

In the High Court of Punjab and Haryana at Chandigarh

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CR No.3681 of 2018 (O&M)

Date of decision: 1.4.2019

SANT KUMAR

.....petitioner

Versus

ARJAN SINGH

.....respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr.K.R.Dhawan, Advocate,
for the petitioner.

Mr.R.L.Batta, Sr. Advocate with
Mr.J.S.Saggi, Advocate
the respondent.

RAJ MOHAN SINGH, J.(oral)

This revision petition has been filed by the petitioner challenging order dated 27.3.2018 passed by the Civil Judge (Jr.Divn.), Chandigarh, vide which objections filed by the respondent/ judgment debtor were accepted.

The grievance of the petitioner is that the petitioner is a decree holder. He filed an execution for alternate relief of recovery of ₹ 3,50,000/-. The execution was filed for realisation of the aforesaid amount by way of attachment of the property of the judgment debtor and also for recovery of the same by means of auctioning the property in accordance with law. Initially the objections were filed by the judgment debtor under Section 47

CPC on the ground that an amount of ₹ 1 lac was paid to the

decree holder towards full and final settlement of his claim on 5.9.2014 by the son of the judgment debtor, namely, Baljit Singh. The objections were contested by the petitioner/ decree holder by denying any meeting dated 5.9.2014 with the judgment debtor as well as his son Baljit Singh. The amended objections were filed by the judgment debtor, thereby introducing names of witnesses, namely, R.R.Verma and Rakesh Verma in whose presence, the amount of ₹ 1 lac was handed over to the decree holder.

The issues were framed on 30.8.2016 and thereafter, examination-in-chief of the judgment debtor was recorded by the executing Court and the execution filed by the decree holder was rendered infructuous by accepting the objections. The grievance of the petitioner is that the petitioner had no opportunity to cross-examine the witnesses in the context of any payment allegedly received by the petitioner.

After hearing learned counsel for the petitioner, I am of the view that triable issues are involved in this case.

Three issues were framed by the executing Court on 30.8.2016. Issue No.1 was to the effect that “Whether the JD has paid the entire decretal amount to the decree holder” ? The onus to prove the aforesaid issued was on the objector. The second issue was that “Whether objections to the execution are maintainable ? OPO

In view of the aforesaid issues, the executing Court was legally under obligation to give opportunity to the petitioner to cross-examine the witnesses of the judgment debtor in accordance with law. By rendering the execution infructuous only after examination-in-chief of the judgment debtor is illegal. Parties would be at liberty to adduce such evidence before the executing Court in order to prove their respective cases.

Petition stands disposed of accordingly.

Both the parties are directed to appear before the executing Court on 24.4.2019.

April 01, 2019
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(RAJ MOHAN SINGH)
JUDGE

Whether reasoned/Speaking

Yes/No

Whether reportable

Yes/No