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IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

1. Civil Revision No.5281 of 2016
Date of Decision: 28.09.2017

TEJINDER PAL SINGH ......Petitioner
Vs
M/s SPARROW DEVELOPERS LTD ....Respondent

2. Civil Revision No.5282 of 2016

JASMEET KAUR ......Petitioner
Vs
M/s SPARROW DEVELOPERS LTD ....Respondent

3. Civil Revision No.5283 of 2016

VARINDER KAUR ......Petitioner
Vs
M/s SPARROW DEVELOPERS LTD ....Respondent

4. Civil Revision No.5284 of 2016

TEJINDER PAL SINGH ......Petitioner
Vs
M/s SPARROW DEVELOPERS LTD ....Respondent

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

Present: Mr. Ashish Gupta, Advocate
for the petitioner(s).

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RAJ MOHAN SINGH, J. (Oral)

[1]. Vide this common order CR Nos.5281, 5282, 5283 and 5284 of 2016 are being decided. Notice of motion was issued on 22.08.2016 in all these revision petitions. As per office report, the respondent was duly served. None appeared on 06.03.2017

and even today despite the pass over. In view of above, I proceeded to hear the aforesaid revision petitions on merits.

[2]. The present revision petitions have been filed by the petitioner(s) against the order dated 08.08.2016 passed by the Executing Court at Narnaul, whereby prayer of the petitioner(s)/ decree-holder(s) in terms of Order 21 Rule 41 CPC was declined. As common question of fact and law is involved in these revision petitions, therefore, for brevity, the facts have been culled out from CR No.5281 of 2016.

[3]. Brief facts are that petitioner is a decree-holder. Money decree was passed on 07.01.2004 by the Addl. District Judge, (Central) Delhi and the judgment-debtor was directed to pay a sum of Rs.2.5 Lakhs to the decree-holder along with *pendente lite* and future interest @ 10% per annum from 01.06.2001 till final realization of the amount. An amount of Rs.11,496.25 as cost was also ordered to be paid to the decree-holder. Since the judgment-debtor shifted his office to House No.1, Om Enclave, Opposite Sectors 9 and 11, near Jagriti High School, Hisar and started carrying out its business from there, therefore, an application was filed by the decree-holder in terms of Sections 39/40/42, Order 21 Rule 6 read with Section 151 CPC for issuance of transfer certificate for transfer of decree for execution to the Court at Hisar.

[4]. Ultimately after due process execution was filed at Hisar. Para No.7 of the execution application was catagoric in terms of the execution having been transferred from Court at Delhi to the transferee Court at Hisar. Before the decree could have been executed, the judgment-debtor again shifted his office from Hisar to Narnaul and the decree-holder again had to resort to the provision in terms of Sections 39/40/42 read with Section 151 CPC for issuance of transfer certificate and for transfer of the decree for execution to the competent Court at Narnaul. The execution was accordingly transferred to the Court at Narnaul. In the original address of the judgment-debtor the judgment-debtor was shown to be having office at H.No.218, Ward 11, Old Mandi, Narnaul, Haryana whereas as per the statement of Arvind Bansal recorded as PW-3 in some other litigation the address of the judgment-debtor came to be revealed as H.No.87/1, Ward No.12, Purani Mandi, Narnaul District Mahendergarh, Haryana.

[5]. In order to get the decree executed with correct address of the judgment-debtor, the application under Order 21 Rule 41 CPC was filed by the decree-holder for examination of the judgement-debtor in order to ascertain the properties held and owned by the Company. However, the said application was dismissed by the executing Court vide the impugned order

dated 08.08.2016 by holding that the decree-holder has not submitted any address of the judgment-debtor/Company. Even the judgment-debtor has not appeared in the proceedings and has already been proceeded against ex parte vide order dated 08.02.2016.

[6]. The executing Court also observed that it was the responsibility of the decree-holder to furnish the details of account of the judgment-debtor with reference to the correct address of the Company. The decree-holder has availed number of opportunities including the last opportunity for submitting the list of properties and for depositing the *munadi* fee. Having availed numerous opportunities, the present application came to be filed just to seek another opportunity. The application was dismissed with cost of Rs.3,000/- to be deposited by the decree-holder in District Legal Service Authority, Narnaul. The executing Court has also observed that on submitting the list of properties and deposit of *munadi* fee by the decree-holder, warrant of attachment be also issued. Though the executing Court has not dismissed the execution, but the application filed by the decree-holder under Order 21 Rule 41 was dismissed.

[7]. The perusal of the record shows that the decree was passed by the Court at Delhi. Subsequently, the execution was

transferred to the Court at Hisar due to shifting of the head office of the judgment-debtor and thereafter with the shifting of head office at Narnaul, the execution was also transferred to Narnaul.

[8]. In order to meet out such type of situation, Order 21 Rule 41 CPC would suffice to provide the remedy to the decree-holder in the context of money decree, wherein the decree-holder may apply to the Court for an order that the judgment-debtor being Company, any officer thereof or any other person by orally examine was to whether any or what debts are owing to the judgment-debtor and whether the judgment-debtor has any and what other property or means of satisfying the decree. The Court may make an order for the attendance and examination of such judgment-debtor or officer or any other person or other person and for the production of any books or documents.

[9]. Order 21 Rule 41 CPC provides that where a decree for payment of the money has remained unsatisfied for a period of 30 days, the Court may on the application of the decree-holder and without prejudice to its power under sub-Rule (1) by order require the judgment-debtor or where the judgment-debtor is a corporation, any officer thereof to make an affidavit stating the particulars of the assets of the judgment-debtor. In case of

disobedience of any order made under sub-rule (2), of Order 21 Rule 41 CPC, the Court may resort to the coercive method by way of putting the judgment-debtor to civil imprisonment for the disobedience of the Order for a term not exceeding three months.

[10]. Apparently, in terms of Order 21 Rule 41(2), the Court has the jurisdiction to ascertain the properties of the judgment-debtor if the money decree remained unsatisfied for the period of 30 days. A direction can be issued on the application of the decree-holder. Since the decree has been transferred to the number of Courts with the change of address of the judgment-debtor, therefore, in my considered opinion, the impugned order appears to be on harsher side by curtailing the remedies available to the decree-holder for securing the necessary information with regard to the existence of properties of the judgment-debtor, who kept on changing head office of the Company from time to time to different places.

[11]. For the reasons detailed in the preceding paras of the order, the impugned order dated 08.08.2016 is set aside. The application under Order 21 Rule 41 CPC is restored. The trial Court is directed to decide the same in accordance with law by taking follow up action in compliance to the Order 21 Rule 41 CPC.

[12]. With the aforesaid observation, revision petitions are disposed of.

September 28, 2017 **(RAJ MOHAN SINGH)**
Atik **JUDGE**

Whether speaking/reasoned Yes/No

Whether reportable Yes/No