IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No.8445 of 2015
Date of Decision: 31.10.2017

Ravinder Kumar ...Petitioner

Versus

The Punjab State Civil Supplies Corporation Limited (PUNSUP) and others ... Respondents

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

Present: Mr. Arihant Jain, Advocate
for the petitioner.

Mr. Deepak Sabharwal, Advocate
for respondents No.1 and 2.

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__RAJ MOHAN SINGH, J.__

[1]. Petitioner is aggrieved of order dated 28.10.2015 passed by District Judge, Sangrur in Execution Petition No.08 dated 17.04.2010, vide which the application under Order 21 Rule 37 CPC filed by the decree holders was allowed and warrant of arrest of the judgment debtor was issued.

[2]. Respondent Nos.1 and 2/decree holders filed the aforesaid execution petition on 17.04.2010 for recovery of the decreetal amount along with interest. Earlier Execution No.145 dated 19.07.1998 was got dismissed as withdrawn on 22.08.2009 as no tangible property of the judgment debtor was found in the knowledge of the decree holder. Liberty was

granted to file fresh execution.

[3]. During pendency of the execution, an application under Order 21 Rule 37 CPC was filed by the decree holders for issuance of warrants of arrest of the judgment debtor.

[4]. Learned counsel for the petitioner argued that the petitioner is neither owner nor in possession of any movable property to satisfy the decree in question and building of rice sheller had already been sold in the open auction. Civil Court decree for recovery was passed on 29.08.1996. After filing of the aforesaid civil suit, the sale deed was executed by the judgment debtor on 07.05.1996. Perusal of the aforesaid sale deed would show that the house was sold to the wife of the petitioner and possession was allegedly given to the purchaser on the spot. As per recital of the sale deed, the entire expenses were borne by the purchaser and total consideration of Rs.1,55,000/- was received from the purchaser.

[5]. The execution was filed by the decree holders for recovery of Rs.2,00,000/- along with interest. Judgment debtor tried to conceal his properties. An application under Order 21 Rule 37 CPC was filed by the decree holders to which judgment debtor filed a reply that he did not own any property. Necessary directions were sought to be issued to the judgment debtor for disclosing immovable and movable properties. Judgment

debtors came up with the plea that possession of the property which was already mortgaged with the bank had been taken by the bank and except for that property, the judgment debtors have no other property. Application was disposed of.

[6]. In application under Order 21 Rule 37 CPC, inquiry was conducted. During course of inquiry, statement of judgment debtor Ravinder Jain was recorded as AW 1, wherein he stated that he was neither owner nor in possession of any movable property to satisfy the decree. The land and building of rice sheller was in possession of the bank which had been sold in the open auction. He admitted in the cross examination that he had filed income tax returns for the financial year 2007-08 to 2011-12. He placed on record copies of the same as Exs. DH/1 to DH/5. Judgment debtor further admitted that the income shown from the aforesaid returns from 2007 to 2012 was in respect of his miscellaneous part time business activities in order to earn his livelihood. He further admitted that he is residing in the house of his son Aman Kumar, who had gone to Australia about 7-8 years ago and he has been residing in the said house from the last 10 years. His son was studying and judgment debtor has no source of income in India. Judgment debtor claimed that plot of house was ancestral property and the same was transferred in the name of his wife Sonika Jain by him

and by his three brothers. His wife further transferred the same in favour of Aman Kumar (son of Sonika Jain and the petitioner). No documents in the form of sale deeds were produced before the Court. On being asked about the sale consideration paid by his wife to the petitioner and his three brothers, the judgment debtor claimed that the said consideration was paid by his father-in-law, but he did not examine his father-in-law, nor produced any document showing the capacity of his father-in-law to pay the consideration of the house or such amount was ever gifted to the wife of the judgment debtor by her father. Judgment debtor further stated that his wife constructed the residential house over the plot purchased by her. Wife of the judgment debtor is a house wife having no independent source of income.

