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IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR-4183-2015 (O&M)

Date of decision : 22.02.2018

Balbir Singh

... Petitioner(s)

Versus

Rajinder Singh

... Respondent(s)

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

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

Mr.Raman Goklaney, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The petitioner-judgment debtor is aggrieved of the impugned order dated 04.12.2014 (Annexure P-5) ordering arrest in the execution of the judgment and decree dated 26.11.2012 for a sum of ₹4,00,000/- with interest @ 12% per annum.

Learned counsel appearing on behalf of the petitioner-judgment debtor submits that no doubt, the aforementioned judgment and decree had attained finality. The property was attached, as indicated in order dated 30.07.2013 (Annexure P-3), thereafter the case was adjourned for filing the application under Order 21 Rule 66 CPC, but without resorting to the aforementioned procedure, the respondent/decree-holder straight away moved an application under Order 21 Rule 37 CPC, which is not a correct appreciation of law, even no notice as per the provisions of Order 21 Rule

37 CPC had been served upon the petitioner/judgment-debtor, thus, the impugned order, under challenge suffered from illegality and perversity and urges this Court for setting aside the same.

Learned counsel for the respondent/decreed-holder submits that the petitioner/judgment-debtor is adopting all possible delaying tactics in execution of the decree. The technicalities should not come in the way. The impugned order, under challenge, is perfectly legal, justified and do not call for interference, thus, urges this Court for dismissal of the present revision petition.

I have heard the learned counsel for the parties and appraised the paper book and of the view that there is force and merit in the submissions of Mr. Sandeep Jasuja.

It would be apt to reproduce the zimini orders from 16.04.2013 to 03.07.2014, which reads thus:-

“Order dated 16.04.2013

Present: Sh. Raman Doomra, Advocate for the D.H.

Requisite report made by the Ahlmad concerned perused.

Let warrant of attachment against the property owned by the J.D., on furnishing of list of property and the requisite process fee, be issued for 30.07.2013.

Dated 16.04.2013

Sd-

(Kapil Dev Singla) PCS

A.C.J. (SD), Jalalabad (W)

Order dated 30.07.2013

Present: Sh. Raman Doomra, Advocate for the D.H.

Warrant of attachment received back duly executed.

On request, case is adjourned to 19.10.2013 for

filing of application u/o 21 Rule 66 CPC.

Dated 30.07.2013

Sd-

(Kapil Dev Singla) PCS

A.C.J. (SD), Jalalabad (W)

Order dated 19.10.2013

Present: Sh. G.K. Jindal, Advocate for the D.H.

Sh. G.K. Jindal, Advocate filed power of attorney on behalf of D.H.

Warrant of attachment received back duly executed.

On request, case is adjourned to 07.02.2014 for filing of application u/o 21 Rule 66 CPC.

Dated 19.10.2013

Sd-

(Kapil Dev Singla) PCS

A.C.J. (SD), Jalalabad (W)

Order dated 07.02.2014

Present: Sh. Raman Doomra, Advocate for the D.H.

The D.H. moved an application u/o 21 Rule 37 CPC.

Let a notice of the aforesaid application to the J.D. Be issued for dated 29.05.2014.

Dated 07.02.2014

Sd-

(Kapil Dev Singla) PCS

A.C.J. (SD), Jalalabad (W)

Order dated 29.05.2014

Present: Sh. G.K. Jindal, Advocate for the D.H.

Sh. Satpal Singh Kamboj, Advocate has filed power of attorney on behalf of J.D.

To come up on 03.07.2014 for filing reply to the application u/o 21 Rule 37 CPC, if any.

Dated 29.05.2014

Sd-

(Kapil Dev Singla) PCS

A.C.J. (SD), Jalalabad (W)

Order dated 03.07.2014

Present: Sh. G.K. Jindal, Advocate for the D.H.

Sh. Satpal Singh Kamboj, Advocate for the J.D.

Reply to the application u/o 21 Rule 37 CPC not filed today.

To come up on 04.09.2014 for filing reply to the application u/o 21 Rule 37 CPC, if any.

Dated 03.07.2014

Sd-

(Kapil Dev Singla) PCS

A.C.J. (SD), Jalalabad (W)”

From the perusal of zimini order dated 19.10.2013, the respondent/decreed-holder was called upon to file an application, after attachment order, under Order 21 Rule 66 CPC, but without exhausting that remedy, straight away moved an application under Order 21 Rule 37 CPC, which is not a correct appreciation of the provisions of the CPC. It has not surfaced that what has happened to the attachment order with regard to the property of the petitioner/judgment-debtor. For realization of the relief, the first remedy for the decree-holder is to realize the outstanding amount from the sale of the property, if some amount is left out or there is no property either moveable or immovable, the provisions of Order 21 Rule 37 CPC can be resorted, but not in the manner and mode as indicated above. The trial Court had remained oblivious of the aforementioned fact, thus, there is abdication, much less, illegality and perversity.

For the foregoing reasons, the impugned order, under challenge, is not sustainable in the eyes of law and the same is hereby set aside.

The respondent-decree holder shall be at liberty to avail remedy as indicated above, much less, in accordance with law.

Resultantly, the present revision petition is allowed.

22.02.2018
Yogesh Sharma

(AMIT RAWAL)
JUDGE

	✓
Whether speaking/reasoned	Yes/ No
	✓
Whether Reportable	Yes/ No