

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH.

Sr. No. 108

Case No. : C. R. No. 6176 of 2019

Date of Decision : September 27, 2019

M/s Ganesh Rice Mills, Barnala Petitioner

vs.

Binny Aggarwal Respondent

CORAM : HON'BLE MR. JUSTICE DEEPAK SIBAL.

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Present : Mr. Aakash Singla, Advocate
for the petitioner.

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DEEPAK SIBAL, J. (Oral) :

The present petition is directed against the order dated 21.09.2019 passed by the Civil Judge (Senior Division), Barnala (for short – the Executing Court), through which non-bailable warrants for the petitioner's arrest and warrants of attachment of his immovable/movable property have been issued.

The noticeable facts, in brief, are that the respondent's recovery suit, filed by her against the petitioner, was decreed on 08.12.2010. Admittedly, that decree attained finality and presently, as per such decree, an amount of Rs.4,34,000/- (approximately) is payable by the petitioner to the respondent.

The petitioner did not satisfy the decree passed against him.

Therefore, the respondent approached the Executing Court where a list of

properties of the Proprietor of the petitioner (referred hereinafter as – the petitioner), which included land and four shops, was filed. Later, it was revealed that litigation qua the petitioner's shops was pending with one Sukhdev Singh and under interim orders passed by successive Courts, these shops could not be alienated.

When even after the passage of nearly 08 years, the petitioner did not satisfy the aforesaid decree and the properties of his which had been filed before the Executing Court, were found to be under litigation wherein their alienation had been stayed, the respondent filed an application under Order 21 Rule 37 CPC seeking therein to detain the petitioner in civil prison. In response to such application, it was submitted on behalf of the petitioner that he was a pauper having no source of income. Faced with the above situation, through order dated 21.07.2018, the Executing Court issued conditional warrants for the petitioner's arrest. The petitioner challenged the afore-referred order of the Executing Court before this Court through **CR No. 6874 of 2018 – M/s Ganesh Rice Mills vs. Binny Aggarwal** which petition came up for preliminary hearing before this Court on 17.10.2018, on which date, learned counsel for the petitioner submitted that the petitioner owned a residential house which could be sold to satisfy the decree and in the sale thereof, he would not raise any objection in terms of Section 60(1)(ccc) CPC . Relying on the petitioner's aforesaid statement, this Court issued notice to the respondent and in the meanwhile, stayed his arrest. Thereafter, it was found that the petitioner's house was attached in some other proceedings and was possessed by his brother. In the light of

such revelation, when the petitioner was asked to file an affidavit to the effect that no family member or any other person would resist the sale of his house, he retracted from the undertaking given by him on 17.10.2018, leading to the dismissal of his petition.

Thereafter, through the order impugned in the present petition, the Executing Court has issued non-bailable warrants against the petitioner and has also proceeded to recover the money due to the respondent through attachment of his immovable/movable property. Such order of the Executing Court is under challenge in the present proceedings.

Learned counsel for the petitioner submitted that without recording its satisfaction in terms of the safeguards provided under Section 51 CPC, the Executing Court could have not issued non-bailable warrants for the petitioner's arrest. According to him, there was no material on the record before the Executing Court which would show that the petitioner was having no means to pay the decretal amount and was willfully not doing so. It was further submitted that the arrest of the petitioner could have been ordered only after the Executing Court had exhausted the process of recovery of the decretal amount from sale of the petitioner's property.

In support of his case, learned counsel for the petitioner relied upon the following judgments :-

1. **M. V. Raju vs. The Manager, Indian Overseas Bank - AIR 2006**

Kerala 379 and

2. **Ashok Kumar vs. Social Mutual Benefits Company Ltd. - 2017 (2)**

ILR (H.P.) 477.

Nearly 09 years ago i.e. on 08.12.2010, the respondent's recovery suit, filed by her against the petitioner, was decreed. Admittedly, such decree attained finality and that the amount payable under the decree, as on date, is Rs.4,34,000/- (approximately). For the last about 09 years, the respondent has been struggling to enjoy the fruits of her decree. When the petitioner refused to pay the decretal amount, the respondent was constrained to approach the Executing Court where a list of properties of the petitioner was filed. However, such properties were found to be a subject matter of litigation between the petitioner and one Sukhdev Singh, in which proceedings, their alienation had been stayed. Thus, having been pushed to the wall, in the year 2017, the respondent filed an application before the Executing Court under Order 21 Rule 37 CPC seeking therein the petitioner's arrest/detention in civil prison. In response to such proceedings, the petitioner raised his hands and claimed to be a pauper having no means to satisfy the decree. Since there was no proceeding for insolvency filed on behalf of the petitioner, the Executing Court issued conditional warrants for the petitioner's arrest. Had the petitioner paid the decretal amount, such warrants would have not been executed. However, no such payment was made. Instead, the petitioner filed a petition before this Court to challenge the issuance of conditional warrants against him. His petition being **CR No. 6874 of 2018 – M/s Ganesh Rice Mills vs. Binny Aggarwal** came up for hearing before this Court on 17.10.2018, on which date, learned counsel for the petitioner disclosed that the petitioner owned a residential house which could be sold to satisfy the decree in question and that since the

petitioner was not residing therein, he would not seek any protection under Section 60(1)(ccc) CPC.

