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

**Civil Revision No.985 of 2019
Date of Decision: 02.07.2019**

Jaspal Singh

.....Petitioner

Vs

Allahabad Bank

....Respondent

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

Present: Mr. S.K. Aneja, Advocate
for the petitioner.

Mr. Sumit Batra, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 28.05.2018 passed by the Civil Judge (Sr. Divn.) Fazilka vide which the application filed by the respondent-decree holder under Order 21 Rule 37 CPC was allowed and conditional warrant of arrest of the petitioner/judgment debtor was issued in terms of Order 21 Rule 37 CPC.

[2]. Respondent Bank is a nationalized Bank and is a secured creditor in the present case. Suit of the plaintiff/respondent was decreed for Rs.3,31,001/- against the defendant/judgment-debtor along with interest @ 12.75% per

annum with yearly rests till the passing of final decree and thereafter at the same rate till the actual realization of the decretal amount.

[3]. Execution petition was filed in which mode of execution was suggested by way of issuance of warrants for attachment and sale of moveable and immovable property including mortgaged property i.e. land of judgment debtor or by way of arrest of the judgment debtor under Order 21 Rule 37 CPC. After calculating the principal decretal amount, interest @ 12.75% and costs of litigation, total amount recoverable was found to be Rs.5,91,787/- for which execution was filed by the plaintiff/decreed holder.

[4]. The first execution filed by the decreed holder was got dismissed as withdrawn on the assurance of the judgment debtor to pay the decretal amount in near future. The execution was withdrawn vide order dated 15.07.2017. Thereafter decreed holder filed second execution petition. In the second execution petition, the judgment debtor was proceeded against ex parte on 19.02.2018. The judgment debtor was served by munadi, but despite service he did not appear and consequently was proceeded against ex parte. Since the judgment debtor was proceeded against ex parte, therefore, no reply to the application under Order 21 Rule 37 CPC was filed and the case

was adjourned to 25.04.2018 for arguments vide order dated 16.03.2018.

[5]. The land of the petitioner/judgment debtor has already been attached. One attempt has already been made by the decree holder to auction the same, but in view of the situation of the land and the circumstances prevailing at the spot, the secured creditor/Bank could not sell the same as no willing buyer has come forward. In the aforesaid context, keeping in view the conduct of the petitioner, the executing Court passed the conditional order by observing that the judgment debtor is a man of means having sufficient properties, therefore, issuance of conditional warrants would suffice to serve the purpose. The conditional warrants have been issued for making payment by the petitioner. In case, petitioner pays the amount in question, he can save himself from the rigor of arrest and *vice versa*.

[6]. Keeping in view the proceedings on record particularly when the judgment debtor has already been proceeded against ex parte and the Court was left with no option, but to pass conditional order.

[7]. This Court vide order dated 01.05.2019 provided one opportunity to the petitioner to have further instructions in the context of his readiness and willingness to satisfy the claim of the decree holder in pursuance of conditional warrants issued

against him. Today, learned counsel for the petitioner has shown unwillingness of the petitioner to satisfy the claim of the decree holder. Learned counsel simply stated that the conditional warrants cannot be executed as the land of the petitioner has already been attached.

[8]. The conduct of the petitioner is deplorable inasmuch as that he knows that by virtue of situation of the land and the circumstances prevailing at the spot, the decree holder cannot put the land to auction and by virtue of stay of execution of warrants of arrest granted by this Court, he can perpetuate and delay the recovery proceedings at his whims and fancies.

[9]. In exercise of supervisory jurisdiction under Article 227 of the Constitution of India, this Court is sanguine of the fact that though arrest is the last resort in case of execution, when solvent securities and mode of satisfaction are available, but in the instant case in the first execution petition, assurance was given by the petitioner/judgment debtor. In the event of not abiding the commitment, second execution was filed by the decree holder in which the judgment debtor/petitioner has already been proceeded against ex parte.

[10]. The aforesaid facts are the instances which have created differentia and makes the present case distinct from the general application of law in execution where first resort is to

make the execution of decree by way of attachment and sale of property and arrest should be made as a last resort. Keeping in view the attempt made by the decree holder to auction the property in question and having failed therein, this Court is satisfied that issuance of conditional warrants is the only appropriate remedy available with the Court to enforce the decree in question. Issuance of conditional warrants cannot be held to be illegal and the petitioner would be at liberty to pay of the amount in question in order to prevent his arrest.

[11]. In view of above, I do not find any error of jurisdiction in the impugned order passed by the executing Court. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

July 02, 2019

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Whether speaking/reasoned

Whether reportable

(RAJ MOHAN SINGH)
JUDGE

Yes/No

Yes/No