IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Date of Decision: 29.01.2019

1. CR No.5583 of 2018(O&M)

Dilbagh Rai Bagga **.....Petitioner**

Versus

Rajesh Kumar **.....Respondent**

2. CR No.5588 of 2018(O&M)

Dilbagh Rai Bagga **.....Petitioner**

Versus

Harash Bala **.....Respondent**

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

Present: Mr. Karan Bhardwaj, Advocate for
Mr. J.S. Mohri, Advocate
for the petitioner(s) in both the cases.

Mr. M.S. Bedi, Advocate
for the respondent(s) in both the cases.

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RAJ MOHAN SINGH, J.(Oral)

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[1]. Vide this common order, CR No.5583 of 2018 titled Dilbag Rai Bagga Vs. Rajesh Kumar and CR No.5588 of 2018 titled Dilbag Rai Bagga Vs. Harash Bala are being disposed of. Facts are being taken from CR No.5583 of 2018.

[2]. Petitioner has assailed the order dated 09.05.2018 passed by the executing Court vide which petitioner was proceeded against *ex parte* in the execution and for setting aside the order vide which arrest warrants of the petitioner were issued.

[3]. Perusal of the record would show that a suit for recovery filed by the plaintiff/decree holder against the defendant/petitioner was decreed vide judgment and decree dated 26.05.2015. Plaintiff was held entitled for recovery of Rs.2,50,000/- along with interest @ 6% per annum on the principal amount of Rs.2,50,000/- from the date of execution of pronote and receipt dated 31.10.2007 till the date of filing of the suit. Future interest @ 4% per annum was awarded on the decretal amount till its final realisation. The counter claim filed by the defendant was dismissed. The aforesaid decree was passed after due contest by the parties.

[4]. In the execution, the Court issued notice to the judgment debtor/petitioner and the notice was received back unexecuted. Fresh notice was issued for 10.02.2016. Perusal of

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subsequent orders would show that warrants of attachment could not be issued for want of list of property. The case was adjourned for the said purpose for 23.08.2016. List of property of the judgment debtor could not be filed and the case was further adjourned to 07.02.2017 vide order dated 15.12.2016. The position remained the same on 07.02.2017 and 14.03.2017. In due course, the executing Court observed that the execution is for money decree and therefore, the application filed by the decree holder for issuance of conditional warrants of arrest of the judgment debtor was allowed vide order dated 18.10.2017. Thereafter, executing Court proceeded on that premise on 20.11.2017, 03.01.2018, 26.02.2018 and 03.04.2018. Warrants of arrest issued against the judgment debtor were not executed on 03.04.2018 and non-bailable warrants of arrest of judgment debtor were issued for 11.04.2018.

[5]. An application for setting aside the *ex parte* proceedings and recalling the order of conditional warrants under Order 9 Rule 13 read with Section 151 CPC was filed by the judgment debtor/petitioner. The case was adjourned to 02.05.2018 for filing reply to the aforesaid application.

[6]. Perusal of the order dated 11.04.2018 would show that judgment debtor was absent. On 02.05.2018, judgment debtor was shown to be absent, but reply was not filed by the decree

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holder and the case was adjourned to 09.05.2018 for filing reply. Non-bailable warrants of arrest of the judgment debtor could not be executed and therefore, fresh non-bailable warrants of arrest were issued vide order dated 22.05.2018 for 31.05.2018. On 31.05.2018, position remained the same and fresh non-bailable warrants were issued for 04.07.2018 and again for 18.07.2018 and 24.07.2018. Non-bailable warrants could not be executed even on 31.07.2018.

[7]. Petitioner preferred the present revision petition on the premise that in a case of money decree, mode of execution was attachment and sale of property. Arrest of the judgment debtor should be the last resort.

[8]. At the time of issuance of notice of motion on 27.08.2018 in CR No.5583 of 2018, following order was passed:-

> *"Learned counsel for the petitioner contends that for execution of a money decree, the process of attachment and sale was issued by the executing court in view of orders dated 25.5.2016, 15.12.2016, 7.2.2017 and 14.3.2017. Thereafter, order dated 18.10.2017 was passed whereby application for issuance of conditional warrants of arrest of JD was allowed and warrants of arrest were issued. Ultimately, the petitioner was proceeded against ex parte on 9.5.2018 and non bailable warrants have been issued.*
>
> *Learned counsel further contends that firstly*

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resort has to be made to the execution of money decree by attaching and auctioning the property in accordance with law. The arrest and detention are the last resort.

Notice of motion for 22.10.2018.

Till the next date of hearing, warrants of arrest may not be executed against the petitioner."

[9]. Learned counsel for the respondent/decree holder submitted that money decree was passed after due contest. No stay has been granted in appeal preferred by the judgment debtor. Even in the execution, judgment debtor was proceeded against *ex parte*.

[10]. In the application for setting aside the *ex parte* proceedings and recalling of order of conditional warrants under Order 9 Rule 13 read with Section 151 CPC, no date of filing was mentioned by the judgment debtor. Perusal of the record would show that though the application was filed in the Court as per order dated 11.04.2018 passed by the executing Court and the case was adjourned to 02.05.2018 for filing reply to the aforesaid application, but judgment debtor was shown to be absent. Similar was the position even on 02.05.2018 when reply was not filed by the decree holder and the case was adjourned to 09.05.2018 for filing reply to the aforesaid application.

[11]. During course of arguments, learned counsel for the respondent/decree holder also pointed out that the decree was

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passed against the judgment debtor who was resident of B-10 MCH-155 Mohalla Kamalpur, Hoshiarpur presently residing at FF 43, Saraswati Vihar, Tehsil and District Jalandhar. In the appeal filed by the judgment debtor, the same address was shown in the memo of appeal, but in the application for setting aside the *ex parte* proceedings and recalling the order of conditional warrants under Order 9 Rule 13 read with Section 151 CPC, judgment debtor pleaded that he is resident of 69 ground floor, Kapurthala in para No.3 of the application. He did not mention his complete address, nor any date of filing of such application was mentioned by the judgment debtor.

[12]. In case of money decree, there cannot be any unconditional stay, particularly when no stay has been granted by the Appellate Court. There may be some irregularity in prosecution of execution, but at the same time, factum of money decree cannot be lost sight of. It would be appropriate to direct the petitioner/judgment debtor to appear before the executing Court and pursue his remedies after executing bank guarantee for the due amount arising out of decree dated 26.05.2015. Subject to aforesaid condition, non-bailable warrants of the petitioner/judgment debtor shall remain in abeyance. In case, the aforesaid condition is not fulfilled by the petitioner/judgment debtor, the executing Court shall proceed to implement the

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impugned action in accordance with law.

[13]. Both the revision petitions are accordingly disposed of.

29.01.2019 **(RAJ MOHAN SINGH)**
Prince **JUDGE**

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

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