

116.

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

CIVIL REVISION-681-2018 (O&M)
Date of decision:02.02.2018

SUKHWINDER SINGH AND ANOTHER

... Petitioners

versus

M/S ROSHAN LAL HARBANS SINGH COMMISSION AGENT AND
ANOTHER

.... Respondents

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA

Present: Mr. Sanjay Verma, Advocate,
for the petitioners.

HARI PAL VERMA, J.

Petitioners-judgment debtors have filed the present revision petition under Article 227 of the Constitution of India impugning the order dated 19.01.2018 (Annexure P-5) passed by learned Additional Civil Judge (Senior Division), Kurukshetra whereby the application filed by the respondents-decree holders for attachment of property of petitioners-judgment debtors for the decreed amount, was allowed and accordingly, attachment order of the land in question was issued. The Executing Court further ordered to secure the presence of the petitioners-judgment debtors by way of conditional warrants of arrest under intimation of SHO Police Station concerned.

Briefly stated, the respondents-plaintiffs had filed a suit for recovery of ₹18,15,000/- including interest calculated upto 13.02.2006. The recovery is based on bahi entries of the plaintiffs. However, as the plaintiffs have failed to prove that they are entitled to recover the aforesaid amount

from the petitioners-defendants, the suit was dismissed vide judgment and decree dated 27.08.2001. However, on appeal having been preferred by the respondents-plaintiffs, the First Appellate Court decreed the suit of the plaintiffs and held the plaintiffs entitled to recover a sum of ₹18,15,000/- with interest vide judgment and decree dated 26.02.2014. The petitioners-defendants-judgment debtors have filed a Regular Second Appeal No.3003 of 2014 against the judgment and decree dated 26.02.2014 which is stated to be pending before this Court. In order to get the decree executed, the respondents-plaintiffs filed an execution petition for execution of decree dated 26.02.2014 passed by learned Additional District Judge, Kurukshetra. While the execution petition was pending, respondents-decree holders filed an application for attachment of property of petitioners-judgment debtors for recovery of decreed amount. The decree holders have calculated that the judgment debtors have to pay an amount of ₹33,77,916/- along with future interest w.e.f. 01.10.2014 and as the judgment debtors have not paid the said amount, attachment of property is necessary for recovery of the amount. The detail of properties has been reflected in the application.

Against the judgment and decree passed by learned Lower Appellate Court, the petitioners-defendants-judgment debtors filed RSA No.3003 of 2014 titled as “Sukhwinder Singh & another Versus M/s Roshan Lal Harbans Singh and others” and on 30.06.2014, this Court has passed the following order:-

“Heard learned counsel for the parties.

The following questions of law arise for consideration of this Court in the present appeal:

(i) Whether the findings of the lower Appellate Court regarding the liability of the appellants/defendants to pay in absence of any evidence showing calculation of *amount of ₹11,02,002/- are completely untenable and misdirected as the same are based upon illegal, erroneous*

and conjectural grounds?

(ii) Whether the acknowledgment and Bahi entries not stamped are inadmissible in evidence under Section 34 of Evidence Act?

(iii) Whether the suit of the respondents/plaintiffs was barred under the provisions of Section 3 and 4 of Punjab Regulation of Accounts Act, 1930?

Admitted.

To be listed within six months, in any case, on or before 17.12.2014.

In the meanwhile, execution of the judgment and decree dated 26.02.2014 shall remain stayed subject to the condition that the appellants shall deposit 20% of the decretal amount as it stands today and for the balance, they would furnish adequate security to the satisfaction of the executing Court. Needless to mention that if the said amount is deposited by the appellants within the stipulated period, the decree holder would be entitled to claim the same by making an appropriate application before the executing Court.

Learned counsel for the appellants submits that the needful would be done within four weeks from today.

Registry is directed to requisition the records of the trial Court.”

