

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

CR 511 of 2020

Date of Decision: February 14, 2020

Chhotte Lal Pandit and anotherPetitioners
Versus
Usha Gupta Respondent

CORAM : HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present : Ms. Jyoti Sareen, Advocate
for the petitioners-revisionist.

Mr. Vaibhav Sehgal, Advocate
for the respondent.

FATEH DEEP SINGH, J. (Oral)

The brief background that needs to be gone into before adjudicating this civil revision by the petitioners/JD's is as follows:-

“The decree holder now respondent Usha Gupta sole proprietor of M/s Usha Textile Mills filed a civil suit on 17.05.2008 against the present petitioners, who are running a firm under the name and style of M/s Nidhi Knitwears and which was decreed on 19.12.12. The judgment debtor filed an appeal,

which was dismissed by the first Appellate Court on 27.03.2014. The Regular Second Appeal was dismissed in *limine* by this Court on 10.07.2014. Thereafter, the JD filed Special Leave Petition before the Apex Court, which was dismissed on 01.12.2014 and the review application too met its nemesis on 12.02.2015. Thereafter, the decree holder filed execution application on 06.03.2013, in which, the Executing Court of learned Civil Judge (Junior Division) Ludhiana through impugned order dated 10.01.2020 while disposing of the objections by the JDs had allowed an application under Order 21 Rule 37 CPC of the decree holder issuing conditional warrants of arrest against the JDs. The same is the subject matter of challenge in this petition.

Heard Ms. Jyoti Sareen, Advocate for the revisionist-petitioners and Mr. Vaibhav Sehgal, Advocate for the respondent and perused the records.

It is by no means put to question that the judgment and decree dated 18.12.2012 has since then attained finality. Ms. Jyoti Sareen, learned counsel for the revisionist-petitioners has sought to lay much emphasis on the fact that notice under Section 13(2) of the Securitization and Reconstruction of

Financial Assets and Enforcement of Securities Interest Act, 2002 was issued on 19.04.2013 as to the properties in question, which was mortgaged with Bank of Maharashtra and were earlier attached by the Executing Court on 17.05.2018. However, it needs to be kept in mind in spite of much time having lapsed consequent upon passing of the judgment and decree against the JD's, they have failed to comply with the same and on their own in response to the Executing Court has given list of properties owned by them. A sum of Rs.37,07,000/- alongwith 12% interest per annum is due on the basis of this decree and as is there in the submissions and the records even earlier the JD's have tried to play truant with Bank of Maharashtra in the year 2011 over a dispute of approximately Rs. 6,30,000,00/- and the properties in question as is stated before this Court are already under mortgage with the Bank, for which, the Executing Court has issued warrants of attachment and, therefore, left with no other option to ensure due recovery of the decretal amount, the Court has issued show cause notice to the JD why he should not be arrested and detained in civil imprisonment. The ratio in **Jolly George Varghese and another Vs. The Bank of Cochin**, 1980 AIR (SC) 470 and **T. Dharmalingam Vs. K.P. Bharathi and others** 2017(2) Lw 298 relied by the learned counsel for the revisionist-petitioners does not cuts much ice on account of factual disparity. Since, the JD's are under legal obligation to discharge the decree in the light of

the judgment and decree, so they cannot by any means hide under the garb of protection of life and personal liberties by having import to Article 21 of the Constitution of India. The impugned order has detailed at length holding that the list of property so given by the JD's being party under mortgage of a bank regarding which proceedings are under way under the Special Act, it was left with no other option but to make efforts to proceed with the execution in a procedure prescribed under the law and holding further that the conduct of the JD's was not bonafide and smacked with every effort to unduly delay the proceedings was constrained to pass the orders allowing the application under Order 21 Rule 37 CPC.

Ms. Jyoti Sareen, learned counsel for the revisionist-petitioners could not impress upon this Court what illegality or perversity has come about in the impugned order, which is in conformity with the law, more so, by having compliance of provisions of Order 21 Rule 40 CPC and, therefore, the revision petition being devoid of merits stands dismissed.

February 14, 2020

(FATEH DEEP SINGH)

amit rana

JUDGE

Whether reasoned/speaking : Yes/No

Whether reportable : Yes/No