

211

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

Civil Revision No.751 of 2020 (O&M)

Date of Decision: 07.10.2020

M/s Chadha Motors and othersPetitioners

Vs

Shashi Jain

....Respondent

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present:Mr. Rakesh Bhatia, Advocate
for the petitioners.

Mr. G.S. Madaan, Advocate
for the respondent.

RAJ MOHAN SINGH, J.

[1]. The case has been taken up for hearing through video conferencing.

[2]. Petitioners have assailed the order dated 28.11.2019 passed by the Civil Judge (Jr. Divn.) Ludhiana, vide which the application under Order 38 Rule 5 CPC filed by the plaintiff was allowed.

[3]. Primary contention of learned counsel for the petitioners is that the suit was filed in the Court of Civil Judge (Jr. Division) Ludhiana and the properties are situated in two Districts i.e. Ferozepur and Moga, therefore, the trial Court could have passed the impugned order in view of Order 38 Rule 5(1)(b) CPC and its Sub-Rule (2). The impugned order has

been passed in violation of mandatory requirement of Order 38 Rule 5 CPC and is void in view of Order 38 Rule 5 and its Sub-Rule (4).

[4]. Learned counsel further submitted that the petitioners were not served at the time when the impugned order was passed on 28.11.2019 and the trial Court has wrongly recorded that the Court had heard learned counsel for the parties. The property in question is already mortgaged with the Bank. The Bank is the secured creditor. The implementation of the impugned order thereby mentioning factum of pendency of suit in the office of Sub-Registrar would create material prejudice to the petitioners as the Bank would not be in a position to sell it for the want of willing buyer.

[5]. Per contra, learned counsel for the respondent submitted that in view of Section 136 CPC, the property can be attached irrespective of local jurisdiction of the Court subject to sending the same to the District Court of local limits within whose jurisdiction such property situates. The trial Court vide the impugned order has directed that in case the petitioners want to alienate the property, they shall disclose the factum of pendency of present suit to the proposed vendee and shall also mention about pendency of suit in the proposed document of alienation. Registering Authority was also directed to register only those documents which have disclosed about pendency of

the suit.

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

[7]. Bare reading of the impugned order would show that the order does not relate to any such attachment before judgment except to make an entry in the record of Registering Authority, however the trial Court has not considered the factum of Bank being a secured creditor having first charge over the property. At the same time the Bank is not party-defendant in the suit. The trial Court has also not considered that the properties are situated in two separate districts. The provisions of Order 38 Rules 5 & 6 CPC are to be strictly applied. The impugned order appears to be wanting on legal parameters for which the trial Court can be directed to revisit the order and to pass a fresh order in accordance with law after taking into consideration the facts and legal position involved in the case.

[8]. In view of above, this revision petition is allowed. The impugned order dated 28.11.2019 passed by the Civil Judge (Jr. Divn.) Ludhiana is set aside and the matter is remanded to the Court of Civil Judge (Jr. Divn.) Ludhiana to pass a fresh order in view of aforesaid observation/direction.

(RAJ MOHAN SINGH)
JUDGE

October 07, 2020

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Whether speaking/reasoned Yes/No

Whether reportable Yes/No