

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

1. CR No.8059 of 2018

Charanjit Kaur

... Petitioner

Versus

Dhanna Singh

... Respondent

2. CR No.8138 of 2018

Charanjit Kaur

... Petitioner

Versus

Rupinder Kaur @ Harwinder Kaur

... Respondent

3. CR No.8213 of 2018

Charanjit Kaur

... Petitioner

Versus

Balkar Singh

... Respondent

Date of decision: 6th March, 2020

CORAM: HON'BLE MR. JUSTICE FATEH DEEP SINGH

Present: Mr. Vishal Gupta, Advocate for the petitioner.

Mr. G.S. Punia, Senior Advocate with
Mr. Amitoj Singh, Advocate for the respondents.

FATEH DEEP SINGH, J.

The above detailed three revision petitions though are arising out of different civil suits but on account of consanguinity of law points can be conveniently disposed off together by way of this common judgment. The facts though are almost akin, but for the decision of the present matter, the factual scenario is extracted from the Civil Suit filed by Dhanna Singh plaintiff against Charanjit Kaur defendant.

The plaintiff in each case has sought suit for recovery of the principal loan amount along with interest at the agreed rate as well as pendente-lite interest on account of advancement of loan to the defendant (now petitioner) for the purpose of her family business. The plaintiff in each case has set up promissory note and receipt as the basis of filing the suit. It is during the course of pendency of the suits, different applications under Order XXXVIII Rule 5 CPC read with Section 151 CPC were filed by the plaintiff in each of the case seeking attachment of the properties of the defendant. The Court of learned Additional Civil Judge (Senior Division), Amloh through orders dated 03.12.2018 allowed the applications and directed the defendant to either furnish the security equal to the suit amount within a period detailed in each of the orders and in default of furnishing security the immovable property of the defendant would automatically be attached and would remain under attachment till further orders of the Court. The same is subject matter of challenge in these revisions.

Heard Mr. Vishal Gupta, Advocate for the petitioners; Mr.G.S. Punia, Senior Advocate assisted by Mr. Amitoj Singh, Advocate for the respondent and perused the records.

Learned counsel for the petitioners Mr. Vishal Gupta, Advocate has sought to rake up the plea that the impugned findings are mere out of the self-assumed apprehensions of the Court and that there was no reasonable ground to hold that there was reasonable apprehension

that the defendant is likely to dispose off her properties to defeat the judgment and decree which might be passed in favour of the plaintiffs and against the defendant, and has placed reliance on '**M/s Raman Tech & Process Engg. Co. & Anr. vs. M/s Solanki Traders**' 2008 (1) RCR (Civil) 195; '**M/s V.G. Quenim and Another v. M/s Bandekar Brother Pvt. Ltd.**' 2002(10) SCC 513; '**Onkar Mal Mittal vs. State Bank of Patiala**' 1991(2) PLR 338; and '**M/s Prem Steel and Allied Industries and others vs. Roopak Kumar Bhardwaj & others**' 2019(2) PLR 696.

Mr. G.S. Punia, Senior Advocate assisted by Mr. Amitoj Singh, Advocate representing the respondent has sought to express the apprehension on the basis that the loan in question, out of which the present petitions have arisen, was advanced on 01.12.2015 and thereafter another loan amount was taken from one Shamsheer Singh and the third loan has been secured from the Corporation Bank and therefore is in itself suggestive of the intention at the back of the mind of the petitioner and has sought to place reliance on '**Rajendran and others vs. Shankar Sundaram and others**' 2008(1) RCR (Civil) 891 and '**P. Chandran vs. A. Mahendrapandi**' 2017(4) LW 638.

Going through the submissions of the two sides and perusal of the records. It is not in any manner displaced by learned counsel for the petitioner that the claim of the plaintiffs is based on promissory note-cum-receipt dated 01.12.2015 and that it is subsequent thereto two other loan amounts have been availed, one from the Bank and another from a

private person. The provisions of Order 38 Rule 5 CPC are self-illustrative that where the Court is satisfied that the defendant with intent to obstruct or delay the execution of any decree that may be passed against him, is about to dispose off the whole or any part of his property, or is about to remove the whole or any part of his property from the local limits of the jurisdiction of the Court. The Court in **Onkar Mal Mittal's case (ibid)** relied upon by the petitioner side, has clearly held while laying down the guiding principles in interpreting the provisions of Order 38 Rule 5 CPC, that whether such circumstances exist is a question of fact that should be brought forth to the satisfaction of the Court and that mere allegations against defendant of selling off the properties are not sufficient. In the present case, the fact of three loans having been availed from three different quarters running into enormous amount, is reflective of the acute financial embarrassment being faced by the petitioner and to the mind of this Court after securing loan from the plaintiffs the other two loans have subsequently crystallized, are matters of much relevance. The promissory note is dated 01.12.2015 and all these loan amounts have been secured subsequent thereto, is certainly an aggravating circumstance in this direction and therefore, this Court legitimately draws the inference that there are reasonable grounds for the petitioner to defeat the very fruits of the suits that have been instituted by the plaintiffs. Furthermore, in **Rajendran's case (ibid)** the Supreme Court lays down that where the Court by exercising its jurisdiction under Order 38 Rule 5 CPC is

required to form a prima-facie case, at that stage it need not go into the very correctness of the various contentions raised by the parties.

Reverting back to the present case, the impugned orders have considered the very parameters for the exercise of powers under Order 38 Rule 5 CPC and had clearly drawn the conclusion that the act and conduct of the then defendant (now petitioner) is a clear cut indicator in this direction as to the very reasonable likelihood that the plaintiffs' decree, if so passed against the defendant, is likely to remain fruitless. The Court has rather afforded reasonable time and opportunity to the defendant to furnish security of immovable property but which the petitioner has failed to avail of, is another adverse stance that goes against the petitioner and is an indicator in that direction and furthermore, no prejudice is likely to be caused by such a stipulation. Learned counsel for the petitioner could not successfully thwart the arguments that have been brought about by the learned counsel for the respondents and in the absence of any illegality or perversity in the impugned orders, this Court is reluctant to show indulgence and as such, the present three revision petitions being hopelessly without merit stand dismissed.

(FATEH DEEP SINGH)
JUDGE

March 6, 2020

rps

Whether speaking/reasoned
Whether reportable

Yes/No
Yes/No