

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

**Civil Revision No.7716 of 2016 (O&M)
Date of Decision : 17th May, 2017**

Dalip Singh

..... Petitioner

Versus

Sandeep Kumar

..... Respondent

CORAM : HON'BLE MR. JUSTICE RAMESHWAR SINGH MALIK

Present : Mr. Sumit Sangwan, Advocate
for the petitioner.

None for the respondent.

RAMESHWAR SINGH MALIK, J. (Oral)

Present revision petition, at the hands of plaintiff, filed under Article 227 of the Constitution of India, is directed against the order dated 26.10.2016 (Annexure P-1), passed by the learned trial Court, whereby the application moved by the plaintiff-petitioner under Order 38 Rule 5 of the Code of Civil Procedure (in short 'CPC'), directing the defendant not to create third party interest in the suit property was dismissed by a totally non-speaking and cryptic order.

Notice of motion was issued.

Learned counsel for the respondent put appearance on 09.12.2016 and on his request case was adjourned to 09.03.2017. When nobody came present on behalf of respondent on 09.03.2017, one last and final opportunity was granted to the learned counsel for the respondent to

argue the case. However, similar is the position today. Neither anybody has come present on behalf of the respondent to argue the present petition nor any request for pass over has been made.

Heard learned counsel for the petitioner.

A bare perusal of the impugned order would show that the learned trial Court completely misunderstood the provisions of law contained in Order 38 Rule 5 CPC while passing the impugned order.

Since the instant case revolves around the scope and ambit of Order 38 Rule 5 CPC, it deserves to be referred here and the same reads as under:-

“Where defendant may be called upon to furnish security for production of property – (i) Where, at any stage of a suit, the Court is satisfied, by affidavit or otherwise, that the defendant, with intent to obstruct or delay the execution of any decree that may be passed against him, --

(a) is about to dispose of the whole or any part of his property, or

(b) is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court,

the Court may direct the defendant, within a time to be fixed by it, either to furnish security, in such sum as may be specified in the order, to produce and place at the disposal of the Court, when required, the said property or the value of the same, or such portion thereof as may be sufficient to satisfy the decree, or to appear and show cause why he should not furnish security.

(2) The plaintiff shall, unless the Court otherwise directs, specify the property required to be attached and the estimated value thereof.

(3) The Court may also in the order direct the conditional

attachment of the whole or any portion of the property so specified.

(4) If an order of attachment is made without complying with the provisions of sub-rule (1) of this rule, such attachment shall be void.”

A bare reading of the abovesaid provisions of law would show that, the legislature in its wisdom, has ensured that as and when such a situation arises before the Court, defendant may be called upon to furnish security for production of the suit property so that decree to be passed in favour of the plaintiff may not get defeated because of malafide intention of the defendant. However, in the instant case, despite the fact that it is a suit for recovery and defendant did not file even any reply to the application, learned trial Court misdirected itself by passing the impugned order which is based on technicalities alone. Instead of passing the impugned order, the learned trial Court was expected to strike a balance between the parties so as to achieve the object of abovesaid provisions of law and not to defeat the said object. Since the impugned order is not only a non-speaking and cryptic order but it is also suffering from patent illegality and the same cannot be sustained.

It is the settled proposition of law that rules of procedures are meant for advancing the cause of justice. No Court of law should proceed on technicalities alone. Particular form of an application even if it is not very appropriately drafted should not alone be made the basis for declining the relief, prayed for by the applicant. It is so said because rules of procedure are handmade by justice. The learned trial Court has miserably failed to assign any reason much less cogent reasons in support of the impugned order because of which the same has been found a patently illegal

order which cannot be sustained, for this reason as well.

No other argument has been 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 since the impugned order has been found suffering from patent illegality and perversity, it cannot be sustained. Accordingly the impugned order dated 26.10.2016, passed by the learned trial Court is hereby set aside. Application moved by plaintiff-petitioner under Order 38 Rule 5 CPC would stand allowed.

Consequently, defendant-respondent is directed to furnish adequate security in the sum of Rs.4,00,000/- i.e. the principal amount sought to be recovered, either by way of bank guarantee or any other tangible security to the satisfaction of the learned trial Court. Till such security is furnished by the defendant-respondent to the satisfaction of the learned trial Court, the landed property of his share, as mentioned in para 4 of the application (Annexure P-2) shall remain attached and he shall also not create any other charge thereon.

Resultantly, with the above said observations made and directions issued, instant revision petition stands allowed, however, with no order as to costs.

17th May, 2017
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(RAMESHWAR SINGH MALIK)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable :

Yes/No