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

CR-5324-2016 (O&M)

Date of decision : 23.01.2019

Gurmail Singh

... Petitioner

Versus

Gulzar Singh

... Respondent

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present: Mr. B.S. Jattana, Advocate
for the petitioner.

Ms. Avin Kaur Sandhu, Advocate
for the respondent.

AMIT RAWAL, J. (ORAL)

The present revision petition is directed against the impugned order dated 13.07.2016 (Annexure P-1), whereby in the execution petition filed by the respondent-decree holder, the Executing Court has issued DRO in favour of the respondent-decree holder.

Learned counsel for the petitioner submitted that the manner and mode, in which, the Executing Court has proceeded to issue DRO for attaching the amount lying depositing in the bank in a decree obtained by Rameshwar Dutt against the petitioner, is totally alien to the provisions of Order 21 of the Code of Civil Procedure.

Learned counsel for the decree-holder/respondent submitted that the whole purpose reflects that the petitioner is a defaulter and many

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persons have filed the suit and third party objections were also filed at his instance in order to thwart the claim of decree holder, thus, urges this Court for dismissal of the present revision petition.

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

It would be apt to reproduce the relevant portion of the order dated 13.07.2016, which reads as under:-

"Case is fixed for consideration on objections. Perusal of the file shows that in the present execution application attachment of the property of the judgment debtor was effected and thereafter, third party objections were filed. Subsequent to the filing of third party objections, Ld. counsel for decree holder moved an application suggesting alternative mode of recovery and as such, the third party objections need not be decided. As per the application moved by Ld. counsel for decree holder suggesting an alternative mode of recovery, an amount of ₹6,59,032/-, stands deposited in the name of judgment debtor Gurmail Singh to the extent of ½ half share in file titled as Rameshwar Dutt Gurmail Singh (file No.71 dated 13.11.2013) pending in the court of undersigned. Let the report of Nazir be called regarding the above said deposit in the name of judgment debtor, after.

File taken up again after lunch. As report of Nazir, as per challan, an amount of ₹ 6,59,032/- was deposited in the bank. File titled as Rameshwar Dutt Vs Gurmail Singh (file No.71 dated 13.11.2013) summoned and perused. Original challan seen. As per challan, an amount of ₹6,59,032/- has been desisted by Rameshwar Dutt in the said case. As such, DRO be issued in favour of decree holder Gulzar Singh to the extent of ₹3,29,516/-. Report be furnished on 15.07.2016."

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From the tenor and mode of the order, extracted above, the trial Court cannot issue DRO in favour of the decree holder/respondent to the extent of ₹ 3,29,516/- out of the amount deposited in the case titled as "*Rameshwar Dutt Vs Gurmail Singh*" and has deviated its focus instead of dealing with third party objections. The impugned order, under challenge, thus, suffers from illegality and does not stand on the touchstone of reasonability as well. The same is hereby set aside. The trial Court is directed to proceed with the matter, in accordance with law.

With the aforesaid observations, the present revision petition stands disposed of.

23.01.2019
Yogesh Sharma

(AMIT RAWAL)
JUDGE

✓

Whether speaking/reasoned **Yes/ No**

✓

Whether Reportable **Yes/ No**