The aforesaid order statedly has not been complied and faced with the situation, respondents-decree holders moved an application i.e. CM No.8709-C of 2014 in RSA No.3003 of 2014 wherein the judgments-debtors were granted two weeks more time to comply the order 30.06.2014 (reproduced hereinabove), failing which, decree holder was free to get the decree executed. The petitioners-judgment debtors though have moved another application i.e. CM No.10092-C of 2014 in RSA No.3003 of 2014 seeking extension of time by another two months to comply the order dated 30.06.2014, however, vide order dated 29.08.2014, the said prayer was also declined, which led to the conclusion that there is no stay in RSA. The decree holder pressed the application dated 06.05.2015 for attachment of land of judgment debtors as mentioned in Jamabandis for the year 2008-09 and accordingly, attachment of warrant of land in question of judgment debtors was issued for 01.02.2018 and the application filed by the

till the decision of RSA, was dismissed. Despite having a decree passed in favour of respondents-decree holders and the same not being complied with despite there being no stay in RSA No.3003 of 2014 and further noticing the fact that the execution of the money decree was being delayed, the presence of the judgment debtors was ordered to be secured for the date fixed by way of conditional warrants of arrest under intimation to SHO Police Station concerned.

Learned counsel for the petitioners has argued that the impugned order dated 19.01.2018 is not sustainable. The Executing Court has issued conditional warrants of arrest of the petitioners without having complied with the provision of Order 21 Rule 37 CPC wherein it has been clearly mentioned that before forming an opinion on issuance of warrants of arrest, a show cause notice was required to be served. But in the present case without adhering to the said provision, conditional warrants of arrest were issued. He has relied upon a judgment of this Court rendered in **Karnail Singh Versus Shagan Singh and others-2016(2) PLR 159** to contend that before forming an opinion of issuance of warrants of arrest, show cause notice is required to be served. The Executing Court has to enforce a warrant of arrest through its officer and no direction can be issued to the police officers to arrest and produce the petitioners before an Executing Court.

I have heard learned counsel for the petitioners and perused the paper book.

There is no dispute that the suit filed by the respondents-plaintiffs-decree holders was decreed by the Lower Appellate Court vide judgment and decree dated 26.02.2014. The said decree and judgment was

challenged by the petitioners-judgment debtors by way of RSA No.3003 of 2014 and vide order dated 30.06.2014, this Court had stayed the execution of judgment and decree dated 26.02.2014, however, subject to condition that the judgment debtors shall deposit 20% of the decretal amount as it stands on 30.06.2014 and in case the said amount is not deposited within the stipulated period, the decree holders would be entitled to claim the same by making an appropriate application before the Executing Court. Thereafter, the counsel for the petitioners-judgment debtors had requested for several adjournments so as to verify the compliance, if any, made by the judgment debtors. But it came to the notice of the Executing Court that the petitioners-judgment debtors had not deposited the amount as referred in the order dated 30.06.2014 in RSA No.3003 of 2014. Even on 06.08.2014 in CM No.8709-C of 2014 wherein the petitioners-judgment debtors sought further extension of time, this Court had granted another two weeks time to comply the order dated 30.06.2014 and it was made clear that in case, the petitioners-judgment debtors failed to comply the order dated 30.06.2014, the decree holder was free to get the decree executed. Again an attempt was made by the petitioners-judgment debtors by moving CM No.10092-C of 2014 to get further extension of time of two months to comply the order dated 30.06.2014, however, the same was declined. Thus, the plea of the petitioners that no show cause notice was issued before issuing the conditional warrants of arrest to secure the presence of judgment debtors, the repeated extensions shows that adequate notice has been given to the petitioners, but in order to frustrate the execution of a decree as obtained by the respondents-decree holders, the petitioners-judgment debtors is trying to delay the execution by seeking one extension after the other and it is in

these circumstances, the Executing Court while noticing the fact that the execution of money decree is being delayed, has ordered to secure the presence of the judgment debtors, by way of conditional warrants of arrest. The petitioners have not even shown their bona fide by depositing 20% of the decretal amount as ordered by this Court in RSA No.3003 of 2014 on 30.06.2014. Therefore, this Court does not find any merit in the present revision petition and the same is, accordingly, dismissed.

(HARI PAL VERMA)
JUDGE

02.02.2018
sanjeev

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