[7]. Learned counsel for the petitioner vehemently submitted that the sale deed was executed in favour of Sonika Jain on 07.05.1996. Since 1996, the plot in question is in the name of his wife. Madan Rice Mill had already been sold by the bank. In the absence of any means to pay the amount, the arrest and detention is claimed to be violative of Article 21 of the Constitution of India. Learned counsel contended that arrest and detention can only be resorted to as a last measure. Learned counsel relied upon ***Jolly George Varghese and***

another Vs. The Bank of Cochin, 1980 AIR (SC) 470.

[8]. I have heard learned counsel for the parties.

[9]. On the one hand, consideration was allegedly paid by father-in-law of the judgment debtor and on the other hand, the case set up by the petitioner is that the house was constructed by his wife Sonika Jain over the plot purchased by her from the petitioner/judgment debtor and his brothers. Judgment debtor did not produce any sale deed vide which the property was transferred in the name of his wife and then in the name of his son. Admittedly, petitioner is living in the house under the plea that his son is a student and living abroad and he is living in the house of his son from the last 10 years. Madan Rice Mill was owned by father of the judgment debtor which ultimately fall into his and his brothers share. The value of the property was about 25-30 lacs at the relevant time and now the value of the property is more than 203 crores. In the record, rice mill is still under their ownership. Judgment debtor further admitted that in the house, electric connection was obtained in the name of his wife, but bills were being paid by him.

[10]. In view of circumstances appearing on record, District Judge, Sangrur held that judgment debtor Ravinder Jain is possessed of sufficient means to pay the execution amount. Having not done so intentionally, the application under Order 21

Rule 37 CPC was allowed and warrants of arrest of judgment debtor Ravinder Jain was issued with a direction to bring him before the Court after his arrest. Decree holders were also directed to deposit the subsistence allowance of the judgment debtor for a period of one month.

[11]. The first execution was dismissed as withdrawn as the details of properties were not in the knowledge of the decree holder on 19.07.1998. With the liberty of the Court, second execution was filed on 17.04.2010 and the property in question was detected in the circumstances that the property was in existence at the time of filing of the suit, but the same was transferred during pendency of the suit on 07.05.1996 and the suit was ultimately decreed on 29.08.1996. Admittedly, the sale deed was executed during pendency of the suit. The execution of the sale deed in the circumstances as mentioned in the preceding para would show that the execution of sale deed was only with a view to avoid financial liability arising out of the decree. Perusal of the sale deed would show that the purchaser had made the payment of the consideration. While appearing as AW 1, petitioner/judgment debtor has admitted that the payment was made through his father-in-law. Having purchased the property, the wife had constructed the house and transferred the same to her son i.e. son of the petitioner as well. The source of

payment was conspicuously concealed by the petitioner. Petitioner is an income tax assessee as per his own admission i.e. evidence Exs.DH1 to DH5. The mode of execution of decree as per relevant coloumn in the proforma was after attachment or by detention of the judgment debtor in the civil prison.

[12]. In view of stand taken by the judgment debtor that he has no property as on date, the last measure for arrest and detention can be resorted to in view of the fact that the judgment debtor has resource to pay the amount in question and transfer of the plot/house vide sale deed dated 07.05.1996 was during pendency of the suit. The transfer was collusive and the stand taken by the judgment debtor in respect of passing of consideration is also on questionable note. Evidently, judgment debtor is living in the house. The alleged *bona fide* of the petitioner cannot be entertained as the transfer of the plot/house is proved to be hit by *lis pendens* and the same was intended to avoid financial liability arising out of Civil Court decree dated 29.08.1996. The precedent cited by learned counsel for the petitioner in ***Jolly George Varghese and another's case (supra)*** is not attracted in view of facts and circumstances of the case.

[13]. For the reasons recorded above, I am of the view that no indulgence can be granted in favour of the petitioner who is a

judgment debtor as he is trying to avoid the liability arising out of Civil Court decree dated 29.08.1996. Since the petitioner has avoided the execution so long, therefore, execution by way of arrest and detention would suffice to serve the purpose.

[14]. Finding no merit in the present revision petition, the same is accordingly dismissed.

(RAJ MOHAN SINGH)
JUDGE

31.10.2017
prince

Whether Reasoned/Speaking **Yes/No**

Whether Reportable **Yes/No**