

Civil Revision No. 5795 of 2016

207 IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

Civil Revision No. 5795 of 2016 (O&M)

Date of decision : 28.07.2021

Asha Rani

...Petitioner

Versus

M/s Bansal Trading Company and another

... Respondents

Coram : Hon'ble Mr. Justice Arun Monga

Present : Mr. Deepak Aggarwal, Advocate, for the petitioner.

Mr. Aman Bansal, Advocate, for the respondents.

(Presence marked through video conference)

Arun Monga, J. (Oral)

CM No. 26159-CII/2018

The application is allowed and the affidavit of respondent no. 2 filed in compliance to the order dated 21.11.2018, is taken on record, subject to all just exceptions.

CR No. 5795/2016

Revision petition herein is by a decree-holder seeking to set aside the impugned order dated 18.08.2016 (**Annexure P-7**), whereby the execution petition filed by him has been transferred from district Bhatinda, Punjab to another State (Rajasthan).

Learned counsel for the petitioner submitted that as per Section 39 of CPC, only a decree-holder has been given right to seek transfer of execution proceedings. Notwithstanding, on an application filed by JD/respondent, vide impugned order dated 18.08.2016, execution proceedings have been transferred by the Court of Additional Civil Judge (Senior Division), Bathinda (Punjab) to the Court of Civil Judge (Senior Division), Sangria, District Hanumangarh (Rajasthan).

Having heard the rival contentions, I am of the view that petition herein deserves to be allowed. The argument of the learned counsel for the respondents that, *dehors* the application of JD, the executing Court is vested with power on its own motion to transfer the execution proceedings, and therefore, it is irrelevant whether an application by the judgment-debtor has been preferred or not, flies in the face of bare reading of Section 39 of CPC, which is extracted herein below:-

“39. Transfer of decree.—*(1) The Court which passed a decree may, on the application of the decree-holder, send it for execution to another Court of competent jurisdiction,—*

- a) if the person against whom the decree is passed actually and voluntarily resides or carries on business, or personally works for gain, within the local limits of the jurisdiction of such other Court, or*
- b) if such person has not property within the local limits of the jurisdiction of the Court which passed the decree sufficient to satisfy such decree and has property within the local limits of the jurisdiction of such other Court, or*
- c) if the decree directs the sale or delivery of immovable property situate outside the local limits of the jurisdiction of the Court which passed it, or*
- d) if the Court which passed the decree considers for any other reason, which it shall record in writing, that the decree should be executed by such other Court.*

(2) The Court which passed a decree may of its own motion send it for execution to any subordinate Court of competent jurisdiction.

(3) For the purposes of this section, a Court shall be deemed to be a Court of competent jurisdiction if, at the time of making the application for the transfer of decree to it, such Court would have jurisdiction to try the suit in which such decree was passed.

(4) Nothing in this section shall be deemed to authorise the Court which passed a decree to execute such decree against any person or property outside the local limits of its jurisdiction.”

Sub-section (2) of Section *ibid* clearly states that the executing Court may of its own motion send the decree for execution to any subordinate Court of competent jurisdiction.

In the instant case, even if it is assumed that the executing Court has passed the order *suo moto*, as is being contended, the proceedings have been transferred from one State to another State. The said recourse, if at all, can be resorted by the court only on an application filed by a decree-holder. Neither the judgment-debtor has any right to file such an application, nor under the aforesaid section the executing Court is vested with any such power to transfer proceedings on its own motion to another State. In the premise, the impugned order is clearly in violation of mandate of Section 39 of CPC and is accordingly set aside.

Civil Revision Petition is allowed.

28.07.2021

vs

(Arun Monga)
Judge

Whether speaking/reasoned : Yes/No
Whether reportable : Yes/No