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

**Civil Revision No.5043 of 2019 (O&M)
Date of Decision: 17.09.2019**

Satpal

.....Petitioner

Vs

Baljeet Singh and others

...Respondents

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

Present: Mr. Rakesh Chopra, Advocate
for the petitioner.

Ms. Prabhjot Kaur, Advocate
for respondents No.1 to 3.

RAJ MOHAN SINGH, J.

[1]. Petitioner has preferred this revision petition against the order dated 16.05.2017 passed by the Addl. Civil Judge (Sr. Divn.) Fatehgarh Sahib, vide which the application filed by the decree holders/respondents No.1 to 3 under Order 21 Rule 37 was allowed and thereafter the application filed by the petitioner for review of the said order was dismissed by the Addl. Civil Judge (Sr. Divn.), Fatehgarh Sahib vide order dated 23.05.2019.

[2]. The case was heard by this Court on 29.08.2019 and thereafter order was kept reserved. Vide order dated 11.09.2019 the case was ordered to be set down for re-hearing in order to have some clarity of facts.

[3]. On a pointed query as to the name of the vendor of sale deed dated 13.02.2014 in favour of defendant No.9 Kaushal Kumar, learned counsel for the petitioner informed the Court that Ranbir Kaur and Ramanpreet Singh were the vendors of defendant No.9 Kaushal Kumar. Out of land measuring 69 sq. yards, Kaushal Kumar purchased half share and remaining half share was purchased by Sukhjeet and Manpreet Singh to the extent of 1/4th share each.

[4]. Brief facts of case are that a civil suit for recovery of Rs.1,21,180/- was decreed along with interest against the petitioner, who was arrayed as proprietor/Manager of defendant No.1-firm and was arrayed as defendant No.2 in-person. Defendants No.3 to 9 were also partners in the firm. In the execution of the decree, the decree holders had no knowledge about the property of judgment debtors No.1 to 3 and that is why the application was filed for execution of decree by arrest and detention of the judgment debtors in civil imprisonment.

[5]. In the application filed by the decree holders, it has been pleaded that in order to frustrate the decree, judgment debtors No.1 to 3 have sold their properties and have transferred amount in the Bank and other financial institutions in the name of their near relatives to the knowledge of the decree holders. The decree holders at present had no knowledge about

the properties of judgment debtors No.1 to 3 which can be furnished for attachment.

[6]. Prior thereto, on the objection filed by defendant No.9 Kaushal Kumar, his property was released on the ground that he had purchased some property vide sale deed dated 13.02.2014 and the same was not charged with the lien of decree in question. Thereafter decree holders filed another site plan showing residential house of the petitioner. The executing Court vide order dated 19.08.2016 observed that under Section 60 CPC, the residential house is exempted from the attachment and the warrants of attachment against the said property cannot be issued. The decree holders were directed to furnish fresh list of properties for issuing fresh warrants of attachment. That is how the application under Order 21 Rule 37 CPC came to be filed by the decree holders.

[7]. The executing Court vide the impugned order has accepted the application thereby issuing conditional warrants and the judgment-debtors were given time to pay the entire decretal amount along with interest and costs, failing which they be detailed in civil imprisonment on furnishing subsistence allowance by the decree holders for one month. The application for recalling or review of the aforesaid order was also dismissed by the Addl. Civil Judge (Sr. Divn.) Fatehgarh Sahib on

23.05.2019.

[8]. I have considered the submissions made by learned counsel for the parties.

[9]. It is true that problem of decree holder starts from the date on which he/she obtains the decree. In execution of decree, decree holder may face multi-prolonged/dimensional problems in the form of objections from different quarters. In case of decree for small amount, the decree holder even may have to spend more than the decretal amount in fighting the litigation in the corridors of different Courts. Disgruntled judgment debtor may even escape under the garb of technicalities.

[10]. In the reply to the application under Order 21 Rule 37 CPC, the petitioner has taken a stand that he has no means to pay the amount in question. In the absence of any *mala fides* and dishonesty on the part of the judgment debtor, the ratio of **Jolly Goerge Varghese and another vs. The Bank of Cochin, 1980 AIR (SC) 360** can be applied. In order to ascertain *mala fides* and dishonesty on the part of the judgment debtor only assertion made in the application and denial thereof are not sufficient, unless and until a positive finding to that effect is recorded by the executing Court.

[11]. The executing Court is required to record a positive finding as there is no possible way to satisfy the decree except by way of arrest. The satisfaction has to be recorded as per requirements of Section 51 CPC. Merely because it appeared to the Court that there is no possibility to satisfy the Court is not equivalent to the satisfaction required under Section 51 CPC and in terms of Order 21 Rule 37 CPC. In order to ascertain means of satisfying the decree by the judgment debtor, the decree holder can also resort to Order 21 Rule 41 CPC, wherein the judgment debtor can be examined in respect of his property.

[12]. In view of aforesaid legal position, I deem it appropriate to direct the executing Court to record positive finding to the effect that there is no possibility of satisfying the decree by the judgment debtor/petitioner except by way of his arrest. In the meanwhile, the decree holders would also be at liberty to invoke provisions of Order 21 Rule 41 CPC in accordance with law. The impugned orders are set aside to that extent and the revision petition is disposed of.

[13]. This order shall not be construed to be an opinion on merits of the case. Only the executing Court is required to do the compliance in terms of recording satisfaction in view of material on record that there is no resources available with the judgment debtor to satisfy the decree. After recording such

satisfaction the executing Court shall pass fresh order in
accordance with law.

September 17, 2019

(RAJ MOHAN SINGH)
JUDGE

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Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No