

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 574 of 2018 (O/M)
Date of decision : 30.1.2018

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Hakam Singh Petitioner
Versus
Jodh Singh and others Respondents

CORAM : HON'BLE MR. JUSTICE KULDIP SINGH

Present:- Mr. H.P.S. Ghuman, Advocate, for 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 ?
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KULDIP SINGH J. (ORAL)

Heard.

The facts of case are that in a money suit, filed under Order 37 of Civil Procedure Code, 1908, present petitioner Hakam Singh stood the surety for defendant No. 1/respondent No. 5 Darshan Singh to the tune of Rs. 15,00,000/-. Among other conditions of surety bond, condition No. 2 is as under :-

'2. That in case the suit of the plaintiff is decreed and if the defendant is held to pay the said sum to the plaintiff and the defendant fails to make the payment of the aforesaid amount, to the plaintiff, then I shall be responsible to make the payment to the tune of Rs. 1500000/- and in case, I fail to make the payment then the surety amount be recovered from my below noted property, which shall bear the first charge.'

The suit was ultimately decreed. In the execution proceedings, when decree was sought to be executed against property of Hakam Singh, surety, he filed an objection petition before the Executing Court, stating that

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JD-defendant owns valuable land in village Achhal and in State of Uttar Pradesh. Therefore, it was prayed that property of JD-defendant should be first attached. It was further stated that property of surety can be sold in auction for execution of decree only if it remain unsatisfied from the property owned by JD-defendant. The said objection petition was dismissed on 16.11.2016, vide impugned order Annexure-P-4. The said order was not challenged before the superior Court. Thereafter, again another objection petition was filed by present petitioner Hakam Singh, stating that he had promised to pay the decretal amount in case JD-defendant defaults in making payment. It was further stated that decree holder is a clever person and he got attached the land of objector instead of making any effort to recover the amount from JD-defendant Darshan Singh. It was further stated in fresh objections that in the indemnity bond, it is mentioned that if defendant is held to pay the said sum to the plaintiff and if he fails to make the payment, then surety shall be responsible to make the payment of Rs. 15,00,000/-. Therefore, it was prayed that decree must be firstly enforced against JD-defendant No. 1. Said objections were also dismissed on 2.12.2017, vide impugned order Annexure-P-3.

I have heard the learned counsel for petitioner and have also carefully gone through the file.

The first impugned order dated 16.11.2016 (Annexure-P-4) shows that prayer in the said objection petition was that the Court should first proceed against property of JD-defendant No. 1 and not against property of surety. The said objection petition was dismissed by passing a speaking order. The said order was not challenged before any superior Court at that time and has been challenged now before this Court after a lapse of more

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than one year. In the second objection petition, the prayer is same, but additional grounds were taken that decree holder is a clever persons and that as per the condition of surety bond, he (surety) was to make payment only if JD-defendant No. 1 fails to make the payment. The condition reproduced above in the surety bond shows that there was no condition that decree holder will proceed against property of JD-defendant No. 1 and in the event, if no recovery could be made from his property, he (decree holder) will be at liberty to proceed against property of surety. The condition was that if 'defendant fails to make the payment of said amount', then surety shall be responsible to make the payment of Rs. 15,00,000/-. Apparently, defendant has not made the payment and surety has also not made the payment. Therefore, the Court has decided to proceed against their properties. There is nothing illegal in the impugned orders. It is not the law that even if such condition is there, decree holder should first make the efforts to recover the decretal amount being property of JD-defendant and after exhausting all the remedies against defendant-JD, he should proceed against surety. The purpose of obtaining surety before granting leave to defend in an application under Order XXXVII CPC, 1908, is that the surety should be readily available to make the payment, if defendant fails to pay the decretal amount. In this case, even surety is not making the payment, therefore, his property has been attached. There is no illegality or infirmity in the impugned orders. Therefore, instant revision is dismissed.

(KULDIP SINGH)
JUDGE

30.1.2018
sjks

Whether speaking / reasoned	:	Yes / No
Whether Reportable	:	Yes / No