

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

CR-3216-2021 (O&M)
Reserved on : 21.10.2022
Date of Decision: 01.11.2022

Dalbir Singh

....Petitioner

VERSUS

Sanjay Kumar

....Respondent

CORAM : HON'BLE MRS. JUSTICE ALKA SARIN

Present : Mr. Ashok Arora, Advocate for the petitioner.

ALKA SARIN, J.

The present civil revision petition under Article 227 of the Constitution of India has been filed for setting aside the order dated 02.02.2019 (Annexure P-8) and also the order dated 11.10.2021 (Annexure P-11) passed by the Trial Court whereby the application for recall of the order dated 02.02.2019 has been dismissed.

The brief facts relevant to the present *lis* are that an award dated 02.11.2016 was passed by the Lok Adalat in a petition under Section 138 of the Negotiable Instruments Act, 1881. The JD-respondent herein agreed to repay the loan amount in two installments of Rs.10,00,000/- each failing which he was liable for conviction as per the statements of the parties recorded on 02.11.2016. Thereafter, the award was passed. The JD-respondent did not pay the amount on time, hence, an execution petition

was filed by the DH-petitioner. In the execution petition, vide order dated 14.05.2018, on an application filed by the DH-petitioner, the salary of the JD-respondent was attached till further orders. Prior to that, the conditional warrants of arrest of the JD-respondent were also issued. The JD-respondent moved an application for release of the salary and attachment of the property. Vide impugned order dated 02.02.2019 the Executing Court, in view of the provisions of Section 60(1)(i) of the Code of Civil Procedure, 1908 (CPC), recalled the order dated 14.05.2018 and the employer of the JD-respondent was directed to release the attached salary only to the extent of $\frac{2}{3}$ rd attached salary and the rest $\frac{1}{3}$ rd attached salary was to be deposited in the account of the DH-petitioner. The property of the JD-respondent was attached with immediate effect and the report of the Tehsildar was called. Further, vide order dated 02.02.2019 the conditional warrants of arrest were recalled. All the applications were disposed off. Subsequently, an application was filed by the DH-petitioner for recalling the order dated 02.02.2019. A reply was filed to the said application. Vide the impugned order dated 11.10.2021 (Annexure P-11) the application for recalling the order dated 02.02.2019 was dismissed. The Executing Court held that the salary of the JD-respondent had been attached and remittance therefrom had already been made for a period of 24 months and further salary could not be attached in execution of one and the same decree. The plea raised by the DH-petitioner that the property attached would not serve the purpose for satisfying the award, was rejected on the ground that the value of the property was yet to be ascertained and the JD-respondent was directed to furnish an affidavit stating all the particulars of his moveable and immoveable properties in accordance with Order 21 Rule 41(1) and (2)

CPC. The prayer of the DH-petitioner for recalling the order of conditional arrest warrants was also declined.

Learned counsel for the DH-petitioner has contended that the order dated 02.02.2019 ought to have been recalled inasmuch as the amount as promised by the JD-respondent had not been paid. Learned counsel for the DH-petitioner has relied upon the judgment of Hon'ble Supreme Court in the case of **K.N. Govindan Kutty Menon V s. C.D. Shaji [2012 (2) SCC 51]** and the judgments of this Court in the cases of **Mahender Kumar Vs. Mangal Singh [2013 (4) RCR (Civil) 342]** and **Ajit Inder Singh Vs. Kuldip Singh [1994(1) Civil Court Cases 680]**.

Heard.

Learned counsel for the DH-petitioner is not in a position to deny the fact that the salary of the JD-respondent already stood attached for a period of 24 months and 1/3rd amount as deducted from the salary was paid to the DH-petitioner. Learned counsel for the DH-petitioner is also not in a position to controvert that some property of the JD-respondent already stands attached qua which the proceedings are pending. The JD-respondent vide the impugned order was directed to file an affidavit stating all the particulars of his moveable as well as immoveable properties.

Section 60(1)(i) CPC reads as under :

“Section 60 - Property liable to attachment and sale in execution of decree.

(1) The following property is liable to attachment and sale in execution of a decree, namely, lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government

securities, bonds or other securities for money, debts, shares in a corporation and, save as hereinafter mentioned, all other saleable property, movable or immovable, belonging to the judgment-debtor, or over which, or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the judgment-debtor or by another person in trust for him or on his behalf:

Provided that the following particulars shall not be liable to such attachment or sale, namely :

xxx

(i) salary to the extent of the first one thousand rupees and two-thirds of the remainder in execution of any decree other than a decree for maintenance.

Provided that where any part of such portion of the salary as is liable to attachment has been under attachment, whether continuously or intermittently, for a total period of twenty-four months, such portion shall be exempt from attachment until the expiry of a further period of twelve months, and, where such attachment has been made in execution of one and the same decree, shall, after the attachment has continued for a total period of twenty-four months, be finally exempt from attachment in execution of that decree.”

The salary of the JD-respondent cannot be attached for a period

of more than 24 months where such attachment is made in execution of one

and the same decree. The amount of $\frac{1}{3}^{\text{rd}}$ of the salary of the JD-respondent for a period of 24 months already stands deposited in the account of the DH-petitioner. Further, a property measuring 3 kanals 11 marlas belonging to the JD-respondent has already been attached and the JD-respondent has been asked to furnish an affidavit along with all the particulars of his moveable as well as immoveable properties. The argument of learned counsel for the DH-petitioner that the salary should be continued to be attached cannot be accepted in view of the clear provisions of Section 60(1)(i) of CPC. Further the argument of learned counsel that the JD-respondent ought to be arrested for non-compliance of the order passed by the Permanent Lok Adalat cannot also be accepted in view of the fact that arrest would be a measure of last resort and in the present case, admittedly, some property of the JD-respondent already stands attached and the Executing Court has directed the JD-respondent to file an affidavit stating all the particulars regarding his moveable and immoveable properties.

The judgment relied upon by learned counsel in the case of **Mahender Kumar** (*supra*) would not come to the aid of the DH-petitioner inasmuch as in the said case there was a specific condition in the compromise that till the amount was not paid the defendant therein would not sell, mortgage the house in question and a charge would remain created on the same. In the present case, there is no such condition in the compromise.

The judgment relied upon by learned counsel in the case of **Ajit Inder Singh** (*supra*) would also not be of any help inasmuch as the same is on a totally different point that in case the compromise is not acted upon, the civil suit should be restored and the Court should proceed with the suit from

the stage as it was withdrawn. The present proceedings have arisen out of the execution proceedings.

The judgment relied upon by learned counsel in the case of **K.N. Govindan Kutty Menon** (*supra*) also does not further the case of the DH-petitioner inasmuch as the same lays down that an award passed by the Lok Adalat would be deemed to be a decree of the Civil Court executable by the Civil Court. There can be no quarrel with the said proposition of law. In the present case, the property of the JD-respondent already stands attached and the JD-respondent has been directed to file an affidavit stating all the particulars regarding his moveable and immoveable properties. Hence, the impugned order cannot be faulted.

In view of the above, I do not find any illegality or infirmity in the impugned orders. The present revision petition, which is devoid of any merit, is accordingly dismissed. Pending applications, if any, also stand disposed off.

Dismissed.

01.11.2022
Yogesh Sharma

(ALKA SARIN)
JUDGE

NOTE : Whether speaking/non-speaking: Speaking
Whether reportable: YES/NO