

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

CR No.1854 of 2017 (O&M)

Date of decision: 17th January, 2018

Shankar Lal

... Petitioner

Versus

Dutta & another

... Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Naveen Bawa, Advocate for the petitioner.

Mr. Suveer Sheokand, Advocate for the respondents.

FATEH DEEP SINGH, J. (ORAL)

Upon hearing learned counsel for the petitioner and the respondents and on perusal of the records in this Civil Revision. It is undisputed stand of the two sides that a suit for mandatory injunction etc. was preferred by Shankar Lal against the defendants Dutta and Arun Kumar for the return of a machine make 'Fischer' Measuring Head X-ray XAN 220 along with the relief of permanent injunction restraining the defendants, their agents etc. from using the said machine of plaintiff illegally and forcibly and it is through judgment dated 19.01.2016 the Court of learned Civil Judge (Junior Division), Ludhiana has decreed the suit of the plaintiff, the operative part of which is hereby reproduced to lay emphasis:

*“... .. 6. In the light of above discussion, this Court
is of the view that the plaintiff has duly proved his case*

through the unchallenged evidence produced on record by him and therefore, the present suit is hereby exparte decreed with cost. The defendants are directed to return the Machine Fischer Measuring Head X-Ray XAN 220 to the plaintiff. The defendants are further restrained from alienating, transferring and using the said machine. Decree-sheet prepared accordingly. File be consigned to the record-room.”

The sole grievance raised by learned counsel for the petitioner is that the executing Court in spite of specific directions having been issued during the execution of the judgment and decree in question, has passed orders dated 09.02.2017, the operative part whereof reads as under:

“After hearing the arguments, this Court is of the view that the present application has been moved by the decree holder under order 21 rule 32 CPC. However, bare perusal of order 21 rule 32 CPC shows that there is no provision for providing police help in a case of execution of a decree of injunction mentioned in the same. Accordingly, this Court is of the view that the present application is not maintainable and the same is hereby dismissed.

However, since the judgment debtors have failed to obey the decree passed by this Court on 19.01.2016, the same can be executed by attachment of property belonging to judgment debtor. Accordingly, the decree holder is directed to file list of properties belonging to judgment debtors within 5 days and thereafter, Ahlmad is directed to issue warrants of attachment against the properties of the judgment debtors for 10.03.2017.”

From a perusal of the same, it is apparent that instead of satisfying the judgment and decree dated 19.01.2016, learned Court below on the mere premise to satisfy the plea had ordered attachment of the property belonging to the judgment debtors contrary to the directions issued in the judgment in question which, both the counsel do not dispute, has since then attained finality. Thus, the Court below has sought to exceed the exercise of its jurisdiction beyond the judgment and decree resulting in not only delay in execution of the same but also great hardship to the decree holder. In the light of these peculiar circumstances, it would be necessitated in the interests of justice to issue directions to the learned executing Court to ensure due compliance of the judgment and decree dated 19.01.2016 (Annexure P1) in true spirit of the same in accordance with law by ordering detention of the judgment debtors in civil prison for enforcement of the decree rather than attachment of judgment debtors' properties which would have brought about expeditious and prompt results else attachment process will cause undue delay much to the distress of the decree holder. However, to safeguard the interests of the judgment debtors, as it is an ex-parte judgment and decree, it would be necessitated for any future legal recourse out of that dispute that might arise during the proceedings between the parties, that release of the machine shall be subject to the decree holders' furnishing

adequate bank guarantee/surety of immovable property to the satisfaction of the executing Court.

The petition is allowed and disposed off in those terms.

(FATEH DEEP SINGH)
JUDGE

January 17, 2018

rps

Whether speaking/reasoned	Yes/No
Whether reportable	Yes/No