

IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

CR No. 6874 of 2018

Date of Decision: 27.03.2019

M/s Ganesh Rice Mills

.....Petitioner

Vs.

Binny Aggarwal

.....Respondent

CORAM: HON'BLE MR. JUSTICE AMOL RATTAN SINGH

Present: Mr. Tribhawan Singla, Advocate,
for the petitioner.

Mr. Vipul Aggarwal, Advocate,
for the respondent.

AMOL RATTAN SINGH, J. (ORAL)

In the present petition, the order of the learned execution Court [Civil Judge (Senior Division)], Barnala, dated 21.07.2018, has been challenged, by which conditional warrants have been ordered to be issued, with the line contained in the order to that effect stating as follows:-

“Therefore, the objection raised by JD is without merit and same is hereby declined and conditional warrant of JD be issued for 17.08.2018.”

The background to the matter is that the respondent had instituted a suit seeking a recovery of Rs. 2,93,902/- against the petitioner firm, which suit was admittedly decreed in favour of the respondent herein by the trial Court on 12.10.2009, with that judgment and decree having become final.

The respondent herein having instituted execution proceedings, particulars of a property belonging to the petitioner firm were supplied to the

execution court, by sale of which the decree was to be satisfied.

However, subsequently, it was discovered that the said property was subject matter of another *lis*.

The petitioner not having disclosed any other property owned by it which could be sold to satisfy the decree issued in favour of the respondent herein, the aforesaid order has been passed by the execution court, with bailable warrants ordered to be issued for the production of the proprietor of the petitioner firm, in order for him to be produced in Court. (The impugned order obviously has been passed in terms of Rule 38 of Order 21 of the Code of Civil Procedure.

When notice of motion had been issued in this petition on 17.10.2018, the following order had been passed:-

“Learned counsel for the petitioner points to the application filed by the petitioner-judgment debtor, disclosing another property owned by the proprietor of the petitioner firm, i.e. by Jiwan Kumar.

On specific query, learned counsel submits that he has taken instructions that though it is shown to be the residential house of the proprietor, he is not living therein and therefore would not be taking any plea in terms of Section 60(1)(ccc) of the CPC.

Notice of motion be issued to the respondent, returnable on 19.11.2018.

Dasti process only.

In the meanwhile, warrants ordered to be issued shall not be executed, till the next date of hearing only and specifically.”

Thereafter, on 21.02.2019, Mr. Aggarwal, learned counsel appearing for the respondent/decree-holder, had submitted that the property that the petitioner now wishes to attach to satisfy the decree in favour of the respondent,

actually already stands attached in some other proceedings and secondly, it is a property in which the brother of the proprietor of the firm is residing, the brother being one Ashok Kumar.

Learned counsel for the petitioner had therefore been asked to file an affidavit, in terms of the undertaking given by him on 17.10.2018, to the effect that no family member or other person would resist the sale of the said property.

That not having been done even after that, today learned counsel submits that the petitioner retracts from the undertaking given by him on 17.10.2018.

Consequently, I see no ground whatsoever to entertain this petition, which is therefore dismissed.

March 27, 2019
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(AMOL RATTAN SINGH)
JUDGE

Whether speaking/reasoned
Whether Reportable

Yes
No.