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

**Civil Revision No.5251 of 2016 (O&M)
Date of Decision: 23.08.2017**

GAURAV KUMAR

.....Petitioner

Vs

INDUSIND BANK LTD. AND ANR.

....Respondents

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

Present: Mr. C.M. Munjal, Advocate
for the petitioner.

Mr. Ashwani Talwar, Advocate
for the respondent No.1.

RAJ MOHAN SINGH, J. (Oral)

[1]. Petitioner has assailed the order dated 02.08.2016 passed by the Addl. District Judge, Sirsa vide which conditional warrants were issued against the petitioner/judgment-debtor No.2.

[2]. Brief facts are that the petitioner was guarantor in the loan availed by judgment-debtor No.1. On the basis of loan agreement, the matter was referred to the Arbitrator by the respondent-Bank. The Arbitrator passed an *ex parte* award dated 11.04.2011 against the judgment-debtors. An amount of Rs.7,41,773/- along with interest was the decretal amount for

which the execution was filed. The mode of execution sought by the decree-holder was to the following effect:-

- “i) To issue recovery warrant for recovering the amount of award along with future interest from the Judgment-debtor.*
- ii) If the Judgment debtors failed to deposit the amount in that case passing the necessary order for directing the J.D. No.1 to surrender the vehicle bearing Registration No.HR-57-0051 financed by Decree Holder to J.D. No.1 and sale of the same belong to J.D. No.1 for recovering the decreed amount and further for attachment of other movable and immovable property of J.Ds and sale of the same for the recovery of decreed amount.*
- iii) By issuing arrest warrant and the JD be directed to undergo civil imprisonment in case of failure to recover the whole amount from the properties of the J.D.”*

[3]. The decree-holder i.e. the Bank filed the application for attachment of two vehicles i.e. Vehicle make Tata 2515 (Truck) bearing registration No.HR57-0051 and vehicle make Tata 2515 (Truck) bearing registration No.HR57-A-0051. Both the said vehicles were in the name of Iqbal Singh/judgment-debtor No.1. Iqbal Singh was served with the process of the Court and was proceeded against *ex parte*. Warrants of attachment of the aforesaid properties were issued.

[4]. Order dated 16.02.2013 passed by the executing Court shows that the summons issued to respondent No.1 were not received back served or otherwise, but at that stage, learned counsel for the decree-holder stated that in view of pendency of the execution, it would be appropriate that warrants of attachment of the properties of the judgment-debtors be issued straightway instead of summoning the judgment-debtors.

[5]. Since the execution was filed within a period of two years, the aforesaid course was suggested. The request of the learned counsel for the decree-holder was accepted and warrants of attachment of the properties of judgment-debtors were issued on filing of process fee and list of the properties. Thereafter, the executing Court was required to follow Order 21 Rule 64 CPC i.e. the power of the Court to order for sale of the attached property and proceeds thereof to be paid to the decree-holder.

[6]. In view of order dated 16.02.2013 passed by the executing Court, the procedure prescribed under the Code was to be adhered to before resorting to arrest of the judgment-debtors for satisfying the decree in question. The attached property is still available with the executing Court and it would be just and appropriate to answer the decree firstly from the properties so attached and thereafter the executing Court can

resort to any other option in accordance with law.

[7]. Though there is no legal impediment in filing execution against the guarantor straightway. The guarantor has already been proceeded against *ex parte*. The property of the guarantor has not been attached. It would be open to the decree-holder to take recourse to the lawful criteria, but in any case resorting to arrest of the judgment-debtor No.2 in violation of Order 21 Rule 64 CPC is not legally sustainable.

[8]. In view of above, the impugned order dated 02.08.2016 is set aside and the present revision petition is allowed to the extent as mentioned above. The executing Court would be at liberty to execute the decree in question from the properties of the judgment-debtors so attached. The decree-holder would also be entitled to take any other proceedings in order to recover the amount from the properties of the judgment-debtors.

August 23, 2017

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No