

IN THE HIGH Court OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 2244 of 2016

Date of decision: 09.02.2018

M/s. Sundaram Finance Ltd.

...Petitioner

V/s.

Mohd. Mubeen and another

...Respondents

CORAM: HON'BLE MR. JUSTICE KULDIP SINGH.

Present: Mr. Nitin Thathai, Advocate for the petitioner.

None for the respondents.

KULDIP SINGH, J. (Oral)

As per office report, respondent No. 1 did not meet at the time of service and his wife refused to receive the summons. Respondent No. 2 was duly served but he has not come present.

Heard.

The impugned in the present civil revision is the order dated 20.01.2016 (Annexure P-5) passed by learned District Judge, Mewat vide which the Court held that the hypothecated property is in the ownership of the decree holder and therefore the same cannot be sold. Further the Court also held that J.Ds. cannot be put behind the bars for not being able to pay the decretal amount. Therefore, the execution petition was dismissed with liberty to the decree holder to file fresh execution petition if he is able to trace the property of J.Ds No. 1 and 2.

After hearing learned counsel for the petitioner, I am of the view that impugned order is liable to be set aside. Even if, the property i.e. vehicle is hypothecated with the decree holder, the decree holder can take

possession of the said vehicle and with liberty to sell the same to recover the decretal amount. Further, the decree holder can always press that JDs have some other property and they are intentionally not disclosing the same. Therefore, execution petition cannot be dismissed by stating that as and whenever the decree holder finds the property of J.Ds, he can move execution appeal. I am of the view that in this case, the Court is required to issue notice to J.Ds as to why they should not be put behind bars for not paying the decretal amount and after hearing the J.Ds, the order is to be passed. Here in place of issuing conditional warrants of arrest to show cause as to why they should not be put behind bar, the impugned order was passed. The impugned order is consequently set aside. The executing Court is directed to proceed with the attachment and sale of hypothecated property and also issue show cause notice to J.Ds No. 1 and 2 as to why they should not be imprisoned for not paying the decretal amount. J.Ds be also directed to disclose the properties owned by them by way of filing affidavit. Both the parties are directed to appear before the executing Court on 01.03.2018. The trial Court is directed to expedite the disposal of execution application.

Civil Revision is allowed.

(KULDIP SINGH)
JUDGE

09.02.2018

Divyanshi

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No