

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

(210)

CWP-19120-2014

Decided on: March 17, 2017.

Gosha Singh alias Tarsem Singh

.... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE M.M.S. BEDI

Present: Mr. Surinder Gandhi, Advocate, for the petitioner.

Mr. Gaurav Jindal, Addl. A.G., Haryana.

Mr. Lal Singh Sandhu, Advocate, for respondent No.4.

M.M.S. BEDI, J (ORAL)

This judgment will dispose of a writ petition filed by the petitioner seeking the quashing of order dated 26.03.2014 Annexure P-6; order dated 26.04.2014 Annexure P-7 and order dated 27.05.2014 Annexure P-8, directing the petitioner to be kept in civil imprisonment for a period of one month on different occasions on account of having not paid the decretal amount pursuant to the money decree Annexure P-4.

Petitioner claims that he is a person belonging to schedule caste and is a poor person whereas respondent No.4 had filed a suit against him for recovery of Rs.10,000/- pleading in his plaint Annexure P-1 that on 25.05.2005 the petitioner (defendant) borrowed a sum of Rs.10,000/- from respondent No.4 (plaintiff) in cash and it was agreed by the petitioner (defendant) that he would work in the fields of respondent No.4 (plaintiff) for a period of one year on Theka and in lieu of the work in the fields, the petitioner (defendant) would get Theka from respondent No.4 (plaintiff) for one year to the tune of Rs.17,500/- along with two quintals of wheat. The petitioner (defendant) was to get first installment of Rs.10,000/-, second

installment of Rs.5000/- on the festival of Lohri and third installment of Rs.2500/- after the completion of the work and to this effect, the petitioner (defendant) had executed a writing on 25.05.2005.

The petitioner (defendant) filed written statement, Annexure P2 raising preliminary objections that the suit of respondent No.4 (plaintiff), was not maintainable.

The Civil Judge (Junior Division), Sirsa vide decree dated 14.03.2011, Annexure P-3, decreed the suit of respondent No.4 (plaintiff) for a sum of Rs.10,000/- vide judgment and decree Annexures P-3 and P-4. Execution application Annexure P-5 was filed by respondent No.4 (plaintiff). The Civil Judge (Junior Division), Sirsa passed order Annexure P-6 dated 26.03.2014 and another order dated 26.04.2014 Annexure P-7. The Executing Court passed another order dated 27.05.2014 Annexure P-8 ordering imprisonment of the petitioner on account of having not paid the decretal amount.

It is not disputed that the execution of the decree by arrest, in money decree, is permissible under Order 21 Rule 11 CPC. It is also not disputed that arrest is one of the modes of execution as per the provisions of Code of Civil Procedure.

The contention of learned counsel for the petitioner in this writ petition is that averments in the plaint of respondent No.4 (plaintiff) indicate that respondent No.4 (plaintiff) had committed offence under the Bonded Labour System (Abolition) Act, 1976 and the act of respondent No.4 (plaintiff) is punishable offence under Section 16 of the Bonded Labour System (Abolition) Act, 1976. Counsel for the petitioner submits that the decree Annexure P-4 is a nullity in view of the above said facts and as such, it was neither executable nor the petitioner could be sent in imprisonment.

It is not out of place to mention here that pursuant to the interim order passed by this Court, the petitioner has been released from the Jail.

I have considered the contentions of learned counsel for the petitioner regarding the application of the provisions of Bonded Labour System (Abolition) Act, 1976 and the other relevant provisions of law.

It is a fact that the petitioner had not raised any objection pertaining to the non-maintainability of the suit on account of the provisions of Bonded Labour System (Abolition) Act, 1976 in his written statement or at any other stage of the suit. Even if, the petitioner had not raised any such objection, he could have challenged the legality of the judgment and decree passed by the Civil Court by filing an appeal under Section 96 of the Code of Civil Procedure. The petitioner has also get an alternative remedy under Section 47 of the Code of Civil Procedure to object to the decree claiming that it was a nullity and was not executable in view of statutory provisions of any law. It is settled principle of law as held in **Saraswat Trading Agency Vs. Union of India and others, 2004 (3) AIR 492** that if a decree is nullity, objection can be raised to its execution taking the benefit of provisions of Section 47 of the CPC.

I have also carefully considered the contention of learned counsel for the petitioner regarding the commission of offence by respondent No.4 (plaintiff) under the Bonded Labour System (Abolition) Act, 1976. The provisions of Chapter VI of the said Act indicate that if any person has committed an offence under the Bonded Labour System (Abolition) Act, 1976, the offence is a cognizable offence as per Section 22 of the said Act and it is triable by Executive Magistrate who can be conferred with the powers of

Judicial Magistrate. Even under Section 12 of the said Act, it is the duty of the District Magistrate, or any other officer authorized by him, to take action as may be necessary, to eradicate the enforcement of forced labour.

Since the petitioner claims that he falls within the definition of “bonded labourer” under the Bonded Labour System (Abolition) Act, 1976 for which respondent No.4 was liable, it was open to the petitioner to raise the plea in the written statement or object to the execution of the decree could have filed objection under Section 47 of the CPC or to at least approach the District Magistrate concerned for an action against the petitioner but having not opted to take any such legal recourse or even a plea under the Bonded Labour System (Abolition) Act, 1976 till the money decree was passed against him, it is not open to the petitioner to challenge the execution proceedings in writ jurisdiction.

So far as the execution of the decree Annexure P-4 is concerned, it is always open to the petitioner to raise objection by challenging the legality of the decree in accordance with law.

No ground is made out for exercising the extraordinary writ jurisdiction under Articles 226/227 of the Constitution of India in the aforesaid circumstances and the writ petition is dismissed without prejudice to the other legal rights of the petitioner.

However, it is observed that arrest should be adopted as last resort for execution of the decree.

(M.M.S. BEDI)
JUDGE

March 17, 2017

harsha

Whether speaking/reasoned:
Whether reportable:

Yes/No
Yes/No