

CR-7940-2017

Date of decision: 17.01.2020

Rohtash and others

.....Petitioners

versus

Dewan and others

.....Respondents

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH**Present:** Mr. Rajesh Lamba, Advocate
for the petitioners.

None for the respondents.

FATEH DEEP SINGH, J.

The claimants, now respondents, instituted a claim petition on 20.11.2013 and 01.04.2014 under Section 166 read with Section 140 of the Motor Vehicles Act, 1988 (in short 'the Act') seeking compensation on account of death of one, Bachchu Singh in a road side accident, which took place on 04.08.2013. An award was passed on 13.03.2015 by the Tribunal awarding compensation to the tune of Rs.12,29,916/- along with interest at the rate of 7% per annum from the date of filing of the claim petition till realization of the amount. The award was passed against respondent-Raghvar

and others son of Shree Ram, who was the driver and owner of the offending tractor bearing No. HR-50-3505. Execution of the orders was filed by the claimants on 29.09.2015. It was through the impugned orders dated 05.08.2017, the Executing Court passed the following effective orders which are reproduced as follows:-

*“Present: Sh. B.S. Poswal, Advocate for decree holder
Sh. R.S. Bastta, Advocate for respondent*

JD Raghubar has appeared though warrants of arrest were received back unexecuted. Vakalatnama on his behalf filed. Heard. There is no offer of the JD to satisfy the award passed against him. As per the execution application filed a sum of Rs.12,29,913/- along with interest at the rate of 7 per cent per annum from 1.4.2014 stands due against the JD who happened to be driver and owner of the offending vehicle when award was passed.

JD was given opportunity for the purpose of section 51 read with Order 21 Rule 40 CPC to show cause why he should not be committed to prison for failure to satisfy award. He had no explanation and his counsel rather stated that he has no resources and he may be committed to imprisonment.

Record shows that a copy of mutation no.7254 has been placed on record on behalf of decree holder which shows that around 47 Kanal 19 marla land has been transferred from Shri Ram to Rohtas and Neeraj. Shree Ram is father of present JD and Rohtas and Neeraj are sons of present JD. This mutation has been incorporated on the basis of the relinquishment deed dated 21.11.2014 which was executed during pendency of the present claim petition. There appears to be force in the contention of counsel for decree holder that this property has been accelerated from the hands of father of JDs to the sons of JD only to defeat the possible award which would have been passed in claim petition.

As a consequence of above, reading provisions of section 51 alongwith Order 21 Rule 40 CPC it is ordered that under section 58 (1) (a) CPC JD Raghvar son of Shree Ram shall be detained in Civil imprisonment for a period of 3 months. Subsistence allowance as determined for civil imprisonment as per section 57 read with Order 21 Rule 39 CPC be deposited by the decree holder immediately. Thereafter, warrants of committal of judgment debtor to Jail as per form No.14 App.E attached to CPC be issued. The JD shall be entitled to be released from detention on expiration of the said period of 3 months in terms of proviso attached to sub section 1 of section 58 CPC.

Copy of order be supplied to JD.

Meantime notice be issued to Shree Ram son of Khachera father of present JD and Rohtas and Neeraj sons of Raghvar i.e. Present JD to appear and file reply as to why the relinquishment deed and mutation of no.7245 should not be considered out come of fraudulent transfer and the recovery be ordered from the attachment and sale of this property. Notice be issued for 19.8.2017.”

What is reflected that this ancestral property owned by Shree Ram, father of JD Raghubar, the latter being father of Rohtash and Neeraj, colluded and connived and concocted relinquishment deed dated 21.11.2014. After the filing of the claim petition and before the award, whereby, the property, which ought to have gone by lineage to JD Raghubar, was in fact, transferred in the name of his sons, Rohtash and Neeraj. The Court has held that it appears to be with a motive to defeat the possible satisfaction of the award. Despite sending the JD Raghubar the civil imprisonment, the Executing Court had issued notice to Shree

Ram, father of JD Raghubar as well as Rohtash and Neeraj, sons of JD Raghubar to appear before the Court and file reply to adjudicate, if this transfer was fraudulent and why attachment and sale of the property be not effected. Though, with much fanfare, learned counsel for the petitioners has sought to controvert the arguments for the respondents that only notice has been issued to show cause and no orders prejudicial to the interest of the petitioners have come about, could not be controverted and refuted by learned counsel for the petitioners.

To the mind of this Court, neither any prejudice has come to the petitioner by the issuance of this show cause notice and rather what one can decipher from this invocation is that the petitioners are trying to gain time by such a recourse. Nothing substantial has come about for this Court to hear on this matter and rather the present petition stands disposed off with the directions to the petitioners to appear before the Executing Court and put forth their claim.

The present petition stands disposed off accordingly.

(FATEH DEEP SINGH)
JUDGE

17.01.2020

Neha

Whether speaking/reasoned : Yes/No

Whether reportable : Yes/No