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

CR No. 2646 of 2019

Date of Decision: 30.05.2019

Devinder Singh Jolly and another

-Petitioners

Vs

Madan Lal and others

-Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Dr. Naresh Kaushik, Advocate,
for the petitioners.

Mr. Samir Rathaur, Advocate,
for respondent No.1.

Ms. Priyanka Dalal, Advocate,
for respondent No.4.

RAJ MOHAN SINGH, J. (ORAL)

1. Petitioner has assailed the order dated 01.04.2019 passed by the Executing Court i.e. Civil Judge (Senior Division), UT Chandigarh whereby the application filed by the petitioner under Order 60 (1) (ccc) CPC for exemption of the house from attachment and for re-calling the order dated 11.08.2016 was dismissed.

2. On 24.04.2019, at the time of issuance of notice of motion, following order was passed:-

“Petitioner No.1 states that he is ready to

pay the 50% of the decretal/due amount as on date within one month to the satisfaction of the executing Court. The house in question is the only dwelling unit of the petitioners. In a suit for specific performance, an alternative decree of recovery was passed and in the execution of the said decree, house in question has been attached and is sought to be sold. Qua the remaining 50% of the amount, petitioner submits that he would pay the same in some short equitable installments.

Notice of motion for 30.05.2019.

In the meantime, the executing Court shall adjourn the execution proceedings for a month in order to enable the petitioner to pay 50% of the due amount subject to the satisfaction of the executing Court.

Till the next date of hearing, the property in question be not sold.

In the event of any default in making payment by the petitioner, the interim protection shall stand vacated.”

3. The aforesaid order was passed on the basis of

readiness and willingness on behalf of petitioner No.1 to pay 50% of the decretal amount within one month to the satisfaction of the Executing Court.

4. Petitioners further claimed that the house in question is the only living unit of the petitioners. Alternative decree for recovery of the money was passed in a suit for specific performance and in execution of said decree, the house in question was attached and was sought to be auctioned.

5. In pursuance of order dated 24.04.2019, an amount of Rs.7,15,000/- has been deposited by petitioner No.1 in the Executing Court vide demand draft No.507234 dated 22.05.2019 towards part payment i.e. 50% of the decretal amount without prejudice to his right in the litigation.

6. Since, there will be no litigation left with the parties after settlement of issue, therefore, the rider placed by petitioner No.1 while depositing the aforesaid amount is of no consequence.

7. Since, this Court has devised the mechanism to pay remaining 50% of the amount by petitioner No.1 in short equitable installments, therefore, for this exercise, it would be just and expedient to direct the Executing Court to fix six equitable installments in six months for the deposit of remaining amount of Rs.7,15,000/-.

8. The Executing Court shall release the amount so deposited in favour of the decree holder after proper identification and as per norms.

9. Learned counsel for the petitioners on instructions from petitioner No.1 undertakes to pay the remaining amount of 50% as per schedule to be fixed by the Executing Court after due notice to the parties. If there is some default in making the payment of installments on the due date, the decree holder shall be entitled to recover the aforesaid amount along with interest. If the default still persists at the instance of the petitioners, then the decree holder shall be entitled to resort to auction of the dwelling unit of the petitioners in accordance with law.

10. Necessary undertaking shall be furnished by the petitioners to the satisfaction of the Executing Court on the date already fixed before it.

11. Disposed of.

30.05.2019
Jyoti Yadav

(RAJ MOHAN SINGH)
JUDGE

1. Whether speaking/reasoned : Yes/No
2. Whether reportable : Yes/No