

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

**Civil Revision No.1482 of 2020  
Date of Decision:20.3.2020**

Tirath Singh

...Petitioner

Versus

Sukhdev Raj @ Dev Raj and others

...Respondents

**CORAM: HON'BLE MR.JUSTICE RAJIV NARAIN RAINA**

Present: Mr.Amit Dhawan, Advocate  
for the petitioner

\*\*\*\*

**RAJIV NARAIN RAINA, J. (ORAL):**

1 The petitioner seeks quashing of the impugned order dated 24.2.2020 passed by the learned Civil Judge (Junior Division), Nakodar, Jalandhar Division (Annex. P6) whereby the warrants of attachment and sale of the property of the petitioner have been issued.

2. On the previous date of hearing i.e.2.3.2020, learned counsel for the petitioner was asked to produce the passport of the petitioner to show details of his visits to India for the last 10 years. This Court wanted to assure itself of his travel history in the face of a judgment and decree passed *ex parte* against him on 1.3.2014.

3. Heard learned counsel for the petitioner.

4. Mr.Dhawan submits that the petitioner is unable to produce the earlier passport as he is in matrimonial dispute with his wife and she refuses to part with it. This is bald statement made to wriggle out of a registered mortgage deed dated 22.5.2002 executed by the

petitioner in favour of the plaintiffs-respondents as security for loan. If the petitioning-defendant's whereabouts are not known for the crucial period when he was proceeded against *ex parte* and invited that decree without contesting the suit, then he ought not to be heard coming at the nick of time against the warrants of attachment of the suit property for satisfaction of the money decree albeit *ex parte* for which notice was issued on 4.3.2020 at the permanent address of the petitioner; *Munadi* effected on 13.3.2020 and the sale slated by public auction for 24.3.2020 as per the schedule fixed by the Civil Judge (Junior Division), Nakodar in her impugned order dated 24.2.2020.

5. In his application under Order 9 Rule 13 CPC, a copy of which has been placed at Annex.P2, the petitioner pleaded he is a Non-resident Indian (NRI), settled in Australia. He has usually been living abroad since 2008 even before filing of the suit and visits India off and on. The benefit available to a Non-resident Indian, facing a suit in India, for exempting limitation for the period before the plaint is instituted, summons issued and in the ensuing civil court proceedings *ex parte*, or otherwise, cannot be availed as a matter of right by the defendant petitioner, when he does not in his application even care to supply his contact address in Australia, establishing prima facie that he was not available to be served is a material circumstance against him.

6. The exemption by way of exclusion of time in certain other cases, other than falling in Part III of the Limitation Act, 1963 is available under Sub-section (5) of Section 15 to a defendant residing

abroad which provided that: “In computing the period of limitation for any suit the time during which the defendant has been absent from India and from the territories outside India under the administration of the Central Government, shall be excluded”.

7. In my considered view, the defendant in order to satisfy the test in provisions of the Act can depend only on the travel entries stamped in his passport to prove that he has never been to India throughout the relevant period from the date of filing of the suit till the *ex parte* decree. If he fails to produce his passport called by the Court or any other contemporaneous evidence, such as complaints made to the High Commission of India in Australia or to the passport authorities in India, showing that his passport was and is in the illegal custody of his disputing wife, he must suffer the consequences of the decree. If he is without a valid passport or a duplicate passport, how does he explain his residence or travel abroad. No help on the point is found from the file. Hence, an adverse inference must be drawn against the petitioner. An *ex parte* decree of a civil court is as good as a decree within the meaning of the term defined in Section 2 (2) of the Code of Civil Procedure, 1908 and is also a formal expression of an adjudication determining rights of the parties, consequent ultimately upon failure by the defendant to make out a case on merits to re-enter proceedings under Order 9 Rule 13 read with Section 106, CPC and claim a fresh trail.

8. Accordingly, interference is uncalled for in this petition on

the facts presented and the story told to avoid his liability to pay back the loan to the plaintiffs is disbelieved.

9. As a result, the impugned order is upheld and the petition is consequently dismissed in *limine*.

March 20, 2020  
*neenu*

(RAJIV NARAIN RAINA)  
JUDGE

|                           |        |
|---------------------------|--------|
| Whether speaking/reasoned | Yes    |
| Whether reportable-       | Yes/No |