

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 1526 of 2015 (O/M)
Date of decision : 8.5.2018

Janak Raj

..... Petitioner

Versus

M/s Sardari Mal Des Raj, Commission Agents and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. Sandeep Jasuja, Advocate,
for petitioner.

Mr. K.S. Chahal, Advocate,
for respondent No. 1.

1. Whether the Reporters of local newspaper may be allowed to see the judgment ?
2. To be referred to the Reporter or not.
3. Whether the judgment should be reported in the digest ?

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KULDIP SINGH J. (ORAL)

Impugned in present revision is order dated 9.2.2015 (Annexure-P-5), passed by learned Additional Civil Judge (Senior Division), Jalalabad, vide which an application under Order XXI Rule 37 CPC, 1908, filed by decreeholder in execution proceedings for recovery of Rs. 8,37,915.08, conditional warrants of arrest of JD No. 2 Janak Raj were issued.

I have heard learned counsels for parties and have also carefully gone through file.

It comes out that amount involved in execution is more than Rs. 8,37,915.08. Interim order dated 29.10.2013 shows that warrants of attachment of property of JD were issued. As per order dated 21.2.2014, attachment was done and case was adjourned to 10.4.2014 for filing application under Order XXI Rule 66 CPC, 1908. On said date, in place of

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filing application under Order XXI Rule 66 CPC, 1908, decreeholder moved an application under Order XXI Rule 37 CPC, 1908 for arrest of JD, on which impugned order is passed.

I am of the view that impugned order is wholly illegal. Sum involved is Rs. 8,37,915.08. Once property of JD has been attached and order is passed for filing application under Order XXI Rule 66 CPC, 1908, the said procedure should have been followed to sell property and recover amount. The remedy of arrest and detention of JD is extra ordinary remedies and cannot be resorted to at first instance without exhausting other remedy available to DH is to recover decretal amount. It being so, impugned order is set aside. However, decreeholder is at liberty to proceed against attached property. Consequently, revision is allowed. Since main case has been allowed, therefore, pending application, if any, also stands disposed of.

(KULDIP SINGH)
JUDGE

8.5.2018
sjks

Whether speaking / reasoned : Yes / No

Whether Reportable : Yes / No