

IN THE HIGH COURT OF PUNJAB & HARYANA, CHANDIGARH
Sr. No.: 114

Civil Revision No.1768 of 2017 (O & M)
Date of Decision: March 14, 2017

Vikas Dalel

..... PETITIONER

VERSUS

M/s Indusind Bank Limited & another

..... RESPONDENT

. . .

CORAM: HON'BLE MR. JUSTICE JASPAL SINGH

. . .

PRESENT: - Mr. Mrigank Sharma, Advocate, for the petitioner.

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Jaspal Singh, J

1. Through this revision petition preferred under Article 227 of Constitution of India, petitioner has sought setting aside of Order dated February 03, 2017 passed by the Additional District Judge, Panchkula as well as order dated February 14, 2017, vide which, while dismissing the objections filed in the execution preferred by respondent, warrants of arrest have been issued against him.

2. The facts giving rise to the instant petition are that respondent Nos.1 and 2 entered into a loan agreement for purchase of a three wheeler (Auto Rickshaw) dated September 28, 2002. The petitioner also runs a three wheeler and was made guarantor to the agreement. He being a rustic person was not able to understand the

complexities of the process and he was not even provided any copy of the papers he had signed. Subsequently, it came to light that respondent No.2 initiated arbitration proceedings against the petitioner at Chennai which had passed an exparte award in favour of respondent No.1 for an amount of ₹ 95,090/-. On receipt of notice issued by the executing court, he appeared before it and preferred an objection petition but without holding any enquiry or giving any show cause notice as envisaged under Order XXI Rule 37 & 38 CPC, his arrest warrants have been issued by dismissing his objection petition. Infact, the executing court has failed to appreciate actual position prior to the dismissal of objections and issuance of warrants of arrest of petitioner. It is relevant to mention here that the executing court has returned a finding that no vehicle number which has been possessed by the bank has been forthcoming, however while doing it, it has failed to appreciate that arbitration award itself mentions that respondent No.1 had taken possession of the vehicle and sold off the same as well.

3. Learned counsel for the petitioner has contended that the executing court has failed to appreciate that even prior to dismissal of the objections, warrants of arrest of petitioner had been issued and respondent No.1 has been directed to submit the subsistence allowance in terms of Section 57 CPC which is suggestive of the fact that the entire process of the executing court has been prejudicial towards the petitioner. Moreover, arrest and detention of JD as per the mandate of the court is the last resort yet in the present case, executing court has directed arrest of the petitioner even prior to issuance of any show

cause as to how the execution is bad in law or if respondent No.2 is having any property against it, execution can be satisfied. Respondent No.2 owns and possesses moveable as well as immovable property in his name and in case he is directed to make payment of the outstanding amount, the execution can be satisfied.

4. While concluding his arguments, it has been submitted by learned counsel for the petitioner that since the impugned order suffers from material infirmities and illegalities, it is not sustainable in the eyes of law and is liable to be set aside. Consequently, objection petition deserves to be allowed.

5. This Court has given a deep thought to the aforesaid submissions made by learned counsel for the petitioner but does not find any legal and factual force therein.

6. It stands amply proved on record that petitioner stood as guarantor and guaranteed for due performance of loan agreement by the loanee i.e. respondent No.2 namely Arun Kant. It is well settled proposition of law that executing court cannot go beyond the decree and if at all petitioner is aggrieved of passing of exparte arbitration award, he could have challenged the same before the competent authority and not in execution proceedings. Moreover, liability of the borrower as well as that of a guarantor is joint and several and the Decree Holder is entitled to recover the amount outstanding from either of them. Since the petitioner has failed to make payment of outstanding amount against him, the court was left with no option but to get the decree satisfied/executed by adopting coercive methods i.e. issuance of

warrants of arrest and detention of the petitioner on deposit of necessary charges i.e. subsistence allowance etc., which have already been deposited. Thus, This Court does not find any illegality perversity in the impugned order, rather the same is absolutely in consonance with the legal proposition applicable to the facts & circumstances of the case in hand.

7. In the light of what has been discussed above, the instant petition being devoid of merits is dismissed.

8. No order as to costs.

March 14, 2017
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(Jaspal Singh)
Judge

Whether Speaking/ Reasoned:
Whether Reportable:

Yes/ No
Yes/ No