

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

**CR No.135 of 2019 (O&M)
Date of Decision: 08.05.2019**

**Karnail Singh
Versus
Karnail Singh**

**....Petitioner

....Respondent**

CORAM: *HON'BLE MR. JUSTICE RAJ MOHAN SINGH*

Present: Mr. Jitesh Sharma, Advocate for
Mr. Rajesh Narang, Advocate
for the petitioner.

RAJ MOHAN SINGH, J.(Oral)

[1]. As per office report, service is complete. Though Mr. Kamal Narula, Advocate appears on behalf of the respondent, but he pleads no instructions from his client.

[2]. A civil suit for recovery was decreed against the respondent. CR No.5629 of 2017 titled Karnail Singh Vs. Karnail Singh was filed in which notice of motion was issued on 23.08.2017 on the basis of statement made by learned counsel for the respondent that the respondent would deposit the decretal amount in two installments and the first installment shall be paid by him till 03.10.2017. On this statement, notice of motion was issued and operation of the impugned order as assailed in that revision petition was stayed. On 04.07.2018,

learned counsel for the petitioner in the aforesaid revision petition sought to withdraw the revision petition. This Court deemed it appropriate to enquire about the factum of making payment by the petitioner on the adjourned date. Ultimately, the case was taken up on 03.08.2018. None appeared on behalf of the petitioner in CR No.5629 of 2017 i.e. respondent herein. Revision petition was dismissed with cost(s) of Rs.50,000/- after noticing some incriminating facts. The amount of cost(s) was to be deposited in the District Legal Services Authority, Fazilka within one month from 03.08.2018, failing which the amount was to be recovered as arrears of land revenue.

[3]. Thereafter, an application under Order 21 Rule 41 CPC was filed by the respondent before the executing Court. Vide the impugned order, executing Court has allowed the same by observing that the judgment debtor can only be arrested and detained if he has means to pay the decretal amount and thereafter, refuse to pay the same.

[4]. Executing Court has not appreciated the factum of making statement by the judgment debtor before the High Court showing his willingness to pay the decretal amount along with interest in two installments for which indulgence was granted by the High Court and interim order was passed. Respondent has misused the process of the Court for which he was required to

be dealt with in accordance with law. The observations made by the executing Court are wholly untenable. Statement made before the High Court showing willingness of the judgment debtor to pay the decretal amount along with interest was on the basis of instructions given by the judgment debtor after ascertaining the means to pay the amount in question.

[5]. For the reasons recorded hereinabove, the impugned order is set aside. This revision petition is accordingly accepted. Executing Court shall proceed to deal with the case in accordance with law.

08.05.2019

Prince

(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/speaking
Whether reportable

Yes/No
Yes/No