Relying on the statement made on behalf of the petitioner, this Court issued notice to the respondent-decree holder and also stayed the petitioner's arrest. Order dated 17.10.2018 is reproduced below for ready reference :-

“Learned counsel for the petitioner points to the application filed by the petitioner-judgment debtor, disclosing another property owned by the proprietor of the petitioner firm, i.e. by Jiwan Kumar. On specific query, learned counsel submits that he has taken instructions that though it is shown to be the residential house of the proprietor, he is not living therein and therefore would not be taking any plea in terms of Section 60(1)(ccc) of the CPC. Notice of motion be issued to the respondent, returnable on 19.11.2018. Dasti process only. In the meanwhile, warrants ordered to be issued shall not be executed, till the next date of hearing only and specifically.”

In the aforesaid Revision Petition, Mr. Vipul Aggarwal, Advocate appeared on behalf of the respondent and brought to the notice of this Court that the residential house qua which the petitioner had made his statement on 17.10.2018, was attached in some other proceedings and was in possession of the brother of the Proprietor of the petitioner firm i.e. Ashok Kumar. In these circumstances, this Court directed the petitioner to

the effect that no family member or any other person would resist the sale of his property. On the issuance of such direction, the petitioner retracted from his undertaking resulting in the dismissal of his petition. The relevant portion of the dismissal order dated 27.03.2019 reads as under :-

“When notice of motion had been issued in this petition on 17.10.2018, the following order had been passed :-

“Learned counsel for the petitioner points to the application filed by the petitioner-judgment debtor, disclosing another property owned by the proprietor of the petitioner firm, i.e. by Jiwan Kumar.

On specific query, learned counsel submits that he has taken instructions that though it is shown to be the residential house of the proprietor, he is not living therein and therefore would not be taking any plea in terms of Section 60(1) (ccc) of the CPC.

Notice of motion be issued to the respondent, returnable on 19.11.2018.

Dasti process only.

In the meanwhile, warrants ordered to be issued shall not be executed, till the next date of hearing only and specifically.”

Thereafter, on 21.02.2019, Mr. Aggarwal, learned counsel appearing for the

respondent/decreed-holder, had submitted that the property that the petitioner now wishes to attach to satisfy the decree in favour of the respondent, actually already stands attached in some other proceedings and secondly, it is a property in which the brother of the proprietor of the firm is residing, the brother being one Ashok Kumar.

Learned counsel for the petitioner had therefore been asked to file an affidavit, in terms of the undertaking given by him on 17.10.2018, to the effect that no family member or other person would resist the sale of the said property.

That not having been done even after that, today learned counsel submits that the petitioner retracts from the undertaking given by him on 17.10.2018.

Consequently, I see no ground whatsoever to entertain this petition, which is therefore dismissed.”

Thus, for about 09 years, the petitioner has made the respondent to run around in circles but till date, the respondent has not been able to enjoy the fruits of her decree.

In a proceeding initiated by the respondent under Order 21 Rule 37 CPC, the petitioner claimed to be a pauper, a stand which was later found to be false as on 17.10.2018, in a statement made before this Court, he admitted to own a residential property.

Further, on 17.10.2018, on an undertaking by the petitioner that the decree in question could be satisfied by selling a residential property

arrest. It was later revealed that the petitioner had failed to disclose that he was not residing in the said house and that the house was in occupation of his brother, without whose consent, further hurdles could easily be created in its disposal. Such crucial information was withheld from this Court for securing stay of the order for his arrest. When this fact was brought to the notice of this Court by the respondent, this Court directed the petitioner to file an affidavit in terms of his undertaking dated 17.10.2018. The petitioner retracted from his statement made on 17.10.2018 leading to the dismissal of his petition. The petitioner's conduct is depreciable.

The above facts, which speak for themselves, leave no room for doubt that non-bailable warrants issued against the petitioner have rightly been issued especially when the revision petition preferred by the petitioner against the issuance of conditional warrants of arrest against him has already been dismissed by this Court and such order has attained finality.

The arguments raised by learned counsel for the petitioner that the Executing Court should have first made all attempts to sell the petitioner's properties and only then should have issued the non-bailable warrants against him is an argument, which in the facts of the present case, deserves outright rejection. The afore-referred facts clearly reveal that for the last about 09 years, the Executing Court has made all possible attempts to execute the decree in favour of the respondent through disposal of movable/immovable property of the petitioner but has remained unsuccessful. All such attempts were frustrated by the petitioner. On 21.07.2018, only when it was stated by the petitioner that he is a pauper and

that has no means to satisfy the decree, did the Court issue conditional warrants for his arrest and that such order, on challenge before this Court, was upheld. The conduct of the petitioner, as discussed earlier, of making false statements before the Executing Court, suppressing crucial facts from this Court to procure an order of stay of his arrest and retracting of the undertaking given to this Court also disentitles him to the grant of any relief.

The judgments cited by the learned counsel for the petitioner are also clearly distinguishable. In neither M. V. Raju's case (*supra*) nor Ashok Kumar's case (*supra*) did the afore discussed facts exist.

In view of the above, I find no merit in the present revision petition.

Dismissed.

(DEEPAK SIBAL)
JUDGE

September 27, 2019
monika

Whether speaking/reasoned ?	Yes/No.
Whether reportable ?	Yes/No.