debtor.

[8]. Learned counsel contended that normally it is correct that the Court which passed the decree has the jurisdiction to execute the same. If the decree-holder sought to execute the decree against the property lying outside the jurisdiction of that Court, Section 39(4) of the Civil Procedure Code (for short 'the Code') would be attracted and the Court was obliged to transfer the decree for execution to the proper Court. Section 38 of the Code provides that a decree may be executed either by the Court which passed it or by the Court to which it is sent for execution. Section 42 of the Code indicates that the transferee court to which the decree is transferred for execution will have the same powers in executing the decree as if it had been passed by itself. A decree could be executed by the Court which passed the decree so long as it is confined to the assets within

its own jurisdiction or as authorised by Order 21 Rule 3 or Order 21 Rule 48 of the Code or the judgment-debtor is within its jurisdiction, if it is a decree for personal obedience by the judgment-debtor.

[9]. Learned counsel further contended that if the property sought to be proceeded against, is outside the jurisdiction of the Court which passed the decree, the interpretation of Amendment Act 22 of 2002 would come into being and the position would be that if the execution is sought to be proceeded against any person or person outside the local limits of the jurisdiction of the executing Court, nothing in Section 39 of the Code shall be deemed to authorise the Court to proceed with the execution. After the said amendment, the controversy was set at rest and it may not be possible to accept the contention that it is a matter of discretion for the Court either to proceed with the execution of the decree or to transfer it for execution to the Court within the jurisdiction of which the property is situated.

[10]. On the other hand, learned counsel for the respondent placed reliance upon **Dr. K.P. Ranga Rao vs. K.V. Venkatesham and others, 2015(1) R.C.R. (Civil) 301** wherein the Hon'ble Supreme Court has held that the decree passed by the Court which had no territorial jurisdiction cannot be reversed unless there was failure of justice.

[11]. I have heard the submissions made by learned counsel for the parties.

[12]. Apparently, in **Dr. K.P. Ranga Rao's** case (supra) the Court was not dealing with Section 39 of the Code and the controversy involved in the case was the territorial jurisdiction of the Court which passed the decree. In the instant case, there is no controversy with regard to the Court having territorial jurisdiction or not. The controversy is that the Court which has passed the decree, has executed the same in respect of property situated outside its territorial jurisdiction.

[13]. In **Dr. K.P. Ranga Rao's** case (supra) the Hon'ble Supreme Court was dealing with the case of specific performance and by relying upon Sections 16, 20 and 21 of the Code, held that Section 21 of the Code will apply in three situations i.e. place of suing, pecuniary limits of the Court's jurisdiction and local limits of the Court's jurisdiction. In each of these cases, it is stated that an Appellate Court or Revisional Court shall not allow an objection to the place of suing (which refers to Section 16 CPC) unless such objection was taken in the Court of first instance at the earlier possible opportunity. An objection as to the place of suing cannot be allowed unless there has been a consequent failure of justice.

[14]. Apparently the facts involved in the aforecited case were different than the one involved in the present revision petition. The Court has not dealt with Section 39 of the Code in the aforesaid case. In view of Amendment Act 22 of 2002 which came into force w.e.f. 01.07.2002, it was made clear that it is no longer a matter of discretion for the Court which passed the decree either to proceed with the execution of the decree itself or to transfer it for execution to the Court within whose jurisdiction the property is situated.

[15]. Having considered the controversy in the light of observations made by the Hon'ble Apex Court in **Mohit Bhargava's** case (supra) I am of the view that the Courts below have not adverted to the aforesaid proposition. In the instant case, the pleading of the suit and the consequent decree passed therein have not been placed on record. Taking into consideration the entirety of facts and circumstances of the case, I deem it appropriate to set aside the impugned orders and remand this case to the executing Court to revisit the controversy in the light of precedents and decide the same afresh preferably within a period of three months from the date of receipt of certified copy of this Court. However it is made clear that nothing expressed hereinabove would be taken to be a final opinion on the merits of the case. The executing Court

would be obligated to pass afresh order in accordance with law without being influenced by any of the factual observations made hereinabove.

[16]. Since this revision petition has been remanded to the executing Court, therefore, the applicant in CM No.5900-CII of 2015 is at liberty to move appropriate application before the executing Court in accordance with law.

[17]. Revision petition along with all other civil misc. applications stands disposed of.

December 13, 2017

Atik

Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No