

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

(1)

CRM-M-24401 of 2019.

Decided on:- May 27, 2019.

Davinder Singh.

.....Petitioner.

Versus

Tanya.

.....Respondent.

(2)

CRM-M-24404 of 2019.

Davinder Singh.

.....Petitioner.

Versus

Nirmal Kaur.

.....Respondent.

CORAM: HON'BLE MR. JUSTICE HARI PAL VERMA.

Present:- Mr. Vikram Singh Chauhan, Advocate
for the petitioner.

HARI PAL VERMA, J.

This order shall dispose of the aforementioned two petitions as the same have been filed by petitioner Davinder Singh against his daughter Tanya and wife Nirmal Kaur under Section 482 Cr.P.C. seeking quashing of the orders dated 29.04.2019 passed by learned Principal Judge, Family Court, Panchkula in execution applications i.e. *CRM No.3 of 2019* and *CRM No.45 of 2019*, whereby conditional warrant have been issued against the petitioner

for not depositing the subsistence/maintenance allowance awarded by the Court in favour of the respondents.

However, for convenience and clarity, detailed order is being passed in **CRM-M-24401 of 2019**.

Learned counsel for the petitioner has argued that in view of the order dated 19.03.2018 passed by learned Additional Sessions Judge, Panchkula (Annexure P-3), auction of the property of the petitioner was to be conducted not less than the Collector rate prevailing in village Tipra, Tehsil Kalka, District Panchkula which is about Rs.3 lakh per Biswa. But despite that, auction of the property of the petitioner was conducted at a throwaway price i.e. less than the Collector rate and no explanation has come forward from the auctioning authority as to why they ignored the order dated 19.03.2018 passed by learned Additional Sessions Judge, Panchkula.

He has further argued that while passing the impugned order dated 29.04.2019, the family Court has failed to appreciate the fact that property of the petitioner which has already been attached by the Civil Judge (Junior Division), Kalka in execution proceedings and if that property is sold at correct price, which is at least the Collector rate of the same, is sufficient to discharge the whole burden on the petitioner.

I have heard learned counsel for the petitioner.

The impugned order dated 29.04.2019 passed by the family Court reads as under:

“Today the case was fixed for depositing the decretal amount whereas photocopies of certain documents filed on behalf of the JD to the effect that the property which has been

attached is under the process of sale, in connected case titled CRM 45/2019 Nirmal Vs. Davinder. It has been submitted by the counsel for the DH, these documents do not serve any purpose because on the one hand in this Court they make submission that sale proceedings are likely to conclude but at the same time they filed objections where the said proceedings are pending. It has also been submitted on behalf of DH that the JD himself has appeared in the court and made a statement that his movable property was auctioned by Revenue Officer and he shall deposit the decreetal amount, but the JD is only trying to delay the matter. Moreover conditional warrant be issued by this Court for which subsistence allowance has been deposited by the DH. It has prayed that since the JD has been avoiding from making the payment of decreetal amount on one pretexts or other and hence, conditional warrants be issued against him. Keeping in view that the execution petition is pending since long and the payment of decreetal amount has not been made despite the statement made by the JD himself in the court on 30.03.2019, in connected case titled CRM 44/2019 Tania Vs. Davinder. In the interest of justice, it shall be appropriate to continue with the proceedings that were initiated by the Court earlier on 18.03.2019 for issuance of conditional warrants against the JD for 21.05.2019, subject to the condition if the JD would pay the amount due against him then he should be released on the spot, on payment of subsistence allowance.

Ahlmad is directed to check that subsistence allowance as mentioned by the DH has already been deposited and then, the conditional warrants of JD be issued for 21.05.2019.”

The impugned order dated 29.04.2019 passed by the family Court shows that the petitioner was required to deposit the decreetal amount.

The argument of learned counsel for the petitioner that the auction of the

property has to be made not less than the Collector rate, cannot be accepted as this issue is not to be adjudicated by the family Court. Once there is an order passed against the petitioner directing him to pay the awarded maintenance, it is the legal obligation of the petitioner to pay the same.

The impugned order further shows that the petitioner himself had appeared before the family Court on 30.03.2019 and made a statement that he shall deposit the decretal amount, but still the same has not been paid, which shows that the petitioner is avoiding payment of decretal amount on one way or the other.

Therefore, this Court finds that there is no merit in the present petitions and the same are, accordingly, dismissed.

Photocopy of this order be placed on the file of other connected case.

May 27, 2019
Yag Dutt

(HARI PAL VERMA)
JUDGE

Whether speaking/reasoned: Yes

Whether Reportable: No