

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 107

Case No. : C. R. No. 8035 of 2018

Date of Decision : March 26, 2019

M/s Windal Auto Pvt. Ltd. and another Petitioners

vs.

M/s RMS Engineering Works and others Respondents

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Simranjeet Singh, Advocate
and Ms. Harmanpreet Kaur, Advocate
for the petitioners.

Mr. Sarvjit Singh Khurana, Advocate
for respondent no.1.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 04.10.2018 passed by the Additional Civil Judge (Senior Division), Faridabad (for short – the Executing Court), through which conditional warrants of arrest have been issued against the petitioners.

The facts, in brief, which would be required to be noticed for adjudicating upon the present petition, are that respondent no. 1 filed a suit seeking therein recovery of an amount of Rs.1,18,10,572/-, along with interest, from the petitioners as also respondents no. 2 to 4. The Trial Court decreed the suit on 03.05.2018. Against such decree the petitioners and respondents no. 2 to 4 preferred an appeal which was dismissed on

02.02.2019. In the meanwhile, respondent no. 1 sought execution of the aforesaid decree dated 03.05.2018 passed by the Trial Court. The petitioners filed objections before the Executing Court which were dismissed on 09.08.2018. Through the same order, the Executing Court issued warrants of attachment of the property of the Judgment Debtors (including the petitioners). On 14.09.2018, the Executing Court recorded that though the decree was for over Rs. 1 crore but the bank accounts of the Judgment Debtors which had been attached, showed only a balance of Rs.1560.18. Finding that the Judgment Debtors, which include the petitioners, were intentionally avoiding to satisfy the decree, on an application filed by respondent no. 1 under Order 21 Rule 37 CPC, the Trial Court issued notice to the Judgment Debtors calling upon them to appear before the Court on 04.10.2018 and show cause as to why they should not be committed to civil prison. On 04.10.2018, the Judgment Debtors filed reply to the aforesaid notice but chose not to appear before the Court. Their reply to the show cause notice was considered and rejected by the Executing Court. Since the petitioners failed to pay the decretal amount and in spite of specific directions, did not bother to appear before the Executing Court, conditional warrants for their arrest were issued. It is this order which is under challenge in the present proceedings.

Learned counsel for the parties have been heard.

It is not disputed that a decree was passed in favour of respondent no. 1 entitling him to recover from the petitioners and respondents no. 2 to 4 an amount of Rs.1,18,10,572/-. Since the Judgment

Debtors (including the petitioners) did not pay the decretal amount, respondent no. 1 knocked the doors of the Executing Court, which issued notice to the petitioners, on receipt of which, the petitioners filed their objections. Such objections were rejected by the Executing Court through its order dated 09.08.2018. Admittedly, such order was not challenged by the petitioners. After the dismissal of the petitioners' objections, the Executing Court ordered the attachment of the bank accounts of the petitioners which shockingly showed therein only a balance of Rs.1560.18. The Executing Court was then rightly convinced that the Judgment Debtors (including the petitioners) were intentionally avoiding to satisfy the decree passed against them and therefore, on an application filed by respondent no. 1, under Order 21 Rule 37 CPC, issued notice to the Judgment Debtors, which included the petitioners, to appear before it on 04.10.2018 to show cause as to why they be not committed to civil imprisonment. Though the petitioners filed reply to the aforesaid notice, but in utter disregard to the directions given by the Executing Court, they chose not to appear before it. The reply to the show cause notice issued to the petitioners under Order 21 Rule 37 CPC was considered and rejected by the Executing Court. Resultantly, as also for the reason that in spite of specific orders, the petitioners had failed to appear before the Executing Court, conditional warrants for their arrest were issued. However, it was directed that in case the decretal amount was paid by the Judgment Debtors, they would not be arrested.

It is not disputed that in reply to the show cause notice issued

to the petitioners under Order 21 Rule 37 CPC, they had raised the same issues as raised by them earlier in their objections and since such issues had already been considered and rejected by the Executing Court through its order dated 09.08.2018, which had not been challenged by the petitioners, their reply to the show cause notice issued to them under Order 21 Rule 37 CPC was rightly rejected.

In view of the above, no illegality or irregularity is found in the afore-referred procedure adopted by the Executing Court.

Learned counsel for the petitioners has placed reliance on a judgment of this Court in **Parkash Chand vs. Punjab National Bank – 1998 (2) PLR 808** to say that since before issuance of warrants of arrest, the Executing Court did not record any satisfaction that the petitioners were likely to abscond, the impugned order was liable to be set aside.

Parkash Chand's case (*supra*) would not support the case of the petitioners simply for the reason that on 14.09.2018, after finding that the petitioners were intentionally not obeying the decree passed against them, the Executing Court not only issued to the petitioners a show cause notice under Order 21 Rule 37 CPC but also required them to appear before it. Though the petitioners filed a reply to the show cause notice, thus acknowledging the receipt of the notice, in total disregard of the specific directions issued by the Executing Court, they failed to appear before it. No application was filed by them seeking any exemption from appearance before the Executing Court. They also did not challenge the order dated 14.09.2018 before any superior court.

In view of the above facts and in particular, the conduct of the petitioners for having failed to appear before the Executing Court in spite of specific directions issued by it, the recourse adopted by the Executing Court with regard to the issuance of conditional warrants for their arrest cannot be faulted with.

Dismissed.

(DEEPAK SIBAL)
JUDGE

March 26, 2019
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<i>Whether speaking/reasoned ?</i>	<i>Yes/No.</i>
<i>Whether reportable ?</i>	<i>Yes/No.</i>