

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

CR No. 7997 of 2019 (O&M)

Date of Decision: 10.2.2020

M/s Grewal Trading Co.

...Petitioner

Vs.

Surinder Kaur and others

...Respondents

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

Present: Mr. Jatinder Singla, Advocate
for the petitioner.

RAJIV NARAIN RAINA, J. (Oral)

1. There is sufficient explanation in the application warranting recall of the order dated 14.1.2020 whereby the petition was dismissed for non-prosecution.

2. CM is allowed.

3. The case is restored to its original number for hearing and is taken up today to see whether the case is made out since notice has not been issued yet.

4. I have heard learned counsel for the petitioner.

5. I propose to pass the following order. The petitioner will have rights to satisfy his claim by sale of property of defendant No.2 and other defendants who were allegedly indebted to the plaintiff, who is a commission agent lending money to farmers for trading crop produce in exchange of money in advance. The plaintiff is the commission agent in the summary suit filed under Order 38 CPC for

recovery of the sum described in the Head Note to the plaint. In the suit he filed an application under Order 38 Rule 5 [attachment before judgment and asking the defendant for furnishing security] praying for temporary injunction restraining ex-parte defendant No.2 from selling, alienating, transferring, mortgaging, gifting and encumbering property etc.

6. The learned trial court has found that the ownership of the property is in the name of defendant No.2 recorded in the *Jamabandi* for the year 2015-16 [attached as Annex. P-4]. The trial judge has held in his order brought up for review that the fact that the deceased Hakam Singh-father of defendant No.2 used to sell his agricultural produce through the *arthiya* shop of the plaintiff and used to borrow money from the plaintiff is a matter of evidence and proof and nothing can be said of the genuineness of the same at this stage. The trial judge has observed that no evidence of an immediate threat regarding alienation of the suit property at the hands of defendant No 2 has been produced on record.

7. Learned counsel submits that the plaintiff had filed an affidavit deposing that defendant No.2 is going to sell his property to avoid liability to return the borrowings. A mere filing of an affidavit and the statements made therein are not independent material to the determination of the dispute, the trial court countered. Neither was it necessary for the learned Additional Civil Judge, Senior Division, Sangrur to observe that the plaintiff has not placed on record any

document to show the intention of defendant No.2. This would be a negative thought process and therefore, even if one tries to overlook the observation, even then, I would heartily support the conclusion arrived at in the impugned order, that the application under Order 38 Rule 5 of the Code deserved to have been dismissed .

8. In case defendant No.2 sells his property to 3rd party, the plaintiff will have a right protected by the principle of *lis pendence* as the subsequent owner will step into the shoes of defendant No.2. Also there is no prima facie material that this defendant has any intention to obstruct or delay the execution of a decree that may be passed against him.

9. In the exercise of jurisdiction conferred by Article 227 of the Constitution of India and while examining the work of the trial Court in this revision, I fail to find any patent error or legal infirmity in the reasoning adopted by the civil judge to conclude that it has in any manner exceeded the bounds of his jurisdiction or has failed to exercise the authority vested in him or has exercised it with material irregularity.

10. The judicial discretion exercised by the civil judge in making the impugned order requires no substitution by this Court. The application has been rightly declined to leave adequate room for production of evidence and proof although the proceeding taken recourse to is by summary procedure. Justice cannot be sacrificed at the altar of Order 38 Rule 5 of the CPC. This provision of the Code has the

most deleterious effect on the activities of the defendant and is not to be used lightly but sparingly and with care and caution. It is not designed to add to the woes of farmers in their non-commercial affairs.

11. There is hardly any merit in this petition warranting interference with the opinion of the civil judge formed after due application of mind in declining the interim prayer for attachment of property before judgment or calling upon the contesting defendant to furnish security based on accounts books maintained privately by the commission agent against a stressed farmer in a script only they can figure out.

12. The proposed order is accordingly passed. The petition is dismissed.

(RAJIV NARAIN RAINA)
JUDGE

10.2.2020

kv

Whether speaking/reasoned : Yes
Whether reportable : Yes