

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

**CR No.3185 of 2018 (O&M)
Date of decision : May 14, 2018**

Dr. Joseph K. Masih

..... Petitioner

Versus

Micromation Pvt. Ltd. Company and another Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. K.K. Saini, Advocate for the petitioner.

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 ?

KULDIP SINGH J. (ORAL)

Impugned in the present revision petition is the order dated 20.01.2018 (Annexure P-8) passed by learned Addl. Civil Judge (Sr. Divn.), S.A.S. Nagar, Mohali, vide which the objections filed by the present petitioner were dismissed. Also impugned the order dated 19.04.2018 (Annexure P-11) passed by the learned Addl. Civil Judge (Sr. Divn.), S.A.S. Nagar, Mohali, vide which the conditional warrants of arrest of the present petitioner were issued.

It comes out that a suit for recovery of ₹28,840/- along with 9% per annum interest and with future interest @ 6% per annum was decreed on 31.01.2013 against defendants, namely, Sumeer Joseph and Dr. Joseph K. Masih. The said decree has become final. In the execution proceeding when the decree was sought to be executed against J.D. No.2, Dr. Joseph K. Masih, he filed objections before the Executing Court, stating that he is not liable to pay the decretal amount. He claimed that he only stood surety for the loan against J.D. No.1, who was employed by the decree holder and had

not paid salary to J.D. No.1. Therefore, it is personal liability of J.D. No.1. J.D. No.2 as outsider has nothing do with the litigation. J.D. No.1 is the Principal Debtor and J.D. No.2 is only the guarantor. Therefore, he is not legally bound to make the payment.

It was further stated that no property of J.D. No.2 can be attached. The Executing Court held that J.D. No.2 is liable to pay the decretal amount, in terms of the decree. Therefore, the objections were dismissed.

Heard.

Before this Court, it is contended that since J.D. No.2-petitioner was only the guarantor, therefore, he is not liable to pay the decretal amount. It is also contended that decree holder should first make efforts to recover the amount from J.D. No.1.

I am of the view that the decree was passed against both the J.Ds. Therefore, their liability is joint and several. Being the guarantor, J.D. No.2 has rendered himself liable to pay the decretal amount. Only remedy available with him is to get reimbursement from J.D. No.1.

It being so, it cannot be said that the guarantor is not liable to pay the decretal amount and that it should be recovered only from J.D. No.1. Therefore, there is no illegality or infirmity in the impugned order. The objections are frivolous and were rightly dismissed. Therefore, the impugned order dated 20.01.2018 (Annexure P-8) is affirmed.

In this case, the amount involved is ₹28,840/-, which with interest has now come to nearly ₹70,000/-.

Learned counsel for J.D. No.2-petitioner was asked as to whether J.D. No.2 is ready to pay the decretal amount?

Learned counsel for the J.D. No.2-petitioner sought time and after some time informed the Court that J.D. No.2-petitioner is not willing to pay the decretal amount.

The learned Addl. Civil Judge (Sr. Divn.), S.A.S. Nagar, Mohali, has issued the conditional warrants of arrest of J.D. No.2.

I am of the view that in place of issuing conditional warrants, efforts should be first made to recover the decretal amount from the property of J.D. No.2, and only if it is found that he is intentionally not paying the same and it cannot be recovered from his property, only then such extraordinary remedy of issuance of conditional warrants of arrest should be resorted.

It being so, the second impugned order dated 19.04.2018 (Annexure P-11) is set aside and the Executing Court is directed to first proceed against the property of J.D. No.2 and also of J.D. No.1 to recover the decretal amount and thereafter, act in accordance with law.

As such, the present petition is partly allowed and partly dismissed.

(KULDIP SINGH)
JUDGE

May 14, 2018

sarita

Whether speaking / reasoned Yes

Whether Reportable: No